

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3706 OF 2018
WITH
CIVIL APPLICATION NO.6614 OF 2017
IN
FA NO. 3706 OF 2018

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THE SECRETARY, M.S.R.T.C., BOMBAY,
THR THE DIV. CONTROLLER,
MSRTC, DHULE, TQ. AND DIST. DHULE ..Appellant..

VERSUS

KALPANA ASHOK JADHAV
age 45 yrs, Occ. Tailoring work,
R/o Khapar, Tq. Akkalkuwa,
Dist. Nandurbar. ..Respondent..
(orig. claimant)

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Mr. A.S. Mali a/w D.S. Bagul, Advocate for appellant.
Mr. G.B. Kingre Advocate for respondent.

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CORAM : S.G. CHAPALGAONKAR, J.

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Reserved on : 18th July, 2023.
Pronounced on : 26th July, 2023.

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JUDGMENT :-

1. The appellant/original respondent-MSRTC approaches this Court under section 173 of the Motor Vehicles Act thereby assailing the judgment and award dated 20.6.2016 passed by the Motor Accident Claims Tribunal, Dhule in MACP No.621 of 2012.
2. The respondent/original claimant had filed MACP No.621 of 2012 before the Tribunal at Dhule under the provisions of section 166 of the Motor Vehicles Act to claim compensation of Rs.5.00 lakhs. The claimant contends that she was traveling in the MSRTC Bus bearing

registration No.MH-14/BT-0560 from Sakri towards Nandurbar. While the bus was passing from Vajdare village, a tractor came from the opposite side. Bus was driven in rash and negligent manner. Resultantly, the tractor collided on driver side of the bus. She sustained serious injuries in the said accident. She suffered bony deep wound to right leg femure with fracture of knee. Her right hand was also fractured. She suffered multiple injuries on her face with depressed fracture of skull. She during her hospitalization for more than 15 days she was operated. However, she suffered permanent disablement. Accordingly, she claimed the compensation of Rs.5.00 Lakh from the respondent MSRTC.

3. The claim was contested by the appellant through written statement contending that the driver of the tractor was responsible for the accident. There was no fault of the driver of the ST Bus. The Tribunal had framed the issues. The claimant relied upon the police papers and recorded her own evidence. She has further relied upon the evidence of Dr. Rajesh Patil PW-3, Rajkumar Suryawanshi PW 4 to prove the permanent disablement and medical treatment. The evidence of PW 2 and PW 5 was recorded to prove the medical expenses. The Tribunal, after considering the evidence of the claimant and her witnesses accepted that the claimant has suffered 60% permanent disablement and granted compensation of Rs.7,95,061/- alongwith interest @ 9% p.a. under the impugned award.

4. The appellant/MSRTC assailed the order of the Tribunal mainly on the ground that the claim is bad for non-joinder of the necessary party as the owner and insurer of the tractor is not joined in the claim petition. The contention of the appellant is that the award passed by the Tribunal is excessive and exorbitant. Assessment of the compensation is without assigning the reasons.

5. Learned advocate Mr. Mali alongwith Mr. Bagul appearing for the appellant would submit that when the accident occurred between two vehicles, it was incumbent upon the claimant to add the owner and driver of both the vehicles as party to the claim petition. He would further submit that in absence of the income proof, the Tribunal assumed income of the claimant to the tune of Rs.5,000/- p.m. The Tribunal granted compensation under various heads without recording reasons for grant of such compensation.

6. Per contra, Mr. Kingre, learned counsel appearing for the claimants supports the award. He would submit that the injuries and permanent disablement suffered by petitioner has been duly proved through the evidence of treating doctor. He would further submit that the Tribunal considered the notional income of the claimant to the tune of Rs.4,500/- p.m. but nothing is added towards future prospects. Assessment of the compensation has to be for pecuniary and non-pecuniary losses. The tribunal has assessed the just compensation.

7. Having considered the submissions advanced by learned advocates appearing for the respective parties and after going through the record, it can be gathered that the present appeal is restricted to the challenge to assessment of compensation and the finding on the point of negligence. It is not in dispute that the claimant was traveling in MSRTC bus at the time of the accident. The tractor coming from the opposite direction dashed against the bus. The offence was registered against the bus driver. He did not step into witness box. The claimant is an eye witness to the accident and categorically deposed about the negligence of bus driver. Even, it is assumed that it was a case of composite negligence between the bus and tractor driver, it is trite that the claimant has choice to prosecute her claim against any of the joint tortfeasor. The evidence on record is sufficient to show that the S.T. driver was responsible for the

accident or at least he was major contributor in the cause of the accident. The claimant, being a third party, has exercised her option to prosecute her remedy against the appellant/MSRTC. In that view of the matter, the contention of the appellant that the claim is bad for non-joinder of necessary party cannot be accepted. Similarly, the evidence on record is sufficient to establish the negligence of bus driver. The Tribunal after recording elaborate reasons arrived at the conclusion that the bus driver was responsible for the accident. There is no force in the contention of the appellant that the issue of negligence is wrongly decided.

8. So far as another contention raised on behalf of the appellant that excessive and exorbitant compensation is granted, the claimant relied upon her own evidence. She has relied upon the evidence of Dr Rajesh Patil PW-3, who has issued a certificate of permanent disablement at exhibit 25. It shows that the claimant has suffered 60% permanent disablement. The contents of the certificate are duly proved through the evidence of PW 3 Dr. Patil as well as PW 4 Dr. Suryawanshi, who is author of the disability certificate at exhibit 32. The medical certificate at exhibit-36 is issued by the duly constituted Board presided by Civil Surgeon. There is no difficulty to accept genuineness of this document. The claimant has proved the medical expenses through the evidence of PW-2 and PW-5. Original bills are filed on record.

9. It is well settled that, even in injury cases, the compensation will have to be assessed by applying multiplier injuries. The Tribunal considered 60% permanent disablement and accepted loss of earning commensurate to the permanent disablement. Notional income of the claimant is estimated to Rs.4,500/-. The age of the claimant is proved to be 45 years. Appropriate multiplier of '14' is applied. Loss of future earning is worked out to Rs.4,53,600/- on notional basis. No fault can be found in the assessment of compensation. On the other hand, the

Tribunal has not considered the compensation towards future prospects while considering consolidated monthly loss of Rs.4,500/-. Hospital and medical expenses are duly proved on the record of the Court. The Tribunal has rightly awarded compensation for non-pecuniary losses i.e. Rs.50,000/- towards pain and sufferings, Rs.25,000/- towards special diet and Rs.10,000/- towards transportation. The assessment of the compensation is based on the appreciation of the evidence on record and application of well settled principles of law. In that view of the matter, there is no force in the appeal. Hence, First Appeal stands dismissed. Pending civil application, if any, stands disposed off. The amount, if any, deposited by the appellant, be disbursed to the claimant.

[S.G. CHAPALGAONKAR]
JUDGE

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aaa/-