

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1826 OF 2019

Maharashtra State Road
Transport Corporation,
Sangli Division Office,
Kolhapur Road, Sangli.

(Ori.Opponent No.2)
...Appellant

Versus

1. Ganesh Vilas Mane

Age : 21 years, Occu.: Nil,
R/o.: Mane Wada, Brahmin Galli,
Vita, Taluka Kahapur, District Sangli
Through Next Friend

Vilas Shivaji Mane

Age : 58 years, Occu.: Business,
R/o.: Mane Wada, Brahmin Galli,
Vita, Taluka Khanapur, District Sangli

(Ori. Applicant No.1)

2. Ramdas Shivram Mane

Age : 41 years, Occu.: Driver,
R/o.: Shiravade, Taluka Karad,
District Satara

(Ori.Opponent No.1)

...Respondents

Mr. D. D. Rananaware a/w Manjeet Lotankar for the Appellant.

Mr. Mahendra B. Deshmukh for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd MAY, 2023.**JUDGMENT :**

1. The issues involved in this Appeal are income of the Claimant considered on higher side and accident occurred due to the negligence of the Claimant.

2. It is contention of learned Counsel for the Appellant that accident occurred due to the negligence of the Claimant, but the Tribunal has not considered this fact and has awarded exorbitant and excessive compensation. Learned Counsel further submits that the Tribunal has considered Rs. 20,000/- as monthly income of the Claimant, who was running radium plate shop at Taluka place. No evidence was produced on record to show that the Claimant was running the said shop. In spite of that, the Tribunal has awarded the exorbitant and excessive compensation, hence, requested to allow the Appeal.

3. Learned Counsel for the Respondent-Claimant submits that the offending bus gave dash to the motorcycle of the Claimant, due to which the accident occurred. Learned Counsel further submits that

sufficient evidence was produced on record to show that the Claimant was earning more than Rs.20,000/- per month. On that basis, the Tribunal has awarded the compensation, which is proper. No interference is required in it.

4. I have heard both learned Counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal (for short 'the Tribunal').

5. It is the Claimant's case that on 9th September, 2015, the Claimant was proceeding towards Vita from Karad on motorcycle, at about 4:15 p.m., at Hanumanvadi, Respondent No.2 drove S.T. Bus bearing No. MH-14-BT-2841 (for short 'the offending bus') in rash and negligent manner and dashed to the motorcycle of the Claimant. Due to the said dash, the Claimant sustained head injury, multiple contusions and diffuse axonal injury (Grade-II). The Claimant was admitted in various hospitals for treatment. The offence was registered against the driver of the offending bus.

6. While dealing with the issue of negligence, the Tribunal has observed that the Claimant has examined eye witness Sagar Sopan Gharage. He has stated that the driver of the offending bus brushed to the motorcycle of the Claimant, due to which the Claimant fell down

and sustained head injury. In police inquiry, it was found that the accident occurred due to the negligence of the driver of offending bus. Considering the evidence on record, the Tribunal has held that the offence was registered against the driver of offending bus. Hence, the Tribunal has held that the accident occurred due to the negligence of the driver of offending bus. I do not find any infirmity in it.

7. It is contention of learned counsel for the Appellant that other motorcycle was riding with motorcycle of deceased, both motorcycle riders brushed each other, therefore, accident took place. To prove this defence, the Appellants have not examined any witness. Driver of the offending bus did not enter in the witness box to prove the negligence of the deceased. Moreover, police has registered the offence against driver of offending bus after making inquiry. In inquiry PW2 Sagar Gharage and other two witnesses have stated that offending bus gave dash to the motorcycle of deceased. From the evidence on record it proves that accident occurred due to negligence of bus driver.

8. To prove the income of the Claimant, the Claimant examined his next friend (his father) Vilas Mane at Exh.31. He has stated that the Claimant was running the business of radium number plate making and from the said business, he was getting Rs. 25,000/- profit per month. This witness further stated that, for the said business, he had

taken a shop at the rent of Rs. 8,000/- per month. The Claimant Ganesh had purchased radium cutter machine of Rs.30,000/-. There were 2 computers of Rs. 40,000/- and other articles of Rs.2,00,000/- were invested in the said business. From the income of business, the Claimant used to deposit an amount of Rs. 5,000/- to Rs. 7,500/- in Shreyas Nagari Sahakari Patsanstha Ltd., Vita and Sahyadri Nagari Co-operative Patsanstha Ltd., Vita and Shri Parshwanath Nagari Sahakari Patsanstha Ltd., Vita. Nothing elicited in cross-examination of this witness.

9. In support of his evidence, the Claimant has examined PW-3 Asafalli Nabilal Shikalgar, who rented his shop to the Claimant. He has stated that he rented his shop to the Claimant on monthly rent at Rs.8,000/- per month and in that shop, the Claimant was running business of digital plates. O.C. of rent receipts, for the period 20th June, 2013 to 4th September, 2015, are at Exh.56.

10. To prove the savings, the passbook of Sahyadri Nagari Co-operative Patsanstha Ltd., Vita is at Exh.53/1, passbook of Shreyas Nagari Sahakari Patsanstha Ltd., Vita is at Exh.53/2 and passbook of Shri Parshwanath Nagari Sahakari Patsanstha Ltd., Vita is at Exh.53/3. From the entries of these passbooks, it reveals that on an average, the Claimant's monthly saving was Rs.5,000/- to Rs.6,000/-. The Claimant

was paying rent at Rs.8,000/- per month. Besides saving and rent, considering the nature of business, the profit may be Rs.5,000/- to Rs.6,000/- per month. Therefore, the Tribunal has considered income of the Claimant at Rs.20,000/- per month, relying upon the Judgment of the Hon'ble Apex Court in *Sanjay Kumar Versus Ashok Kumar 2014 (1) TAC 727 (S.C.)*.

11. In my view the Claimant was doing business with huge investment. He had machinery. He was saving more than Rs.5,000/- to 6,000/- amount in banks. He was paying rent of Rs.8,000/-. As he was running shop, there must be other expenses. It proves that his monthly earning was more than Rs.20,000/-. I do not see merit in the contention of learned Counsel for the Appellant that it is considered on higher side.

12. After the accident, as per the disability certificate issued by the doctor, the Claimant has suffered 80% permanent disability, but the claimant has suffered 100% functional disability. To prove the disability, the Claimant has examined Dr. Pushparaj Mullya at Exh.68. This witness has stated that the Claimant-Ganesh Mane was admitted in his hospital on 9th September, 2015 and he was in his hospital till 7th September, 2015. The Claimant had suffered injuries on his body. There was bleeding in his right ear, injury to his right hand elbow,

right forehead and brain injury and bilateral frontal contusion and left temporal contusion with DAI Grade-II diffuse cerebral edema. This witness has further stated that after the discharge, the Claimant was taking treatment on the injury sustained to him. After considering the injuries, this witness and Dr. Prabhu issued injury certificate, which is at Exh.69.

13. This witness further stated that the Claimant is unable to walk, always he has to take help of others. He is unable to do his own work. He is unable to take decisions. The disability is occurred in whole body. In cross-examination, this witness admitted that no surgeries were done on the Claimant. There is progress in the body of the Claimant after the treatment and he cannot say whether the Claimant will be fully recovered or not. In my view, from the evidence of doctor it reveals that the Claimant has suffered injuries to the whole body parts as well as to the brain. After treating the patient, the doctor stated that the Claimant is unable to walk properly, he is unable to do his work and cannot take his decisions. It shows that the Claimant has suffered 100% functional disability. After the accident the body of the Claimant is confined to bed.

14. The Tribunal has awarded Rs.50,000/- for mental, physical pain, shock and suffering, loss of amenities of life, loss of expectation

of life, loss of prospects of marriage. Considering nature of 100% functional disability, the amount of Rs.50,000/- is on lower side. It should be more than Rs.5 Lakh. Moreover, the amount for attendant as per doctor's evidence, which requires for whole life, is not awarded. As this Court has considered monthly income of the Claimant of Rs.20,000/- per month, I am not considering the amounts to be enhanced in above heads. In view of above, I pass following order :

ORDER

- i. Appeal is dismissed. No order as to costs.
- ii. The Claimant is permitted to withdraw deposited amount, along with accrued interest thereon.
- iii. The statutory amount be transmitted to the Tribunal, along with accrued interest thereon.
- iv. The parties are at liberty to withdraw the amount, as per rules.
- v. Appeal is disposed of.
- vi. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)