

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 357 OF 2004

Master Vikas Radhesham Shukla, (Minor)	}	
Through Father and Guardian	}	
Shri. Radhesham Kashiprasad Shukla,	}	
48 yrs. Occ- Service, R.at and c/o.-	}	
Mr.Ghasiyaram Devangiri, Mangalal Bhavan,	}	
Katra Road, Raigad, Chattisgad State.	}	...Appellant

Versus

1.	Shri. Iqbal Yusuf Virani	}	
	Age: Adult, Occupation: Business	}	
	Residing at Opposite Hotel Gazal,	}	
	Shriram Trading Company,	}	
	Shreerampur, District Ahmednagar.	}	
2.	The New India Assurance Company Limited	}	
	Regional Office, Sharda Centre,	}	
	Behind Nal Stop, Off Karve Road,	}	
	Pune-411004.	}	..Respondents
			(Org. Opponents)

WITH

FIRST APPEAL NO. 81 OF 2004

The New India Assurance Company Limited	}	
Regional Office, Sharda Centre,	}	
Behind Nal Stop, Off Karve Road,	}	
Pune-411004.	}	...Appellant
		(Org. Opponent No.4)

Versus

1.	Master Vikas Radhesham Shukla, (Minor)	}	
	Age- 9 yrs., Occ. Nil, minor	}	
	Through Father and Guardian	}	
	Shri. Radhesham Kashiprasad Shukla, 48 yrs.	}	
	Occ- Service, R.at and c/o.- Mr.Ghasiyaram	}	
	Devangiri, Mangalal Bhavan, Katra Road,	}	
	Raigad, Chattisgad State.	}	(Org. Applicant No.1)

2. Iqbal Yusuf Virani }
 Age: Adult, Occupation: Business }
 Residing at Opposite Hotel Gazal, }
 Shriram Trading Company, }
 Shreerampur, District Ahmednagar. } (Org. Opponent No.1)
 ...Respondents

Mr. Vinayak Pandit i/by Mr. Ajinkya Udane for the Appellant in FA/357/2004.

Ms. Poonam Mital for the Appellant in FA/81/2004 & Respondent No.2 in FA/357/2004.

CORAM : SHIVKUMAR DIGE, J.

DATED : 17th APRIL, 2023

JUDGMENT :

1. The Appellant-Insurance Company has preferred this appeal against the judgment and order passed by the Motor Accident Claims Tribunal, Pune (for short 'The Tribunal'). The Respondents-claimants has also preferred appeal against the impugned order. Both the Appeals are preferred against the same judgment and order. Hence, I am deciding these appeals by this common judgment.

2. It is contention of learned counsel for the Appellant-Insurance Company that Tribunal has exonerated the owner of offending vehicle from the paying liability of compensation, if owner of offending vehicle is exonerated from liability, the Tribunal ought not have fixed liability on the Insurance Company to pay the compensation, but Tribunal has directed the Appellant-Insurance Company to pay the compensation which is improper. Hence, requested to allow the appeal filed by Appellant-Insurance

Company and dismiss the appeal filed by Claimants-Respondents.

3. Learned counsel for the Respondents-claimants submits that accident occurred, when claimant was travelling in the offending bus and the said bus was turtled, the claimant suffered injuries in the said accident. Due to said injuries, left hand of the claimant is amputated, but Tribunal has awarded compensation on lower side. Hence, requested to enhance the compensation and allow the Appeal filed by claimant and dismiss the Appeal filed by the Insurance Company. Learned counsel relied on *Mallikarjun vs. Divisional Manager, National Insurance Company Limited And Another*¹.

4. I have heard both the learned counsel. Perused the judgment and order passed by the Tribunal. It is contention of learned counsel for the Appellant-Insurance Company that the owner of offending vehicle is exonerated from paying the compensation. It is claimant's case that on 22nd October, 1998, the claimant was returning with his family members by bus bearing No.MH-17/A.9960 from Shirdi to Pune. When the bus came within the limits of village Jategaon situated on Nagar-Pune Road at 02:30 p.m., the bus turned turtle, as a result of which passengers including the claimant sustained grievous injuries. Left hand below joint level of the claimant was cut off in the said accident on the spot. He was admitted in Hospital, doctor amputated left hand of the claimant above elbow level. The offence was registered against driver of offending bus. While dealing with issues of negligence, the Tribunal has observed that it has not come before the Court

¹ (2014) 14 SCC 396

that, accident was occurred due to rash riding and negligence of the driver of offending bus. Hence, opponent No.1 who is owner of the offending bus, cannot be held liable to pay compensation.

5. In my view, admittedly accident occurred due to turtle of the bus, offence was registered against the driver of offending bus. When bus was turtled it means it was turtled due to negligence of bus driver, but this fact is not considered by the Tribunal. Hence, I hold that accident occurred due to negligence of the driver of offending bus. The owner cannot be exonerated from paying compensation. The offending bus was insured with the Appellant-Insurance Company. Hence, Insurance Company is liable to pay the compensation.

6. It is contention of learned counsel for the Appellant-claimant that, as per the view of *Mallikarjun supra*, the claimant is entitled for Rs.4,00,000/- compensation, but Tribunal has not considered this fact and awarded Rs.1,90,222/-. The Hon'ble Apex Court in the case of *Mallikarjun supra* has held that the claimant who suffers disability upto 60% is entitled for Rs.4,00,000/- compensation. In the present case, it has come on record that claimant has suffered 60% disability. Hence, claimant is entitled for Rs.4,00,000/-. It has come on record that claimant has incurred expenditure of Rs.20,022/-. The Tribunal has not awarded hospital expenses of Rs.20,022/- and medical expenses of Rs.8,500/-. So the claimant is entitled for this amount along with Rs.4,00,000/- total comes to Rs.4,28,522/-. The Tribunal has already awarded Rs.1,90,222/- after deducting above referred amount, the claimants are entitled for remaining amount of

Rs.2,38,300/-

7. In view of the above, I pass following order:-

O R D E R

(i) First Appeal No.81 of 2004 is partly allowed.

The judgment and award passed by the Tribunal is modified as under :

(ii) The Respondent jointly and severally pay the compensation to the claimants.

(iii) First Appeal No.357 of 2004 is allowed.

(iv) The claimants are entitled for enhanced amount of Rs.2,38,300/- @ 7.5% per annum from the date of filing claim petition till realization of the amount.

(v) The Respondents are directed to deposit the enhanced amount along with accrued interest thereon, within eight weeks after the receipt of the order.

(vi) The claimants are permitted to withdraw the deposited amount along with accrued thereon.

(vii) The statutory amount deposited in Appeal No.81 of 2004 be transmitted to the Tribunal. The parties are at liberty to withdraw it as per rule.

8. Pending applications, if any, are also disposed of.

(SHIVKUMAR DIGE, J.)