

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.185 OF 2023

Maharashtra State Road Transport
Corporation, Mumbai

...Appellant

Versus

Mrs. Alka Deepak Tupare

...Respondent

NILAM
SANTOSH
KAMBLE

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NILAM SANTOSH
KAMBLE
Date: 2023.03.28
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Mr. Nitesh Bhutekar, for the Appellant.

Mr. Sunil Bhinde, for the Respondent.

CORAM : S.G. DIGE, J.

DATE : 3 MARCH 2023

P.C:-

1. Compilation of documents is tendered, it is taken on record.

2. The issue's involved in this Appeal are non joining of necessary party, sole negligence of tempo driver, income of Claimant and percentage of disability.

3. It is contention of learned counsel for the Appellant that the accident was occurred due to sole negligence of tempo driver who gave dash to the bus wherein Claimant was traveling. The FIR was registered against the tempo driver. But the tempo driver and Insurance Company of tempo not added as a party

defendant. This issue was raised before the Tribunal. The Tribunal has not considered this fact and has awarded exorbitant and excessive compensation.

4. It is contention of learned counsel for the Claimant that it is not necessary to join tempo driver as a party and if this Court feels to join tempo driver as a party, Court may pass appropriate order.

5. I have heard both learned counsel. Perused judgment and order passed by Motor Accident Claims Tribunal (for short 'the Tribunal')

6. Admittedly, for occurred accident, offence is registered against tempo driver, he is necessary party, but this fact is not considered by the Tribunal, hence, it is necessary to remand this matter for fresh hearing. Meanwhile, the Claimant can be permitted to withdraw 50% amount out of the deposited amount along with accrued interest thereon and all contentions of Appellants can be kept open. If Appellant succeeds, they can recover the paid 50% amount, from whom liability of accident is fixed by the Tribunal.

7. The Appellant can put his side before the Tribunal after joining tempo driver as a party. The learned counsel for the

Appellant further submit that yet the Appellant has not deposited the entire award amount before the Tribunal.

8. Considering submissions of both learned counsel's I pass following order.

ORDER

- (i) The Appeal is partly allowed.
- (ii) The order passed by the MACT, Mumbai is quashed and set aside.
- (iii) The matter is remanded back to the MACT, Mumbai for fresh hearing.
- (iv) The Claimant is directed to join the tempo driver, owner and insurer of tempo as a party.
- (v) Contention of both parties are kept open.
- (vi) The Appellant shall deposit 50% of the award amount along with interest thereon before the Tribunal within four weeks.
- (vii) The Claimant is permitted to withdraw the said amount along with accrued interest thereon on

furnishing undertaking. That said amount would be adjusted subject to decision of Tribunal. If this amount withdrawn by the Claimant is excessive, than the compensation awarded by the Tribunal, in that case Claimant has to refund the excessive amount.

(viii) If amount withdrawn by the Claimant is less than the award amount, the Claimant is entitled for remaining amount.

(ix) The Appellant is entitled to recover 50% amount if Appellants are exonerated from liability of accident. Appellant can recover paid amount from the party on whom liability is fixed by the Tribunal.

(x) The statutory amount deposited by the Appellant be transmitted to the Tribunal. Parties are at liberty to withdraw it as per rule.

(xi) All pending Civil Applications, if any, are disposed of.

(S.G. DIGE, J.)