

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

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FIRST APPEAL NO. 196 OF 2004

B. S. Sudhishkumar)
C/o. Ayappa Tyre Work)
Near Vashi Village)
New Bombay : 400 703) ...Appellant
(Orig. Applicant)

Versus

1. M/s. Reshma Dyeing (P) Ltd.)
D-52, T. T. C. Area,)
Turbhe, New Bombay)

2. Oriental Insurance Co. Ltd.)
Jeevan Udyog, Asaf Ali Road,)
New Delhi)Respondents
(Orig. Opp. Party Nos.1 & 2)

WITH

FIRST APPEAL NO. 925 OF 2007

The Oriental Insurance Co. Ltd.)
Jeevan Udyog, Asaf Ali Road,)
New Delhi)Appellant
(Orig. Opp. No.2)

Versus

1. B. S. Sudhishkumar)
C/o. Shri Ayappa Tyre Works)
Near Vashi Village, New Bombay)
-400 703)
2. M/s. Reshma Dyeing (P) Ltd.)
D-52, T. T. C. Area, Turbhe,)
New Bombay.)
(Owner of M/Bus No.MXT 5355.)Respondents
(Respondent No.1 is the Orig.
Claimant & Res. No.2 is the
Orig. Opponent No.1)

Mr. Mohit Turakhia a/w Ms. Ishita Bhole i/b Mr. S. S. Vidyarthi,
Advocate for the Appellant in FA/925/2007 and Advocate for the
Respondent No.2 in FA/196/2004.

Smt. S. V. Sonawane, Advocate for the Respondent No.1 in
FA/925/2007 and Advocate for the Appellant in FA/196/2004.

CORAM : SHIVKUMAR DIGE, J.

DATE : 30th APRIL, 2024.

Oral Judgment :

1. The Appellant/Claimant has filed appeal for enhancement
of the compensation.

2. The Respondent No.2/Insurance Company has filed cross Appeal, challenging the judgment and order passed by Motor Accident Claims Tribunal, Thane (for short “the Tribunal”). The Appeal and cross Appeal are against the same judgment and order hence, I am deciding it by this common judgment.

3. It is contention of learned counsel for the Appellant/Claimant that due to accidental injuries, the Claimant has suffered 100% permanent physical disability. His left leg above knee has been amputated but the Tribunal has not considered this fact and has awarded compensation on lower side under various heads. The Tribunal has considered monthly income of the Claimant at Rs.1000/- per month. The Tribunal should have considered his monthly income as per Minimum Wages Act, 1948 at Rs.3000/- per month. Learned counsel further submitted that the Tribunal has not awarded amount for prosthetic leg, it be awarded. Hence, requested to allow the Appeal.

4. Learned counsel for the Respondent No.2/Insurance Company submits that no documentary evidence was produced on

record to show the involvement of offending vehicle. No police papers were produced on record but this fact is not considered by the Tribunal. Learned counsel further submitted that the offence was registered against the driver of offending vehicle but no police papers produced on record in that regard. Learned counsel further submitted that the brother of the Claimant, PW-2 has stated that he had gone to police station to lodge the complaint but the police did not pay any attention to his request so, there are contradictory statement of Claimant and his brother but these are not considered by the Tribunal. Hence, requested to allow the cross Appeal and dismiss the Appeal filed by the Claimant.

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

6. It is Claimant’s case that on 14th January, 1990 at 6:30 p.m. the Claimant was waiting at Vashi Village Bus stop at that time, one private bus was coming in rash and negligent manner. The said bus left the track and gave dash to the Claimant. The Claimant sustained

injuries and his left leg is amputated above the knee joint. To prove its case, the Claimant Bhanu Sudhishkumar has examined himself at Exhibit 20. He has stated that, when he was waiting for bus on Vashi Village bus stop, he was dashed by private bus bearing No. MXT-5355 came from Sion side. The bus was in very high speed. Due to dash, he sustained injuries and was shifted to Motwani Nursing Home at Vashi for treatment. Thereafter, he was shifted to Sion Hospital, Bombay and on 19th February, 1990 his left leg above knee was amputated in Sion hospital. His brother Suresh was assisting him in Sion hospital. He further stated that after dash the said bus stopped at the distance of 15 feet ahead of the accident spot and he saw the number plate of the said bus.

7. In cross-examination, he admitted that after the accident, the said bus stopped at the distance of 15 feet ahead of the accident spot. His brother had gone to police station to lodge the report about the accident. The police had filed the case against the driver of said bus. He did not file copy of F.I.R. and spot panchanama or any documents on record. In support of his evidence, the Claimant has examined his brother Sureshkumar Udayanu as PW-2 at Exhibit 22.

He has stated that the accident spot was 15 feet away from his house. At the time of accident, he was present near his house. One person told him that, his brother had met with a motor accident and passengers from that bus had shifted him to Motwani Hospital. Immediately, he ran to Motwani Hospital at Vashi. At that time, the bus driver along with two to three passenger were present in the hospital. The said bus was also standing on the side of the road. The registration of number of that bus was MXT-5355 with the name written on it "Rashmi Dying Private Limited". The said bus was owned by Rashmi Dying Private Limited. He further stated that on the following day of accident his brother was shifted to Sion hospital in ambulance. His left leg above knee was amputated by the Doctor in Sion hospital. He was taking care of his brother during night time and day time. He further stated that he attempted to file report of the accident to the police. However, they did not take any cognizance of his report. Thereafter, he had sent registered A.D. complaint through post to Vasi Police Station through his Advocate. The said A.D. is produced on record with receipt. In cross-examination, he has denied the suggestion that bus was not involved in the accident.

8. While dealing with the issue of involvement of the bus, the Tribunal has observed that immediately, after the accident the Claimant was admitted in the hospital, the case papers Exhibit-16(C) shows that the history was given of vehicular accident. The Tribunal further observed that the Appellant/Insurance Company in written statement has mentioned that the driver of the bus did not given information about accident to the owner. The owner of the vehicle came to know about the accident only after the notice of the claim petition served to him. In the written statement, he mentioned that the driver who was engaged to drive the vehicle on the way when the accident occurred, left the service long back and even the Opponent No.1 the owner of the vehicle has no knowledge about the whereabouts the vehicle. The Tribunal further observed that the Claimant's brother Sureshkumar immediately after receiving the information went to the hospital where, he saw driver of bus along with two to three person were present there. He saw bus bearing registration No. MXT-5355 with the name written on it Reshma Dying Private Limited. The Tribunal further observed that the Opponents did not adduce any evidence to prove that the accident occurred due to reasons other than the negligent driving of the bus by its driver thus

the Claimant has proved that the accident in question occurred due to rash and negligent driving of the bus. I do not find infirmity in it.

9. In my view, there is no dispute about the injuries caused to the Claimant due to vehicular accident. The bus driver and passenger of the bus had taken the Claimant to the hospital. PW-2 had seen the bus on the road and he saw bus driver along with two to three persons in the hospital with Claimant. He has specifically given the name scripted on the glass of bus i.e “Reshma Dying Private Limited”. The brother of the Claimant had issued notice dated 11th May, 1999 which is at Exhibit-35 to Inspector of Police at Vashi Police Station about the accident furnishing and requesting to panchanama and insurance particulars of offending vehicle. The Exhibits-36 and 37 are acknowledgment receipt of Inspector of Vashi Police Station. At Exhibit-38 is the notice issued to owner of the vehicle and Exhibits-39 and 40 are acknowledgment receipts. After receipt of the notice, the owner of the vehicle has not denied about the happening of the accident nor replied the said notice. It shows that, he was aware about the accident occurred due to his bus. It has come on record, that immediately after the accident the Claimant was admitted in the hospital and he was admitted there for couple of month. Though

police has not registered F.I.R. against the driver of offending bus, it cannot be a ground to deny the compensation to the Claimant. It has come on record that the Claimant was dashed by the driver of offending bus. Immediately, after the accident, the Claimant was admitted in the hospital and in the hospital papers it is mentioned that he injured due to vehicular accident. The passengers and driver of bus carried the Claimant in the hospital. The PW-2 saw the bus near the hospital. He specifically mentioned the name of that bus. Considering evidence on record, I do not see merit in the contention that the offending bus was not involved in the accident.

10. To prove the income, the Claimant has examined himself. He has stated that he was doing work in Engineering Firm and he was getting salary at Rs.1100/- per month. The Tribunal has considered his income at Rs.1000/- per month.

11. It is contention of learned counsel for the Claimant that the Tribunal should have considered monthly income of the Claimant at Rs.3,000/- per month as per the Minimum Wages Act, 1948. In my view, in claim petition the Claimant has admitted that he was getting the salary of Rs.1100/- per month. Hence, his salary cannot be considered as per the minimum wages act and his salary certificate

exhibit produced on record shows that he was getting salary at Rs.1100/- per month hence, I am considering salary at Rs.1100/- per month. The Tribunal has applied multiplier of 16. At the time of accident, the Claimant was 19 years old, proper multiplier is 18. The Claimant has suffered 74% disability but his functional disability is 100% hence, he is entitled for future income. The Tribunal has awarded loss of future earning due to disability at Rs.1,92,000/-, it should be Rs.2,37,600/-. As per, the income of Rs.1100 X 12 X 18 so total comes to Rs.2,37,600/-. The Tribunal has considered Rs.5,000/- for medical treatment, it is proper. The Tribunal has awarded loss of income for 3 months of Rs.3,000/-, it should be Rs.3,300/-. The Tribunal has awarded Rs.15,000/- for Shock, pain and suffering. Considering the disability of the Claimant, I am considering it Rs.50,000/-. The Tribunal has awarded Rs.50,000/- for loss of amenities in life. As, the Claimant has suffered 74% disability but his function disability is 100% hence, I am considering Rs.1,00,000/-. The Tribunal has not awarded amount for future treatment of artificial limb. As per the view of Hon'ble Apex Court in the case of ***Mohammad Sabir Husain vs. Original Manager UP State***, I am considering Rs.10,00,000/ for artificial limb-. The Tribunal has not

awarded amount of loss of expectation in life. Hence, I am considering it Rs.1,00,000/-.

12. Considering the above calculation, the Claimant is entitled for following compensation.

Monthly income	Rs.1100/-
Annual Income	Rs.13,200/-
Multiplier 18	Rs.2,37,600/-
Expenses for medical treatment	Rs.5000/-
Loss of income for 3 moonths	Rs.3,300/-
Shock , Pain and suffering	Rs.50,000/-
Loss of amenities	Rs.1,00,000/-
Future treatment Artificial Limb	Rs.10,00,000/-
Loss of expectancy of life	Rs.1,00,000/-
Total compensation	Rs.14,95,900/-

. The Tribunal has awarded interest at 6% on compensation amount.

In my view, it is on lower side, it should be 7.5% .

13. In view of above, I pass following order.

ORDER

i. Appeal is allowed and the Cross appeal is dismissed.

ii. The Claimant is entitled for enhanced amount of **Rs.14,95,900/- @ 7.5% interest per annum** from the date of filing claim petition till realisation of the amount.

iii. The Claimant is entitled at 7.5% interest per

annum on Rs.2,65,000/- awarded by the Tribunal from date of filing claim petition till realisation of the amount instead of 6% per annum.

- iv. The Respondent No.2/Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within eight weeks after receipt of the order.
 - v. The Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 - vi. The Claimant shall pay deficit Court fees on enhanced amount, if any, as per Rule.
 - vii. The statutory amount along with accrued interest in cross appeal be transmitted to the Tribunal. The parties are at liberty to withdraw it, as per Rule.
14. All pending applications , if any, stand disposed of.

(SHIVKUMAR DIGE, J.)