

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 209 OF 2020

Madhukar Sahebrao Bhilare Age 57 years, Occupation : Business Residing at Bhosale Niwas, Behind Sai Baba Mandir, Tata receiving Station, Devlapada, Borivali (E), Mumbai – 400 066.	...	Appellant
versus		
The General Manager, Bombay Electricity Supply and Transport Undertaking, BEST House, Colaba, Mumbai – 400 005.		Respondent

Mr. Niketan Nakhawa along with Mr. Pramod Purav, Advocate for the Appellant.

Ms. Savita Suryavanshi along with Ms. Devarshi Bagna i/b. S. K. Legal Associates LLP, Advocates for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 27th FEBRUARY, 2024.

Oral Judgment :

1. By way of this appeal, the appellant/claimant has challenged the dismissal of the claim petition.

2. It is contention of learned counsel for the appellant/claimant that the claimant was proceeding on motor-cycle, at that time, his motor-cycle was dashed by the offending bus from the backside. Due to said dash, the claimant has suffered injuries and he has suffered 38% permanent physical disability but the Tribunal has not considered this fact and has observed that the motor-cycle of the claimant was not dashed by

the offending bus, which is erroneous. Learned counsel further submitted that the offence was registered against the driver of the offending bus. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent-Corporation that the offending bus was not involved in the accident. The spot-panchanama shows that the headlight of the motor-cycle was damaged, if the dash was given from the backside, then, how the headlight of the motor-cycle would be damaged. The Tribunal has considered all the aspects while passing the judgment and order, hence, 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, Mumbai (for short "the Tribunal").

5. It is claimant's case that on 18th January 2013 at about 12.30 p.m., he was going on motor-cycle bearing No.MH-01-AB-3162 from Tata receiving station towards Sanjay Gandhi National Park, Borivali. When he reached at Magathane flyover, BEST bus bearing No.MH-01-AP-0357 gave dash to the motorcycle of the claimant, resulting into causing serious injuries to the claimant. Due to the injuries, he was admitted in Bhagwati Hospital and thereafter he was shifted to Life Line Hospital, Malad.

5.1. To prove the negligence of the driver of the offending bus, the claimant examined himself at Exhibit-12. He has stated that his

motor-cycle was dashed by the driver of the offending bus and due to the accidental injuries, he has suffered 38% permanent partial disability. To prove their defense, the respondent – Corporation has examined driver of the offending bus- DW1-Lahu Rathod at Exhibit-32. He has stated that on the day of incident, when his bus reached Magathane Flyover, one motor-cycle came from behind and gave dash to one stationary tempo. In order to save the motor-cyclist, he took his bus on the right side of the road and the bus went on road divider, the motor-cycle never came in contact with the bus. He further stated that due to the accident, he got scared and left the bus. Thereafter, he went to Borivali Police Station on his own and gave the statement. A false criminal case has been filed against him and he is not responsible for the accident. In cross-examination, he admitted that the spot of accident was a straight road and charge-sheet has been filed by the police against him for the said accident.

5.2. While dealing with the issue of negligence, the Tribunal has observed that no independent witness has been examined by the claimant and the respondent-Corporation. The police papers i.e. spot panchanama and the accident report form shows that the head lamp, speedometer of the motor-cycle and front fibre mudguard had broken. It shows that if the offending bus had hit the motor-cycle from backside, front portion of the motor-cycle would not have been damaged. In police papers, nowhere it is mentioned that the front portion of the BEST bus

was damaged in the accident. The claimant has not come before the Tribunal with clean hand. He has suppressed the presence of the motor tempo on the spot of the incident. On that ground, the Tribunal has dismissed the claim petition. I am unable to under the observations of the Tribunal about dismissal of the claim petition, as admittedly, the information of the accident was given by the driver of the offending bus to the police. After receiving the information, the police came at the incident spot and after making inquiry, an FIR was registered against the driver of the offending bus for the said accident. Though the Tribunal has observed that the claimant has not mentioned about the stationary tempo in my view, it is claimant's case that the driver of the offending bus had given dash to his motor-cycle from backside, so no question of mentioning stationary tempo arises. Moreover, it has come on record that after the accident, the bus driver had ran away from the incident spot. It shows his involvement in the accident. The offending bus was seized by the police. The spot-panchanama shows that there was damage to the motor-cycle. It has been observed by the Tribunal that the headlight and front mudguard of the motorcycle were damaged, if dash was given from backside, then, how the front portion of the motor-cycle is damaged. In my view, it may have been damaged after falling on the road due to the impact of the dash, but the Tribunal has not considered this aspect. Considering the evidence on record, it is proved that the accident occurred due to the sole negligence of the driver of the offending bus.

5.3. To prove the disability, the claimant has examined Dr. Naresh Khanna. He has stated that the claimant has suffered 38% permanent physical disability. To prove medical bills, the claimant has examined Manoj Ghag, Receptionist in Life Line Hospital at Exhibit-22. He has stated that the claimant was admitted in their hospital on 18th January 2013 and was discharged on 27th January 2013. The claimant has paid the hospital bill of Rs.1,24,043/- towards hospitalisation, it is at Exhibit-25. The discharge card is at Exhibit-26. In cross-examination, this witness has stated that yet the claimant has to pay Rs.74,043/- towards hospital bills. To prove the income, the claimant has examined himself. He has stated that he was working as Chairman of Janani Co-op. Credit Society (Pathpedi) and he was earning Rs.25,000/- per month. After the accident, he could not attend his duties for a period of six months, hence, he did not receive any remuneration for the said period. In my view, as per the evidence of AW2, the claimant has paid hospitalisation bill of Rs.1,24,043/- and he was yet to pay Rs.74,043/-. Hence, the claimant is entitled for Rs.1,98,086/- for medical bills. Though the claimant has stated that he was receiving Rs.25,000/- as remuneration, the Chairman of the Co-operative Credit Society, it cannot be considered as salary. Considering 38% permanent physical disability of the claimant, he was admitted in the hospital for couple of days, considering pain and sufferings, loss of income, future prospects, special diet, attendance

charges, loss of amenities in life, I am considering lumpsum amount of Rs.1,50,000/-. So the claimant is entitled for an enhanced compensation of Rs.3,48,086/-.

6. In view of above, I pass following order :
 1. The appeal is allowed.
 2. The claimant is entitled for enhanced compensation of Rs. 3,48,086/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
 3. The respondent-BEST Undertaking shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.
 4. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 5. The claimant shall deposit deficit court fees as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)