

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1510 OF 2011

The Brihan Mumbai Municipal Corporation, a Statutory Authority duly constituted under the provisions of the Mumbai Municipal Corporation Act, 1888, through General Manager, the Brihan Mumbai Electric Supply and Transport Undertaking, having Office at BEST Bhavan, BEST Marg, Mumbai – 400 001.	...	Appellant
Versus		
Sachin Keshav Toraskar, aged about 23 years, residing at Janjagruti Chawl, Shri Ram Nagar, L.B.S.Marg, Vikroli (West), Mumbai – 400 083	...	Respondent

Ms. Karishma Jhaveri i/b. Navdeep Vora and Associates, Advocates for the Appellant.

Mr. Tukaram R. Kale i/b. Mr. T. J. Mendon, Advocate for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st MARCH, 2024.

Oral Judgment :

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

2. It is contention of learned counsel for the appellant that the accident occurred when the claimant was trying to cross the road at the

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place where there was no zebra crossing. There was no negligence on the part of the driver of the offending bus but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered monthly income of the claimant at Rs.4,000/- per month without any evidence on record, which is on higher side as the claimant was working on temporary basis. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent-claimant that the accident occurred due to sole negligence of the driver of the offending bus and the bus gave dash to the claimant when he was standing on the road side. Due to the accidental injuries, the claimant has suffered 80% permanent physical disability and his left leg is amputated. Learned counsel further submitted that the claimant was working with Godrej Appliances Limited and he was getting a salary of Rs.6200/- per month. The Tribunal has considered all the aspects while passing the impugned judgment and order. 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 12th September 2002, at about 9.45 pm, the applicant was crossing the road with his friend and all of sudden, one bus bearing No.MH-01-H-8547 came from the north side in high speed. The offending bus was driven rashly and negligently and it

gave dash to the claimant. The front right tyre of the offending bus ran over the right leg of the claimant, due to that, he had sustained injuries below knee on right leg. Due to accidental injuries, his right leg is amputated. Due to disability, he cannot resume his duties. An offence was registered against the bus driver. To prove the negligence of the offending bus driver, the claimant – Sachin Toraskar examined himself at Exhibit-16. He has stated that he and his friend were crossing the road, at that time, the offending bus came from the north side. The said bus was driven in rash and negligent manner, it gave dash to him. In cross-examination, he has stated that he was standing near the vegetable shop, he stopped by seeing the bus, the offending bus, all of sudden, gave dash to the claimant. The claimant was alone hit by the bus. To prove the negligence of the claimant, the respondent-Corporation has examined the driver of the offending bus- Kishan Yadav at "Exhibit-23". He has stated that he had halted the offending bus as the railway gate was closed. When the railway gate opened, he started the bus. The bus went hardly half feet ahead, at that time, he heard a sound on the right side middle of the bus, people shouted and he stopped the bus. This witness did not get down the bus to see what had happened. A police van came and one boy was taken to Rajawadi Hospital. A case was filed against him. In cross-examination, he admitted that official inquiry was held in respect of the accident by his department. In the said inquiry, his increments were reduced in grade by two steps permanently. He further admitted that

there was onion and potato shop by the side of the accident. He admitted that there was dash with BEST bus and the claimant was crushed under the right side tyre. While dealing with the issue of negligence, the Tribunal has considered the evidence on record and police papers as well as the Department Enquiry held against the driver of the offending bus and his two increments came to be stopped, hence, the Tribunal has held that the accident occurred due to sole negligence of the driver of the offending bus. I do not find infirmity in it. In my view, the driver of the offending bus was not aware about the accident, he came to know about the accident when the passenger in the bus shouted. After the accident, the driver did not get down from his seat, it shows that he was driving the bus negligently. Moreover, in the Departmental Enquiry, his two increments have been reduced. The offence was registered against the driver, hence, I do not see merit in the contention that the accident occurred due to sole negligence of the claimant.

Though claimant has stated in his cross-examination that he and his friend were trying to cross the road but, in cross-examination, it has come on record that they were standing near vegetable shop, they stopped on seeing the bus, and, all of sudden the BEST bus gave dash to him and, he fell on the road, it supports the claimant's case. Hence, I do not see merit in the contention of the appellant that there was contributory negligence of the claimant in the said accident.

To prove the income of the claimant, he has stated that, at the

time of the accident, he was working with Godrej Appliances, Mumbai and he was earning Rs.6,000/- per month. In support of evidence of claimant, he examined AW2 – Farookh Bada Dam, Senior Manager(Recruitment) in Godrej Appliances at Exhibit-18. He has stated that the claimant was working in their company against a temporary vacancy as and when available. The claimant was a semi-skilled worker and his approximate salary was Rs.6200/-. Nothing elicited in cross-examination of this witness. Considering the evidence on record, the Tribunal has considered the monthly income of the claimant at Rs.4000/-. I do not find any infirmity in it.

6. Considering the above reasons, the appeal is devoid of merit and I pass the following order :

ORDER

1. The appeal is dismissed. No order as to cost.
 2. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 3. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)