

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.191 OF 2009
WITH
CROSS OBJECTION (ST) NO.6730 OF 2009

Maharashtra State Road Transport }
Corporation, }
Having Its Office at Vahatuk Bhavan, Dr.A. }
Nair Marg, Bellasis Road, Bombay Central, }
Bombay-400 008. } ...Appellant

Versus

Shri.Shekhar Bhai Thakur }
101 Devji Bhuwan, S.K. Bhole Road, }
Mumbai-400028. } ...Respondent

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Ms.Pinky M. Bhnsali a/w Ms.Rajlaxmi Punjabi, for the Appellant.
Ms.S.V. Sonawane, for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd APRIL 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is non-joinder of necessary party. The Claimant has also preferred Cross Objection for enhancement of the compensation. As Appeal and Cross Objection are against same judgment and order, I am deciding it

by this common judgment.

2. It is contention of the learned counsel for the Appellant-Corporation that the Claimant was traveling in the offending bus. The said bus dashed to the stationary lorry parked by the edge of the road. The accident occurred at 4.30 a.m. The accident occurred due to sole negligence of the driver of the offending truck as he had not put on indicator and the parking lights of the said truck. The Claimant has not added driver of the truck as a party, but this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, the Claimant was passenger in the bus. The offense was registered against the driver of the offending bus. Non-joinder of the party cannot be a ground to appeal, it is choice of the Claimant to claim compensation from any of the tortfeasor. The learned counsel further submitted that due to accidental injuries Claimant has suffered 100% disability. He has to carry bag for passing stool, as his rectum is removed in the operation. The cost of bag is Rs.3,700/- per month, and he

has to carry bag for whole life. The Tribunal has awarded Rs.5,730/- as a cost of the bag, which is on lower side. The learned counsel further submitted that the Tribunal has awarded Rs.1,50,000/- for pain and suffering, Rs.1 lakhs towards the loss of amenities in life, Rs.25,000/- for the loss of expectation of life and discomfort, inconvenience and frustration, mental shock etc., which are on lower side. The learned counsel further submitted that the Tribunal has awarded interest on compensation amount from filing written statement, it is erroneous, it should be from filing Claim Petition. Hence, requested to allow the Cross objection and dismiss the Appeal.

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

5. It is Claimant's case that on 10th January 1998 he was traveling in bus No.MH-12-FA-1569. It was going to Sangamner from Mumbai. His wife had accompanied him. When the said bus was going on Nashik-Pune Road, in the vicinity of Ghode Shivar at about 4.30 a.m., the said bus dashed to the stationary

lorry parked by the edge of the road. As a result of the impact of the dash the Claimant sustained abdominal and other injuries. He was admitted in various hospitals. The offence was registered against the driver of the offending bus.

6. It is contention of the learned counsel for the Appellant-Corporation that, the accident occurred due to sole negligence of the driver of the truck as he did not put indicator or parking lights off of the said truck in on and due to darkness the driver of the offending bus could not see the stationary lorry. The Claimant should have added driver of the truck as a opponent party. In my view, the issue of non-joinder of party is no more *res-integra*. It is settled principal of law that it is choice of the Claimant to claim the compensation from any of the tortfeasor. Moreover, the offence was registered against the driver of the bus, in which Claimant was treavelling.

7. It is contention of the learned counsel for the Appellant that the Appellant be permitted to file appropriate proceedings against the driver of the truck. In my view, this Court cannot give permission to file proceeding. The Appellant-

Corporation has choice to file appropriate proceedings as per procedure of law.

8. It has come on record that due to accidental injuries the Applicant has permanent colostomy i.e. a diversion of faecal matter into a bag on his abdominal wall and it requires regular care and attention for his life time. It has come in the evidence of the Claimant that from the date of accident he cannot pass stool in normal way and asotomy bag is tied to his stomach, in which the daily stool is deposited and at the end of the day the bag required to be replaced. The evidence of the Claimant is proved by witness Jayendra Shriyan. The disability of the Claimant has not been challenged by the Appellant-Corporation. It has come on record that rectum of the Claimant is removed in the operation. The cost of the bag is Rs.3,700/- to Rs.4,000/- per month. The Tribunal has awarded total compensation of Rs.5,730/- as cost of bag. In my view, the Claimant is required a bag daily for passing the stool and the Tribunal should have awarded compensation on that basis. Hence, I am considering Rs.4,000/- as cost of bag, multiplied into 12 months and

multiplier of age of the Claimant 13 is applied ($4000 \times 12 \times 3 = 6,24,000$). Total amount comes to Rs.6,24,000/-. The Claimant is entitled for this amount as cost of the bag. The Tribunal has awarded Rs.1,50,000/- for pain and suffering. Considering the nature of injuries, I am considering it as Rs.2,00,000/-. The Tribunal has awarded Rs.1,00,000/- towards the loss of amenities in life, I am considering it Rs.2,00,000/-. The Tribunal has awarded Rs.25,000/- for loss of expectation of life, I am considering Rs.1 lakh and for discomfort, inconvenience, attendant conveyance special diet and frustration etc., I am considering Rs.2 lakhs. Considering these calculations the Claimant is entitled for enhanced amount of Rs.13,24,000/-.

9. The Tribunal has awarded interest on compensation amount from filing written statement. It is settled principle of law that the Claimant is entitled for interest on compensation amount from filing of the Claim Petition i.e. 15th September 1999.

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

ORDER

- (i) The Appeal is dismissed.
- (ii) The Cross-Objection is allowed.
- (iii) The Claimant is entitled for enhanced amount of Rs.13,24,000/- alongwith @ 7.5% interest from the date of filing of the Claim Petition till realization of the amount.
- (iv) The Appellant-Corporation shall deposit enhanced amount within eight weeks after receipt of the order.
- (v) The Claimant is permitted to withdraw deposited amount along with accrued interest thereon.
- (vi) The Claimant shall pay Deficit Court Fees on enhanced amount, if any, as per Rule.
- (vii) In First Appeal No.191 of 2009 statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(viii) All pending Civil and Interim Applications are disposed of.

11. The learned counsel for the Appellant-Corporation requested for stay of the order, as date of the accident is in year 1998, I am not inclined to grant the stay.

(SHIVKUMAR DIGE, J.)