

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

FIRST APPEAL NO. 217 OF 2023

Maharashtra State Road Transport)
Through Divisional Controller)
Raigad Division Office, Ramwadi Pen)
District: Raigad)

....Appellant
(Org. Opponent)

Versus

Anup Jayesh Pawar)
Age: 25 years, Occ: Tution Teacher)
R/o 1/B/405 Palapse Kudawe Road,)
Radhe Heritage, Palaspe, Taluka Panvel)
District Raigad)

....Respondent
(Ori. Claimant)

Mr. D. D. Rananaware, Advocate for the Appellant.
Mr. Sanjay Ghaisas, Advocate for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd FEBRUARY, 2024.

Oral Judgment. :

1. The issues involved in this appeal are contributory negligence of the Claimant in the said accident, disability of

the Claimant and compensation awarded on higher side.

2. It is contention of learned counsel for the Appellant/Corporation that accident occurred due to negligence of the Claimant. The Claimant in his cross examination has admitted that at the time of accident, he was not holding driving licence but this fact is not considered by the Tribunal. Learned counsel further submitted that the doctor who has given the disability certificate, in cross-examination has admitted that the Claimant was not his regular patient and without treating him, he had given the disability certificate, which is not proper. Learned counsel further submitted that after accident, the Claimant has completed his education in engineering so, there is no loss of income of the Claimant but this facts are not considered by the Tribunal, Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent/Claimant that accident occurred due to sole

negligence of the bus driver. The offence was registered against the bus driver. Moreover to prove that, the claimant was not holding effective and valid licence at the time of accident, no witness was examined by the Appellant/Corporation. Learned counsel further submitted the Claimant was earning Rs.25,000/- per month. He was engineering student and he has suffered 49% permanent physical disability but, the Tribunal has considered his monthly income at Rs.6,000/- per month, which is on lower side. Hence, requested to dismiss the Appeal.

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

5. To prove the disability, the Claimant Anup Pawar has examined himself at Exhibit-21. He has stated that due to accidental injuries, there was a fracture of his right femur, Right tibia and facial bones. Operations were done on his leg and his jaw. In support of his evidence, the Claimant has

examined PW-2 Dr. Chandrashekhar Sathaye at Exhibit-35. He has stated that he has examined the Claimant. He has further stated that he was treated in MGM hospital, Mumbai, after discharging from hospital, the Claimant complained of stiffness and pain in his right knee, right hip and right ankle and difficulty in performing activities of daily living, like squatting (using Indian toilet) climbing stairs and running. The Claimant had to use support (walker) while walking. He also complained difficulty in chewing food. On examination he had 30% restriction of range of his motion of his right knee, 30% restriction of the range of movement of his right hip and 50% restriction of movement of his right ankle. He had moderate, tenderness on his right leg. He had chronically, discharging sinus on the right leg. He had moderate malocclusion of teeth. His fresh X-ray was taken on the day of examination , it showed non healed fracture of his right femur and healed tibia fracture. He had implants in his femur and tibia. Accordingly this witness distributed his total permanent disability to 49%. The disability certificate is at Exhibit-36. This witness further stated that due to

disability, patient will face difficulty in climbing stairs, using Indian toilet and public transport and for conducting day to day activities. In cross-examination, this witness admitted that the claimant was not his regular patient and after 7 months of accident, he issued disability certificate to the Claimant after examining him. It appears that there are restrictions of movements of knee, ankle and right hip of the Claimant, due to accidental injuries. Though, this witness has not treated the Claimant. After taking fresh X-ray and after examining the claimant, this witness has issued disability certificate. I do not find infirmity in it.

6. It is contention of learned counsel for the Appellant that the Claimant in cross-examination has admitted that he was not holding driving licence, it shows his negligence. In my view, offence was registered against the driver of offending bus. The police paper produced on record shows negligence of bus driver. In cross-examination, the claimant has stated that at the time he was not holding driving licence, it does not mean that he was not holding driving

licence. The driving licence may have been kept at his home it has not come on record that the Claimant was not holding effective and valid driving licence nor Appellant/Corporation examined officer from R.T.O. office to prove the said fact. Hence, I do not see merit in it.

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

ORDER

- i. Appeal is dismissed. No order as to costs.
 - ii. The Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 - iii. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
8. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)