Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 242 OF 2024

Maharashtra State Road Transport Corporation ...Appellant
Through Divisional Controller, Raigad

Versus

Subhash Laxman Parab ...Respondent

Mr. Nitesh Bhutekar with Prathmesh Mandlik, Priyesha Patel, for the Appellant.
Mr. Sanjay Ghaisas, for the Respondent.

CORAM: R. M. JOSHI, J.

DATED: 29th JANUARY 2026

PC:-

1. This Appeal takes exception to the Judgment and Award dated 16th September, 2022, passed in Motor Accident Claim Petition No. 132 of 2018, wherein the Tribunal has granted compensation for the damage caused to the auto-rickshaw bearing No. MH-06/Z-2889 and an amount of Rs.2,05,000/- was directed to be paid to the claimant.

2. It is not in dispute that the on 31st July, 2017 an accident occurred between the auto-rickshaw bearing No. MH-06/Z-2889 and State Transport Bus bearing registration No.MH-14/BT-2731. It is the case of the claimant that in the said accident the driver of the bus drove the said vehicle negligently and dashed to the auto-rickshaw causing extensive damage to the said vehicle. It is further case of the claimant that on account of the damage caused to the vehicle, he lost income of Rs.40,000/-, so also, a sum of Rs.2,10,000/- was claimed towards actual damages of the vehicle. The claimant examined himself, so also, led evidence of Mr. Nitin Suresh Kekre, Surveyor and relied upon Survey Report Exh. 20, RC Book of rickshaw Exh. 21, certificate of cancellation of registration Exh. 22, copy of FIR Exh. 25 and copy of spot panchanama Exh. 26.

3. The learned Tribunal accepted fault of the driver of the bus in the occurrence of the accident and the claim of the petition was allowed to the extent of Rs.2,05,000/-.

4. Learned Counsel for the MSRTC submits that the Tribunal has committed error in accepting the Surveyor's report which does not indicate any deduction towards the depreciation. It is his submission that admittedly the auto-rickshaw was purchased in the year 2014 and met with an accident in the year 2017. Thus, according to him, the depreciation amount ought have been taken into consideration while determining value of vehicle. To support his submission he placed reliance on the rate of depreciation decided under the Income Tax Act. According to him, as per the said rate of depreciation mentioned therein there would be 30% depreciation in respect of the vehicle in question. He further placed reliance on the judgment of the Division Bench of Kerala High Court in case of **Abraham vs. Johny**[1] wherein the said Court

1 2008 SCC Online Ker 427

has accepted the depreciation at the rate of 5% per annum. It is his further submission that in view of the fact that there is cancellation of registration of the vehicle only on 21st September, 2021, it cannot be held that the loss of income has occurred to the claimant.

5. Learned Counsel for the claimant supported the impugned Judgment and Award.

6. There is no dispute about the fact that the State Transport bus was also involved in the occurrence of the accident and the charge-sheet has been filed against the driver of the bus for negligent driving of the vehicle. Findings recorded by the Tribunal in that regard require no interference.

7. Insofar as the claim for damages caused in the said accident to the auto-rickshaw is concerned, the claimant apart from examining himself on oath before the Tribunal has led evidence of a Surveyor. The Surveyor deposed about the amount damage caused to the vehicle in question. In the cross-examination there is no suggestion made to this witness with regard to the deduction of the depreciation while determining valuation of vehicle. Apart from this, admittedly there is no evidence led before the Tribunal by the MSRTC to determine the amount of depreciation which could be made applicable in the instant case.

8. There cannot be any dispute made generally to the proposition sought to be canvassed by the learned Counsel for the MSRTC that the depreciation will have to be taken into consideration while arriving the value of the vehicle. However, at the same time, such valuation cannot be done on the basis whims of the parties or even at the wish of the Court. Determination of depreciation for the puspose of income tax and as per the guidelines issued by Insurance Regulating Authority differ. Needless to say that the actual depreciation would be determined by the expert i.e. valuer. The parties must lead evidence in this regard. Hence, in this case, however, there is absolutely no evidence to hold so. The respectful view of the Judgment of the Kerala High Court wherein 5% deduction was taken, in respect of car insured under policy of insurance. Moreover, there is nothing on record to indicate that what nature of evidence was led in the said case. Apart from this, the depreciation applicable for the Income Tax purpose cannot be *ipso facto* made applicable to the present case. This Court, therefore, finds no reason or justification not to accept the amount of damages ascertain by the Tribunal in respect of damage caused to the vehicle in question.

9. On the point of loss of income, it is pertinent to note that there is evidence to indicate extensive damage being caused to the auto-rickshaw. As a result of this, irrespective of the fact that registration was cancelled on 21st September, 2021, there was no possibility of the said vehicle being plied on road to earn any income. The amount of compensation towards the actual loss of income, therefore, is just and proper.

10. As a result of above discussion, there is no merit in the Appeal.

11. In view of the above, I pass the following order.

ORDER

- **a)** The Appeal stands dismissed.
- **b)** The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
- **c)** The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
- **d)** R & P be sent back to the Tribunal.

12. In view of dismissal of the Appeal, pending Applications, if any, stand disposed of.

(R. M. JOSHI, J.)