



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 4107 OF 2017

1. Maharashtra State Road Transport,
Corporation, through it's Divisional Controller,
Divisional Office Yeotmal [M.S.]
 2. Maharashtra State Road Transport,
Corporation, through it's,
Divisional Controller, Divisional Officer,
Nanded.
- Appellants
[Original Respondent Nos.1 & 2]

VERSUS

1. Dayanand S/o Maroti Raut,
Age: 32 years, Occu: Skilled labour, New Nil,
R/o: Shiur Camp, Post Shiur, Tq. Hadgaon,
Dist. Nanded.
- Respondent
[Original Respondent]

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Ms. Reddy Ranjana D., Advocate for the Appellants
Mr. G. N. Chincholkar, Advocate for Respondent - Sole

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CORAM : NEERAJ P. DHOTE, J.
Reserved On : 17th April, 2025
Pronounced On : 6th May, 2025

JUDGMENT :

1. This is an Appeal filed under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as the 'M.V. Act'] by the Appellants – Maharashtra State Road Transport Corporation, challenging the Judgment and Award dated 23rd August, 2016, passed by the learned Motor Accident Claims Tribunal, Nanded, [hereinafter referred to as the 'learned Tribunal'] in Motor Accident Claims Petition

No.257/2012 [hereinafter referred to as the 'Claim Petition'], by which, the Appellants are directed to pay jointly and severally Rs.74,800/- [Rupees Seventy Four Thousand Eight Hundred Only] with interest @ 7.5 % per annum from the date of filing of the Petition till realization of the amount, to the Respondent - Sole.

2. The facts giving rise to the present Appeal are as under :-

[I] The Respondent - Sole filed the above referred Claim Petition before the learned Tribunal for compensation of Rs.3,00,000/-, contending that, on 24/03/2012 around 05:00 p.m at Pusad – Hingoli road, a State Transport Bus [For short the 'Bus'] bearing No. MH-31-AP-9713 came in a rash and negligent manner and gave dash to the Stationary Autorickshaw bearing No. MH-29-3510, in which, he was sitting. Due to the dash by the Bus to the Autorickshaw, he suffered grievous injuries and was admitted to the Hospital for treatment. He suffered fracture in his right leg, injuries to the chest, spine and head. Due to the said injuries, he suffered permanent disability and claimed the compensation from the Appellants.

[II] The Appellants contested the Claim Petition by filing Written Statement below Exhibit – 14. The contentions of the Respondent - Sole were denied and pleaded for dismissal of the Claim Petition.

[III] The learned Tribunal framed following issues below Exhibit – 15.

- “1. Whether petitioner proves that, on 24-03-2012 on Shembal Pimpri to Shiur Camp Road at Mulava Phata the S.T. bus bearing No. MH-31/AP-9713 driven by its driver came in high speed and in rash and negligent manner and gave dash to the auto bearing No. MH-29/3510 in which the petitioner was travelling and thus has caused permanent disability.
2. Do respondent Nos.1 and 2 prove that, the petition is bad on account of non-joinder of necessary party.

3. Whether the claimants are entitled to get compensation ? If yes, what should be the quantum.
4. What award ?”

[IV] The Respondent - Sole examined himself by filing Evidence Affidavit below Exhibit – 16 and he was cross-examined on behalf of the Appellants. The Police Papers, Copy of Discharge Card and Form Comp – B were brought on record in the Claim Petition. The Appellants examined the Driver of the Bus below Exhibit – 23 and he was cross-examined on behalf of the Respondent - Sole. Considering the evidence available on record, the learned Tribunal passed the impugned Judgment and Award.

3. It is submitted by the learned Advocate for the Appellants that, the Driver of Bus and the Driver of Autorickshaw were not made party to the Claim Petition. On this aspect, reliance is placed on the Judgment in **Machindranath Kernath Kasar Vs. D. S. Mylarappa and Ors.; LAWS [SC] 2008 4 88**. No reasons are given by the learned Tribunal in support of finding to Issue No.2. The Medical Officer is not examined to prove the injuries. Only Form Comp – B is brought on record. There was delay of about two [2] months in lodging the Report with the concerned Police Station. . Hence, the Application be allowed.

4. It is submitted by the learned Advocate for the Respondent - Sole that, as the injured was hospitalized, there was delay in lodging the Report with the concerned Police Station. After the recovery, the injured was able to walk and thereafter, he lodged the Report. Non adding the Driver of offending vehicle will not affect the Claim

Petition. In support of his submissions, he relied on the Judgment in **New India Assurance Company Limited Vs. Sitaram Devidayal Jaiswal and Ors. ; 2012 [2] ALL MR 429**. In the Evidence Affidavit, there is reference of medical expenditure incurred by the injured and the learned Tribunal did not grant the same. The percentage of disability in Paragraph No.17 of the impugned Judgment is wrongly mentioned as '12' instead of '21'. There is no merit in the Appeal and the same may be dismissed.

5. Both the sides cited the aboveresferred Judgments on the point of effect of not impleading the Driver of the offending vehicle as party Respondent to the Claim Petition. On going through the said Judgments cited by both the sides, the legal position, which gets culled out, is that, the Claim Petition cannot be dismissed or gets vitiated for non-joinder of the Driver of the vehicle involved in the Accident as the party to the Claim Petition. Both the Judgments came to be considered by this Court in **National Insurance Company Limited vs. Ashok Rajaram Bambulkar and Others ; 2022 ACJ 2188**, which was an Appeal under the M.V. Act from the decision of the MACP for compensation in respect of death from the motor vehicular Accident, wherein, one of the point for consideration was, whether non-impleadment of the Driver of the offending vehicle or absence of notice to the Driver under Rule 260 of the Rules, vitiated the proceedings before the Tribunal. This Court elaborately considered the

said issue in the light of the Judgments, in New India Assurance Company Ltd., Aurangabad Vs. Suman Bhaskar Pawar and Others; 2010 [2] Mh.L.J 177, in Machindranath Kernath Kasar Vs. D. S. Mylarappa and Others [*Supra*] and New India Insurance Company Limited Vs. Sitaram Devidayal Jaiswal and Others [*Supra*], and rejected the contention of the Appellants therein that, non-impleadment of the Driver of the offending car or absence of notice to the Driver, under Rule 260 of the Rules vitiated the proceedings before the Tribunal.

5.2 In the case at hand, the Driver of the Bus, which was involved in the motor vehicular accident, though was not party to the Claim Petition, was examined as the Witness by the Appellants before the learned Tribunal. Thus, no fault can be found with answering of Issue No.2 in the Negative by the learned Tribunal, though no reasons in so many words are given.

6. The Respondent - Sole, being the injured, is an eyewitness to the Accident. His evidence shows that, he lodged the Report with the Khandala Police Station, Taluka Pusad, District Yeotmal and Crime No.48/2012 came to be registered against the Driver of Bus for the offence punishable under Sections 279 and 338 of the Indian Penal Code, 1860 [hereinafter referred to as 'I.P.C']. The said Report is lodged after more than one and half [1½] months by the Respondent - Sole. In his cross-examination before the learned Tribunal, the

explanation for delayed reporting to the Police has come on record, which shows that, due to the injuries in the leg, there was delay in lodging the Report. The F.I.R. corroborates his evidence, wherein, it is mentioned that, due to the fracture in his leg, he was unable to move and he could not lodge the Report with the Police. This shows that, the delay in lodging the Report is explained. This being the matter relating to the compensation under the M. V. Act, the said delay in lodging the Report, when explained, will not be of much significance. The learned Tribunal has rightly considered this aspect. The learned Tribunal has also considered Article – A, the referral letter by Public Health Center, Sembal Pimpri to the Sai Hospital, Pusad, whereby the Respondent - Sole was immediately taken to the Public Health Center after the Accident.

7. Though the Bus Driver denied the Accident due to the rash and negligent driving of the said Bus, in his cross-examination, he admits of driving the Bus on the route, where the Accident took place, on the date and time of Accident stated by the Respondent - Sole. In cross-examination of the Respondent - Sole, it has come that, he had given the history about the Accident to Dr. Bang of Umarkhed. It is fortified in the cross-examination of the injured that, he was in the Autorickshaw, which was stationery at the time of Accident. The Respondent - Sole's contention that, the Autorickshaw was stationery at the time of Accident, finds corroboration from the Police Papers.

The evidence of Claimants, the evidence of the Bus Driver, copies of Police Papers and documents showing the hospitalization of the Appellant for Accident injuries, are sufficient to hold the factum of motor vehicular accident due to rash and negligent driving of the Bus by its Driver. On the basis of evidence available on record, no fault can be found with the findings of the learned Tribunal that, the Respondent - Sole suffered injuries in the motor vehicular accident involving the Bus while he was sitting in the Autorickshaw.

8. Admittedly, the Respondent - Sole did not examine the Medical Officer or treating Doctor to prove the extent of injuries and disability suffered by him. He has relied on Exhibit – 21, which is the Form Comp - B showing fracture in '*Tibia fibula 1/ 3rd under knee with restricted movement and difficulty in walking and 21% permanent disability*'. This being the Injury Claim, profitable reference can be made to the Judgment in **Raj Kumar Vs. Ajay Kumar and Another (2011) 1 SCC 343**, wherein, the general principles relating to the compensation in injury cases are enumerated as follows :-

“6. The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special Damages)

(i) *Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.*

(ii) *Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :*

(a) *Loss of earning during the period of treatment;*

(b) *Loss of future earnings on account of permanent disability.*

(iii) *Future medical expenses.*

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under item (i) and under item (ii) (a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a)."

8.1 Though the said Form Comp – B indicates 21% permanent disability to the Respondent - Sole, there is no evidence as to whether the said disablement was permanent or temporary. There is no evidence to show that, the said injury suffered by the Respondent - Sole affected the earning capacity of the Respondent - Sole. In cross-examination, the Respondent - Sole admitted that, he has not filed any document showing that, he took medical treatment at the Primary Health Center, Sembal Pimpri and he has not filed any document showing that, he was referred to another Hospital. There are no Medical Bills on record, though it is contended that, he incurred Rs.34,000/- towards Medicines, Doctor Fees, Hospital Charges, Special

Diet, Travelling Expenses, Stay Charges and other Expenses. However, from the evidence available on record, particularly, the copy of Discharge Card at Exhibit – 19, it is clear that, the injured was admitted to the Hospital on 24/03/2012 and discharged on 27/03/2012. Considering the days of hospitalization in the Hospital for treatment to the leg injury, overall expenditure as claimed by the injured for the above referred purposes appears reasonable and acceptable. Further, due to the injury in the leg, the injured must have experienced pain and sufferings, for which, Rs.3000/- appears to be reasonable amount. It is true that, there is no medical evidence in respect of medical advice for taking rest from work. Considering the days of hospitalization and the injuries as referred above, one [1] month rest from the work can safely be presumed and, therefore, Rs.3,000/- as the one month's earning considered by the learned Reference Court, is considered as one month's loss of earning. If the said amount are added [Rs.34,000/-, Rs.3,000/- and Rs.3,000/-], the amount of compensation comes to Rs.40,000/-.

9. As per the observations in the above referred Judgments, the percentage of disability cannot be applied as it is, as the extent of permanent disability of the limb cannot be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity as observed in the above referred Judgment. It would not be out of place to reproduce

the relevant observations from the above referred Judgment on this aspect :-

“19. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

9.1. In view of the above referred legal position, the learned Tribunal erred in multiplying the percentage of permanent disability to the amount of Rs.36,000/- incurred by the injured for his medical treatment. There are no reasons in the impugned Judgment as to how the permanent disability is taken by the learned Tribunal at 12%. Further, in absence of Expert / Medical Evidence to show the future loss of earnings, applying the Multiplier of '15' will not be sustainable.

10. In the backdrop of the above discussion based on the evidence available on record, on reassessing the evidence available on record and the principles laid down in the above referred Judgments, the compensation awarded by the learned Tribunal, vide the impugned

Judgment and Award needs to be modified to the above extent, with no interference in the rate of interest granted by the learned Tribunal. Hence, the following order :-

ORDER

- [I] The Appeal is partly allowed with no order as to costs.
- [II] The amount of compensation awarded by the learned Tribunal, inclusive of no fault liability amount, is modified to Rs.40,000/- [Rupees Forty Thousand, inclusive of no fault liability amount].
- [III] Rest of the operative order in respect of joint and several liability and rate of interest is upheld.
- [IV] The Record and Proceedings be sent back to the learned Tribunal.

[NEERAJ P. DHOTE, J.]

Sameer/-