

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

FIRST APPEAL NO.1494 OF 2012

Maharashtra State Road
Transport Corporation
through Divisional Controller
Division at Aurangabad.

.. APPELLANT
[Orig.Resp. No.2.]

Versus

1] Kadunath s/o Laxman Ravate
Age 55 years, Occu-Conductor
R/o Deogaon (Rangari)
Tq. Kannad, Dist. Aurangabad

RESPONDENT NO.1
[Orig.Claimant]

2] Shivaji s/o Ramrao Tayade
Age major, Occ-Driver
R/o Radhaswami colony,
Suvarnakar Nagar, Jatwada Road
Aurangabad through Divisional
Controller, MSRTC Aurangabad

RESPONDENT NO.2
[Orig.respondent no.1]

3] Walmik Ambadas Gajale
Age 39 yrs, Occ-Driver
R/o Phadtare Wasti, Koregaon Bhima
Tq. Shirur, Dist. Pune

4] M/s Super Spares & Services Pvt.Ltd
Laxmi Abhishek, Laxmi Park,
Near Colony Nursing Home,
Dandekar Bridge, Pune,
Dist. Pute.

5] The National Insurance Co. Ltd
Through its Divisional Manager
Divisional Office, Hajari Chambers
Station Road, Aurangabad

.. RESPT NOS.3 TO 5
[Orig.Respt 3 to 5]

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Smt.Ranjana D. Reddy,Adv. for appellant
Shri P.R.Jadhav, Adv.for respondent No.1
Shri S.R.Bodade,Adv. for respondent no.5.
Respondent nos.3 and 4 served.

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CORAM : S.V.GANGAPURWALA,J.**DATED : 21ST SEPTEMBER, 2015****ORAL ORDER :-**

The present respondent had filed claim application u/s 166 of the Motor Vehicles Act on account of the injury sustained by him in an accident. The said claim petition is partly allowed. Aggrieved thereby, MSRTC has filed the present appeal.

2] Mrs.Reddy, learned counsel submits that the claimant has also got benefit under the provisions of Workmen's Compensation Act, as such the present application under the Motor Vehicles Act is not maintainable as per Section 167 of the Motor Vehicles Act. The learned counsel relies on the judgment of the Apex Court in the case of **Oriental Insurance Co. Ltd. V/s Dyamavva and others reported in 2013 (2) T.A.C. 1 (S.C.)**. The learned counsel further submits that though the claimant has suffered only 40% permanent disability, the compensation is awarded considering 100% disability, the same is illegal. The compensation will have to commensurate with the disability suffered by the claimant, as such, only 40% of the amount could have been awarded. According to the learned counsel, the claimant can do other jobs. In view of that 100% disability could not

have been considered.

3] The learned counsel for the claimant submits that the claimant had not filed any application under the provisions of the Workmen's Compensation Act. The two bills paid were only on application given to the Department. I have also heard Shri Bodade learned counsel for respondent no.5.

4] With the assistance of the learned counsel, I have gone through application and the record and proceedings. The bar u/s 167 of the Workmen's Compensation Act would arise if the claimant prosecutes the remedies under the Workmen's Compensation Act and the Motor Vehicles Act. In that case, option is given to prosecute remedy under one statute only. Here in the present case, claimant had not filed any application under the provisions of the Workmen's Compensation Act. In light of that, bar u/s 167 of the Motor Vehicles Act would not arise.

5] As far as quantum of compensation is concerned, it is matter of record that the claimant has sustained 40% disability. The claimant was working as a Driver. The present appellant terminated his services on the ground that the claimant now is unfit to work as a Conductor. The appellant did not thought it fit to give any other job of lesser responsibility to the claimant which shows that the appellant itself was of the view that the claimant is unfit to do any job. The tribunal has considered the functional disability and has also rightly applied multiplier of 11 considering age of the claimant. The tribunal has not awarded any amount under the head of loss of enjoyment of life, amenities, permanent disability as is held by Apex Court in the case of **Syed Sadiq Versus Divisional Manager, United India Insurance Co. reported in 2014 AIR (SC) 1052**. However, as the

claimant has got some amount from the appellant towards his medical bills, I am not considering the said aspect. In light of above, Appeal is dismissed, however, with no order as to costs.

6] The claimant is allowed to withdraw the amount deposited by the appellant. In view of disposal of Appeal, Civil Application stands disposed of.

[S.V.GANGAPURWALA,J.]

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