

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

**FIRST APPEAL NO. 102 OF 2015**

SATERAM SHAHADEO INGLE  
VERSUS  
MAHARASHTRA STATE ROAD TRANSPORT  
CORPORATION, PARBHANI

...

Advocate for Appellant: Mr S.M.Kshirsagar h/f P N  
Kalani

Advocate for Respondents: Mr A.D.Wange

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**CORAM : V.K. JADHAV, J.**

**Dated: June 13, 2016**

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**PER COURT :-**

1. With the consent of learned counsel appearing for parties, heard finally.

2. Being aggrieved by the Judgment and award dated 13.03.2014 passed by the learned Chairman, Motor Accident Claims Tribunal, Parbhani in MACP No.460/2011, the original claimant has preferred this appeal to the extent of quantum.

3. Brief facts, giving rise to the present appeal, are as under :-

a] The claimant was travelling in the bus bearing registration No.MH-20/BL-0597. On 14.3.2011 at about

00.45 am on Aurangabad-Osmanabad road within the limits of village Malkapur, the said bus gave dash to one truck bearing registration No.MP-14/HB-0294 coming from the opposite direction. At that time, bus was overtaking the bullock cart, and it dashed against the truck which was coming from front side. In consequence of which, claimant had sustained the injuries on his head, left lower limb, chest, abdomen and the injuries on both legs and right hand. According to the claimant, injuries sustained by him also resulted into permanent disablement to the extent of 42% as certified by the Medical Officer. Thus, the claimant has preferred claim petition before the Motor Accident Claims Tribunal, Parbhani for grant of compensation under the various heads.

4. Respondent MSRTC has denied the liability and contended that the claimant is not entitled to claim compensation of Rs.5.00 lacs. The learned Chairman of the Tribunal, by its impugned judgment and award dated 13.3.2014 partly allowed the claim petition and thereby directed the respondent MSRTC to pay

Rs.2,65,000/- to the claimant together with interest @ 7.5% p.a. from the date of filing of the petition till realization of the amount. Being aggrieved by the same, the claimant has preferred this appeal to the extent of quantum.

5. Learned counsel for the appellant-original claimant submits that, even though the claimant has sustained 42% of permanent disablement, the said permanent disablement has affected his earning capacity to the extent of 100%. The claimant was doing labour work prior to the accident and on account of the injuries which resulted into permanent disablement is not able to do the labour work as it was prior to the accident. Learned counsel submits that, even though claimant has incurred heavy medical expenses, the Tribunal has awarded only Rs.38,000/- for the medical expenses.

6. Learned counsel appearing for respondent M.S.R.T.C. submits that, the claimant has not examined Medical Officer as his witness to prove the contents of

permanent disablement certificate placed on record. Learned counsel submits that, thus, the nature of the permanent disablement and consequence thereof in future are not explained by an expert. Learned counsel submits that, in absence of the same, the Tribunal has considered that earning capacity of the claimant is affected to the extent of permanent disablement sustained by him. Learned counsel submits that, the Tribunal has considered medical bills submitted before it and accordingly awarded compensation to that extent. Learned counsel submits that, the Tribunal has awarded just and reasonable compensation and there is no reason to interfere in it.

7. It appears from perusal of record and proceeding that copy of the permanent disablement certificate issued in form comp 'B' is placed on record alongwith application seeking permission for production exh.18. It further appears that the Tribunal has allowed production of document in the interest of justice. It further appears that said certificate pertaining to the permanent disablement sustained by the claimant was

issued by Orthopedic surgeon, Civil Hospital, Parbhani.

8. In absence of expert's evidence and even though the contents of the said certificate are not proved before the Tribunal, the Tribunal has considered that earning capacity of the claimant is affected to the extent of permanent disablement sustained by him. Claimant in his affidavit of evidence has contended that, after the accident he was admitted in Sasoon Hospital, Pune where he was operated six times on his legs and even rod was inserted in his left leg. It is also stated that he was admitted there for near about six months. He has further deposed that, at present he is not able to do any work, he cannot walk and he cannot lift the weight. On perusal of the medico legal certificate, it appears that the claimant has sustained compound fracture on both legs, and nature of the injuries is shown as grievous.

9. In a case of **Rajkumar Vs Ajay Kumar and another**, reported in **2011(2) Mh.L.J. 569**, in paragraph no.11 and 12 of the order, the Supreme Court has made following observations :-

*“11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to ‘hold an enquiry into the claim’ for determining the ‘just compensation’. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the ‘just compensation’. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen’s Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is a functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor’s opinion as to whether it is possible to deduce the corresponding functional permanent*

*disability with reference to the whole body and if so the percentage.*

*12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily give liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will no be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability."*

10. It is further observed by the Supreme court that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. It is further

observed that the tribunal should therefore take an active role to ascertain true and correct position so that it can assess 'just compensation'. It is also observed that, tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured.

11. In view of the above observations and in view of the facts and circumstances of the present case, in my considered opinion, this is a fit case to be remanded to the Tribunal to prove the contents of permanent disablement certificate in form Comp 'B' placed on record by examining the concerned Orthopedic surgeon who has issued the certificate and to seek his opinion on the point that permanent disablement sustained by the claimant how far affected his earning capacity.

12. In the light of the above discussion and more particularly observation of the Apex Court in case of Rajkumar (supra), I proceed to pass the following order.

### **ORDER**

I. The appeal is hereby partly allowed.

II. The judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Parbhani dated 13.03.2014, in MACP No.460 of 2011 is hereby quashed and set aside. Matter is remanded to the Tribunal with the following directions :-

- a] Re-admit MACP No.460 of 2011 (Sateram Shahadev Ingle Vs. Maharashtra State Road Transport Corporation Parbhani) to its original number and proceed to decide the same.
- b] The evidence (if any) recorded during the course of the original trial, would be subject to all just exceptions, be evidence during the trial of claim petition after remand.
- c] The claimant is permitted to examine the author of the permanent disablement certificate issued in form 'Comp'.**'B'** placed before the Tribunal as witness and the Respondent MSRTC is at liberty to cross examine the said witness.

III. Matter is remanded to the extent of examination of said witness as directed above.

IV. Learned Member of the Tribunal shall decide

the MACP No.460 of 2011 afresh, after giving an opportunity of hearing to both the sides, on its own merits, in accordance with law.

V. Needless to add that the observation made by this court while disposing of the present appeal would not cause any prejudice to the trial of MACP No.460 of 2011 after remand.

VI. Needless to state that the compensation amount as per the previous award deposited by the Respondent MSRTC if withdrawn by the claimant, the same shall be considered by the Tribunal while passing the award on merits, after remand.

VII. Record and proceeding be sent to the tribunal forthwith.

VIII. The parties are directed to appear before the Tribunal on **13.7.2016**.

IX. Appeal is accordingly disposed of.

**( V.K. JADHAV, J. )**

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