

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

FIRST APPEAL NO. 403 OF 2015

VITHAL TULSHIRAM SHINDE
VERSUS
MAHARASHTRA STATE ROAD TRANSPORT
CORPORATION

...

Advocate for Appellant : Mr P V Balkhande
Advocate for Respondents : Mr A D Wange

...

CORAM : V.K. JADHAV, J.

Dated: July 05, 2016

...

PER COURT :-

1. Being aggrieved by the Judgment and Award passed by the Member, Motor Accident Claims Tribunal, Basmath, dated 2.5.2014 in Motor Accident Claim Petition No.12 of 2012, the original claimant has preferred this appeal to the extent of quantum of compensation.

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

a] The appellant-claimant is serving as a professor. On 29.8.2011 at about 4.30 p.m. he was traveling as a passenger in S.T.Bus bearing registration No.MH-20/D-

7059 from Jawala Bazzar to Hingoli. The driver of the said bus had driven it in the rash and negligent manner and gave dash to one motor cycle near Wagarwadi. Because of the said accident, the driver of the S.T.Bus has lost control over the bus, left the road and went in a road side ditch near the bridge, in consequence of which, the appellant-claimant sustained fracture to his right hand and mandible. After the accident, he was taken to Government Hospital and therefrom to Private Hospital, Nanded. He was operated in the said hospital on his right hand and mandible. He had to bear hospital and medical expenses. Furthermore, injuries sustained by him also resulted into permanent disablement to the extent of 30%. Thus, the appellant-claimant filed Motor Accident Claim Petition before the Tribunal Basmath for grant of compensation under various heads.

b] Respondent M.S.R.T.C. has strongly resisted the claim petition by filing written statement at Exh.12. It is denied that accident had taken place on account of rash and negligent driving of the driver of S.T.Bus. Further,

respondent M.S.R.T.C. has denied the occupation, monthly income of the appellant-claimant and injuries sustained by him in the said accident.

c] The learned Member of the Tribunal, Basmath, after considering the evidence adduced by the parties to the claim petition in support of their rival claims, partly allowed the petition with proportionate costs and thereby directed the respondent to pay an amount of Rs.1,30,000/- with interest. Being aggrieved by the same, the appellant-original claimant has preferred this appeal to the extent of quantum.

3. Learned counsel for the appellant-original claimant submits that, though the claimant has sustained 20% of the permanent disability, the Tribunal has not applied multiplier method to calculate the compensation. Learned counsel submits that, the Tribunal has awarded only Rs.75,000/- for his medical treatment even though appellant-claimant has incurred medical expenses more than that. Learned counsel submits that, the Tribunal has awarded meager amount

towards permanent disablement and has not considered at all the loss of amenities in future life likely to be faced by the claimant.

4. Learned counsel for respondent MSRTC submits that, the Tribunal has awarded just and reasonable compensation. The appellant-claimant is serving as a professor in Junior College and as such there is no loss of future income. It is not the case of the appellant-claimant that he has lost his job because of the injuries sustained by him in the accident. Learned counsel submits that, so far as income from the agricultural source is concerned, even prior to the accident he was supervising the agricultural affairs and he was not personally cultivating his agricultural land. In view of that, there is no loss of income from the agricultural source. Learned counsel submits that, the Tribunal has awarded just and reasonable compensation under the non pecuniary heads also. There is no substance in the appeal and thus the appeal is liable to be dismissed.

5. It is not disputed that the claimant is serving as a

Professor in Junior College and he is teaching technical subject. In view of this, there cannot be any loss in future income as such. Considering the same, the Tribunal has awarded lump sum amount for permanent disablement sustained by the claimant. It further appears from the record that, the claimant has examined P.W. 2 Dr. Rajeshwar Pawar from Aadhar Hospital. As per the MLC Exh.21, the appellant claimant had sustained two grievous injuries and one simple injury in the accident. PW 2 Dr. Pawar has deposed that, he had performed operation on fracture of humerus and fracture of mandible of the appellant claimant. Discharge summary is proved by the appellant-claimant and same is marked as Exh.37. Furthermore, the appellant-claimant has produced on record disability certificate and since the same is issued by the Medical Officer, General Hospital, Hingoli, the Tribunal has considered the said certificate. As per said certificate, the claimant sustained 20% permanent disablement. Learned counsel for respondent MSRTC has rightly pointed out that so far as agricultural income is concerned, there cannot be loss of future

income as such.

6. It appears that the Tribunal has awarded only Rs.30,000/- towards permanent disability. Considering the fact that the claimant had sustained two grievous injuries and one simple injury in the accident and further he was operated on the fracture of humerus and mandible, it would be appropriate if the compensation is awarded to the tune of Rs.60,000/- towards permanent disablement. Considering the nature of the injuries which resulted into permanent disablement to the extent of 20%, the claimant would certainly faced loss of amenities in future life while carrying out his job as professor in Junior College, and also supervising day to day agricultural operations. The learned Member of the Tribunal has not awarded any compensation under this head. The claimant is thus entitled for an amount of Rs.15,000/- under this head.

7. In view of this, recalculation of the compensation which can be broadly categorized is as under :-

(* granted by the Tribunal)

i.	Medical Expenses	Rs.75,000/- (*)
ii	Permanent Disability	Rs.60,000/-
iii.	Pain and sufferings	Rs.15,000/- (*)
iv.	Loss of income	Rs.10,000/- (*)
v.	Loss of Amenities in future life	Rs.15,000/- =====
		Rs.1,75,000/- =====

(Rs. One lac seventy five thousand only)

8. In the result, following order is passed.

ORDER

- I. First Appeal is hereby partly allowed with proportionate costs.

- II. Judgment and Award dated 2.5.2014 passed by the Member, Motor Accident Claims Tribunal, Basmath in MACP No.12 of 2012 is hereby modified in the following manner :-

“Respondent-MSRTC shall pay an amount of Rs.1,75,000/- (Rs. One lac seventy five thousand only) to the appellant-original claimant with interest @ 7% p.a. from the date of petition till realization of the entire amount.”

- III. Rest of the Judgment and Award passed by the Member of the Tribunal in MACP No.12/2012 stands confirmed.
- IV. Award be drawn up in tune with the modifications, as aforesaid.
- V. Appeal is accordingly disposed of.

(V.K. JADHAV, J.)

...

aaa/-