

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

FIRST APPEAL NO.678 OF 2002

Jabbar s/o Maliksab Bagwan,
Age 38 years, Occu. Business,
(Now nil), R/o Ahmedpur,
Tq. Ahmedpur, District Latur.

**...APPELLANT
(ORIG.CLAIMANTS)**

VERSUS

1. The Maharashtra State Road
Transport Corporation, through
it's Divisional Controller,
Latur, Taluka: Latur,
District Latur.
- (2. Rajendra Kishanrao,
Age 45 years, Occu: Driver,
R/o. Nwai, Taluka Bhalki,
District: Bidar (K.S.).)

(Appeal dismissed against R.No.2 vide Registrar's order
dated 24.2.2004.)

**...RESPONDENTS
(Orig.Respondents)**

...
Mr. Fayaz K.Patel, Adv., h/f Mr. N.B.Patil (Raiwadikar),
Advocate for the appellant.
Mrs. R.D. Reddy, Advocate, for respondent no.1.

...
CORAM: P.R.BORA, J.

DATE :JULY 6th, 2017

ORAL JUDGMENT:

1. Present Appeal is filed against the judgment and award passed by the Motor Accident Claims Tribunal at Latur on 24th of December, 2001, in M.A.C.P. No.557/1998.

2. The appellant had filed the aforesaid claim petition claiming compensation on account of the injuries caused to him in a vehicular accident happened on 22nd of May, 1998, while he was travelling by a State Transport Bus from Ahmedpur to Hyderabad. In the accident so happened, the appellant received severe injuries to his right hand. It was virtually crushed in the accident and eventually, was required to be amputated. It was the case of the appellant that he was carrying on the business of selling fruits on a hand cart and used to earn around Rs.100/- to Rs.150/- per day. It was the further contention of the appellant that since in the alleged accident he lost his right hand, he could not carry on the said business and has, thus, lost his future earning capacity. The appellant had, therefore, claimed

compensation of Rs.3,00,000/- (Rs. three lakhs) from the State Transport Corporation towards his future loss of income, towards pain and suffering, loss of amenities and towards the medical expenses. As per the case of the appellant, he had incurred 80 per cent permanent disability because of the injuries caused to him in the alleged accident.

3. The claim petition was resisted by the S.T. Corporation on various grounds. A plea of contributory negligence was also taken by the S.T. Corporation. The Tribunal, however, did not consider the said plea and held the negligence of the driver of the S.T.Bus responsible for occurrence of the alleged accident. The Tribunal, however, determined the amount of compensation on lumpsum basis and held the appellant entitled for the total compensation of Rs.1,50,000/- (Rs. one lakh, fifty thousand) inclusive of No Fault Liability compensation. Aggrieved thereby, the claimant had preferred the present appeal seeking enhancement in the amount of compensation as awarded by the Tribunal.

4. Learned Counsel appearing for the appellant submitted that the Tribunal has completely ignored the income as was being earned by the appellant before his meeting with the accident. Learned Counsel submitted that the Tribunal has also not considered that because of amputation of his right hand, the appellant had become incapable of carrying on business in future and thus has totally lost his future earning capacity. Learned Counsel submitted that in such circumstances, the Tribunal must have allowed the claim in toto since the appellant had claimed a very reasonable sum of compensation amounting to Rs.3,00,000/- (Rs. three lakh). Learned Counsel submitted that the Tribunal has nowhere discussed or provided any justification for awarding the compensation of Rs.1,00,000/- towards future loss of income of the appellant. Learned Counsel further submitted that the Tribunal has also not adequately awarded non pecuniary damages. Learned Counsel submitted that the claim as was filed by the claimants should have been awarded in full and he, therefore, prayed for modification of the award to the said extent.

5. Smt. Reddi, learned Counsel appearing for the respondent Corporation, supported the impugned judgment. Learned Counsel submitted that the Tribunal has rightly determined the amount of compensation and no interference is required in the impugned judgment and award.

6. I have carefully perused the impugned judgment as well as the evidence on record. It is not in dispute that the appellant suffered severe injuries to his right hand and ultimately the right hand was required to be amputated. Though there is no concrete evidence as about the income of the appellant, the fact remains that it is not in dispute that the appellant was carrying on the business of selling fruits on hand cart. A reasonable inference can be drawn that after the accident, the appellant may not be able to carry on the business of selling fruits on hand cart as efficiently as he was carrying out before meeting with the accident. It is to be borne in mind that it may not be possible for a small fruit vendor to bring on record any documentary evidence as about his income. In the circumstances, the only possible mode for

the Tribunal to assess the income of the appellant is by doing some guess work. The Tribunal has, by adopting the said mode, held the income of the appellant to the tune of Rs.30/- to Rs.40/- per day. It does not appear to me that the Tribunal has committed any error in doing so. However, while awarding the compensation, the Tribunal must have further considered that the appellant may not be able to enjoy the amenities of life as a normal person because of amputation of his right hand. It further cannot be ignored that the pain and suffering which the appellant undergone during the period of his treatment also needs to be adequately compensated. It has also to be considered that though the injury appears to be only to the right hand, having regard to the nature of the business, the appellant was carrying on, it may seriously affect his earning capacity to a considerable extent.

7. Considering the aforesaid circumstances and more particularly, the age of the appellant / claimant at the time of happening of the accident, I deem it appropriate to enhance the amount of compensation from Rs.1,50,000/- (Rs. one lakh fifty thousand) to

Rs.2,50,000/- (Rs. two lakh, fifty thousand). It appears to me that this would be the just and fair compensation payable to the appellant claimant for the injuries suffered and the disablement incurred by him because of the accidental injuries.

The First Appeal, therefore, stands allowed in the aforesaid terms. The appellant will be entitled for the enhanced amount of compensation along with interest at the rate of nine per cent per annum from the date of petition till its realization. Award be drawn accordingly.

(P.R.BORA)
JUDGE

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AGP/678-02fa