

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 31 OF 2002

Hirachand s/o Bhagwan Jain,
Age 33 years, Occ : Business,
Resident of Aurad Shahajani,
Taluka Nilanga, District Latur.

... **APPELLANT**

VERSUS

1- Vasant s/o Bhaurao Shinde,
Age major, Occ: Driver,
Resident of Kalmugali, Taluka
Nilanga, District : Latur.

2- The Divisional Manager,
M.S.R.T.C., Latur,
(Bus No.MH-20-D-0-803)
Nilanga to Bombay.

3- Smt. Aruna w/o Ashokkumar Yerte,
Occupation : Business and household,
Resident of Aurad-Shahajani,
Taluka Nilanga, District : Latur.

Appeal dismissed as
against R. No.3 vide
R's order dated 17-2-04.

4- The Manager,
National Insurance Co., Latur,
Taluka and District Latur.

... **RESPONDENTS**

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Mr. N. B. Patil Raiwadilkar, Advocate for Appellant.
Mrs. Ranjana D. Reddy, Advocate for Respondent No.2.
Mr. D. V. Soman, Advocate for Respondent No.3.

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CORAM : **V. K. JADHAV, J.**
DATE : 13th April, 2017.

ORAL JUDGMENT:

. Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Latur dated 8th November, 1996 in MACP No.140 of 1993, the original Claimant has preferred this appeal to the extent of quantum.

2 Brief facts giving rise to the present appeal are as follows:

- a) On 9th October, 1992, the Claimant had started his journey in a jeep bearing registration No.MXV-6433 from Latur Shahajani. On way, near the bridge of village Peth at bout 06:30 pm, the said jeep collided with one S.T. Bus bearing registration No.MH.20-D-O-803 coming from opposite side. In consequence of which, Claimant has sustained injuries, which resulted into permanent disablement. The Claimant has taken the treatment in hospital and incurred the medical expenses. The Claimant thus, approached to the Motor Accident Claims Tribunal by filing MACP No.140 of 1993 for grant of compensation of

Rs.50,000/- under the various heads.

- b) The Respondent / MSRTC has strongly resisted the claim on the ground that the said accident had taken place on account of rash and negligent driving on the part of the driver of jeep.
- c) Respondent No.3 / owner of the jeep has strongly resisted the claim on the ground that the driver of S.T. Bus was responsible for the accident and he had driven the vehicle S.T. Bus in rash and negligent manner.
- d) Respondent No.4 / Insurer has also resisted the claim by filing the written statement. It has been contended that the jeep was on extremely left side of the road and the bus had come on the wrong side and given dash to the jeep. It has also been contended that Respondent No.3 / owner had committed breach of the conditions of insurance policy and therefore, the Respondent No.4 / Insurer is not liable to pay the compensation.

- e) The Claimant has adduced oral and documentary evidence in support of his contentions. However, the Respondents have not adduced any evidence.
- f) The learned Member of the Tribunal after considering the evidence on record held that the drivers of both the vehicles are responsible for the accident and it is a case of composite negligence. The Tribunal has thus, directed the Respondents to pay jointly and severally an amount of Rs.5,000/- with interest at the rate of 12% per annum from the date of petition till realization of the entire amount. The Tribunal has also fixed the inter-se liability between the Respondents and further directed that Respondent / MSRTC is liable to pay the compensation to the extent of 70% and the Respondents / jeep owner and its Insurer liable to pay the compensation to the extent of 30%. Being aggrieved by the quantum of compensation, the original Claimant has preferred this appeal.

3 It appears from the appeal memo that the Appellant has restricted his appeal to the extent of additional compensation of Rs.10,000/-. The Appellant / Claimant has mainly relied upon the disability certificate Exhibit – 40 wherein the percentage of permanent disablement has been specified. It has been certified in the said permanent disablement certificate Exhibit – 40 that the Claimant has sustained 15% of disablement. However, the Tribunal has not considered the same and awarded very meager amount of compensation.

4. The Respondent / MSRTC and Respondent / Insurer submits that the said disablement certificate Exhibit – 40 has been issued in the year 1996 though the accident had taken place in the year 1992. The learned counsel submits that the Appellant / Claimant has sustained the simple injury in the accident and in the so-called disablement certificate Exhibit – 40, only disfiguration of face has been mentioned. It is not clear from the said certificate Exhibit – 40 as to how the Claimant has sustained the permanent disablement to the extent of 15%. So far as disfiguration of the face as stated in the permanent disablement certificate Exhibit – 40 is concerned, there is

no question of loss of future income and as such, the Tribunal has awarded just and reasonable compensation. No interference is required.

5 The learned counsel for Respondents submits that the Tribunal has awarded exorbitant rate of interest and he same should be 6% per annum instead of 12% per annum as awarded by the Tribunal.

6 On careful perusal of the evidence and the judgment and award passed by the Tribunal, it appears that the Claimant has placed on record MLC Exhibit – 39 and permanent disablement certificate Exhibit – 40, which has been issued by the Government hospital. Though the Tribunal after considering the said permanent disablement, which is in the form of disfiguration of face, rightly held that there is no loss in the future income, however, awarded a very meager amount of compensation for the said disablement of disfiguration of face sustained by the Claimant. Admittedly, after the accident, the Claimant was hospitalized for some period. The Claimant has incurred medical expenses and also expenses on account of conveyance, special diet etc. Since the Appellant /

Claimant has restricted his claim in the appeal to the extent of additional Rs.10,000/-, in my considered opinion, by considering the injuries sustained by the Appellant / Claimant vide medico legal certificate Exhibit – 39 and the resultant permanent disablement as per certificate Exhibit – 40, the Claimant is entitled for the total amount of Rs.15,000/- inclusive of the compensation awarded by the Tribunal. Hence, the following order:

ORDER

- I. The appeal, is hereby partly allowed. No costs.
- II. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Latur dated 8th November, 1996 in MACP No.140 of 1993, is hereby modified in the following manner:

“Respondent Nos.1 to 4 do pay jointly and severally to the Claimant Rs.15,000/- (Rupees Fifteen Thousand Only) with proportionate costs and interest at the rate of 6% per annum from the date of petition till realization of the entire amount.”

- III. Rest of the judgment and award stands confirmed.

- IV. Award be drawn up as per the above modification.
- V. Needless to say that if any amount is deposited as per the judgment and award passed by the Tribunal, the same shall be the part of the award after modification.
- VI. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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