

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

FIRST APPEAL NO. 1002 OF 2007

Maharashtra State Road Transport
Corporation Through Divisional
Controller Ahmednagar, Division Sarjapur,
Ahmednagar.

...Appellant...
Orig opponent.

VERSUS

Tukaram Dagadu Marane,
age 50 yrs, Occ. Nil,
R/o 50/339, Laxminagar,
Parvati, Pune-9.

..Respondent..

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Advocate for Appellant : Mr M K Goyanka
Advocate for Respondents : Mr Darandale Abhijit C.

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CORAM : V.K. JADHAV, J.

Dated: August 03, 2017

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JUDGMENT :-

1. Being aggrieved by the judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Ahmednagar, dated 8.6.2007 in MACP No.751/2001, original respondent MSRTC has preferred this appeal.

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

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follows :-

a] on 29.10.1997 at about 3.15 p.m. the claimant alongwith his wife was travelling in his Maruti Van from Pune to Ahmednagar. On way, one S.T. Bus bearing registration No.MH-12/1029 came from opposite direction towards Pune side in high, excessive speed and gave dash to the Maruti van of the claimant. In consequence of which, the claimant sustained crushed injury on his right leg. He was immediately shifted to Civil Hospital, Ahmednagar and he was treated there for compound fracture of tibia fibula right side with multiple abrasions. Thereafter he was shifted to Sassoon Hospital, Pune, but the claimant opted to take treatment in the private hospital of Dr. Hardikar, where fixtures were implanted and necessary treatment was given to him for six months and surgical operations were performed on his leg. The claimant has incurred huge medical expenses. The claimant thus approached the tribunal by filing MACP No.751/2001 for grant of compensation under various heads. The claimant has claimed compensation of Rs.10.00 lacs from the MSRTC.

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b] The appellant-MSRTC has strongly resisted the claim by filing written statement. It has been denied that the accident had taken place due to rash and negligent driving on the part of the driver of the S.T. Bus. The claimant himself was rash and negligent in driving the Maruti Van and, therefore, he was at fault in committing the accident. In the alternate, it has also been contended that the claimant had contributed the accident and the appellant MSRTC is thus not liable to pay the compensation.

c] The claimant has adduced oral and documentary evidence in support of his contentions. The respondent MSRTC has not adduced any evidence. The learned Chairman, Motor Accident Claims Tribunal, Ahmednagar by its impugned judgment and order dated 8.6.2007 partly allowed the claim petition and thereby directed that the opponent shall pay compensation of Rs.7,80,500/- excluding the amount of no fault liability to the petitioner with interest @ 9%p.a. from the date of petition till realization of the entire amount. Being

aggrieved by the same, the present appeal is preferred by the MSRTC.

3. The learned counsel for the appellant-MSRTC submits that, there was head on collusion between the S.T. Bus and Maruti Van being driven by the claimant himself. The learned counsel submits that, the claimant was entirely responsible for the accident. The accident had taken place in the hilly area and S.T. Bus was in ascending direction, where as Maruti Van was in the descending direction of the hilly area. However, the Tribunal has not considered the same and erroneously held that the driver of the S.T. Bus was entirely responsible for the accident. Learned counsel submits that in the alternate, the Tribunal ought to have held the contributory negligence on the part of the claimant who was driving Maruti Van at the time of accident.

Learned counsel submits that, the Tribunal has erroneously recorded the facts and pleadings to the effect that the claimant was constrained to leave the service by availing voluntary retirement due to

permanent disablement sustained by him in the accident. Learned counsel submits that, there is no pleadings to that effect and even the respondent-claimant has not adduced any evidence to that effect. It is a part of record that the respondent-claimant has voluntarily retired from service on his own, however, tribunal has worked out the difference of the salary by considering his remaining span of service and awarded the compensation erroneously under the head of loss of future income. Learned counsel submits that, there is no evidence on record to indicate that the Department where the claimant was working has directed the claimant to take voluntary retirement, otherwise the department would retired him compulsorily. It is also not the case of the claimant that he was not in a position to carry out his work and therefore he was constrained to take voluntary retirement. On the other hand, it is a part of record that after taking voluntary retirement, the claimant has received monetary benefits one time by way of lump-sum amount, however, tribunal has considered loss of future income and awarded a

huge amount of compensation of Rs.6,77,300/- under the head of loss of future income. Learned counsel submits that, though the claimant has examined P.W.2 Dr.Hardikar, he neither deposed about percentage of permanent disablement sustained by the claimant, nor mentioned the same in his permanent disablement certificate Exh.27. Learned counsel submits that the claimant has failed to substantiate his contention that due to permanent disablement, he is unable to perform his work as earlier.

4. Learned counsel for respondent-original claimant submits that, the claimant has examined P.W-3 Vijay Wani, who has produced on record about salary being paid to the claimant as well as extract indicating the emoluments which the claimant could have been received had he been continued in the service. Said extract is marked at exh.62. The claimant had taken Voluntary retirement w.e.f. 2.9.1999 and his date of retirement is 31.5.2007. It further shows that had the petitioner been continued with the service, he would

have received total salary of Rs.10,41,947/- up to his retirement on superannuation. However, the claimant was constrained to take voluntary retirement and as such, he could not get full salary and as per the Voluntary Retirement Scheme he would get approximately 35% of the regular salary. The tribunal has, therefore, rightly worked out the loss suffered by the claimant to the extent of 65% of his emoluments which amounts comes to Rs.6,77,300/-. The tribunal has thus considered said amount of loss of future income of the claimant due to permanent disablement sustained by him. The tribunal has observed that decision to retire voluntarily is because of the permanent disablement sustained by the claimant. Learned counsel submits that, even though, the respondent-claimant has not preferred any appeal or cross objection, the claimant is entitled to just and reasonable compensation under all the admissible heads. Learned counsel submits that, the tribunal has awarded very meager amount under the heads of pains and sufferings, loss of amenities in future life and future

medical expenses. Even the tribunal has not awarded any compensation separately for having sustained permanent disablement by the claimant.

5. On careful perusal of the pleadings, evidence adduced by the parties and the impugned judgment and award passed by the Tribunal, it appears that, the tribunal has correctly recorded the finding about negligence on the part of the driver of the S.T.Bus. Learned counsel appearing for appellant-MSRTC submits that, the FIR and spot panchnama are not duly proved by the claimants and, thus, those documents cannot be read in evidence. On perusal of the record, it appears that, certified copies of those documents are produced before the tribunal and even the tribunal has referred those documents in the impugned judgment and award. Even, the parties also referred those documents in their respective submissions before the Tribunal. On careful perusal of the contents of the spot panchnama and, particularly, observations made by the learned Chairman of the tribunal in paragraph No.6 of

the impugned judgment, it appears that, road at the spot of accident is 22 feet in width having 5 feet kaccha road to both sides. It is East-West in direction on the spot. The bus was coming from Ahmednagar. Thus, southern side of the road is correct side for Bus and northern side of the road is correct side for the Maruti Van. Spot of accident is shown as two feet away from the northern edge of the road. The learned Chairman of the Tribunal has thus rightly observed that there is 20 feet tar road towards south side of the spot. Thus, the only irresistible inference could be drawn that Maruti Van was running from its correct left side of the road i.e. northern side but the driver of the S.T.Bus must have taken longer turn to pass the curve and thus made encroachment upon portion of wrong side and dashed against Maruti Van. It appears that, the learned Tribunal has correctly recorded the findings to issue no.1 and 2. No interference is required.

6. Respondent-Claimant was auditor prior to the accident and even considering the nature of permanent

disablement in the form of stiffness to right knee and he will not be able to bend the right knee fully and the leg is weak and there is shortening of 1 ½ inch in his right leg, it cannot be inferred that, the claimant was not able to continue with his job. There is no pleadings to the effect that due to said disablement, the claimant was constrained to take voluntary retirement and therefore, he is getting less salary compared to his regular salary till his date of retirement on superannuation. Even the claimant has not stated so in his oral evidence before the tribunal. However, the tribunal on his own assumed the same and inferred that the claimant has taken voluntary retirement on account of the disablement sustained by him in the said accident. Though the claimant has examined auditor Mr. Wani of his department, said witness Wani has also not deposed before the Court that claimant was constrained to take voluntary retirement. Respondent-claimant has not produced any documents on record to show that department was not willing to continue him on said job and as such the claimant was constrained to take

voluntary retirement. On perusal of the exh.62, extract produced by witness Mr. Wani, it appears that reference has been given to the voluntary retirement taken by the claimant in terms of the Government resolution. It appears that, the tribunal on its own considered this aspect even though it is nobody's case. The tribunal has considered this aspect in its own way. The learned Chairman of the Tribunal has worked out difference between the salary after voluntary retirement and salary would have been paid to the claimant till his retirement on superannuation. This entire exercise has no meaning. Considering the permanent disablement and its nature, and employment of the claimant prior to the accident, I do not think that the claimant has sustained any loss of future income. The tribunal has awarded near about Rs.6,77,300/- for loss of future income. I do not find any justification for the same. Respondent-claimant is not entitled for the said compensation.

7. Though, the claimant without any pleadings deposed before the Tribunal that, he had asked for the

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sitting job, however, the same was not allowed and therefore, he has taken voluntary retirement. However, in order to substantiate the same, the claimant has not produced any documentary evidence on record. On the other hand, job of the auditor is basically a sitting job and I do not find any reason for the claimant to take voluntary retirement. Moreover, shortening of the leg is not mentioned in the certificate at exh.27. The claimant has deposed before the tribunal about shortening of the leg and other side has not cross examined the claimant on that point.

8. So far as other heads are concerned, though respondent-claimant has not preferred any appeal or cross objection, in the light of the ratio laid down in case of **The State of Maharashtra (through the Collector Nashik and others) Vs. Smt. Kamaladevi Kailashchandra Kaushal and others dated 15.3.2017 in FA 103/2017 (M.S.Sonak, J.)**, the respondent-claimant is entitled for just and reasonable compensation. It appears that, the tribunal has not

awarded just and reasonable compensation under other heads. Tribunal has not awarded the compensation separately to the claimant for having sustained permanent disablement. Though witness Dr. Hardikar has not specifically mentioned percentage of permanent disablement, witness Dr. Hardikar has deposed before the Court that there is stiffness to the right knee of the claimant and he will not be able to bend right knee fully and power of the leg is weak. He has also specified that, there is shortening of one and half inch of his right leg. In his expert opinion, right leg of the claimant is disabled. Witness Dr. Hardikar has specifically deposed that he has not given the percentage of permanent disablement and he has advised the claimant to take permanent disablement certificate from Pune where he was treated. The claimant has produced on record certificate issued by Sasoon Hospital Pune wherein percentage of the permanent disablement is prescribed as 70%, however, said certificate is not in form Comp. 'B' and tribunal has not exhibited said certificate. However, considering the nature of the disablement and

particularly shortening of the right leg of the claimant, the claimant is entitled for an amount of Rs.1,00,000/- (Rs.One lac) for having sustained permanent disablement in the aforesaid nature. It is a part of record that the claimant was treated in various hospitals and he was operated twice for insertion of the implant and for removal of the same. The claimant was also advised to use leg brace for entire life. In view of the same, the claimant is entitled for an amount of Rs.50,000/- for pains and sufferings, Rs.50,000/- for loss amenities in future life. The claimant is also entitled for an amount of Rs.50,000/- for future medical expenses.

9. In view of the above discussion, break up of the compensation under different heads award-able to the claimant which can be broadly categorized is as under :-

1	Permanent disablement	Rs.1,00,000/-
2	Medical expenses	Rs.0,35,200/-
3	Pains and sufferings as against Rs.7,500/- awarded by the tribunal	Rs.0,50,000/-
4	Special diet	Rs.0,07,500/-
5	Conveyance	Rs.0,07,500/-

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6	Attendant charges	Rs.0,48,000/-
7	Loss of amenities in future life as against Rs.7,500/- awarded by the tribunal	Rs.0,50,000/-
8	Future Medical expenses	Rs.0,50,000/-
9	Purchase of artificial support	Rs.0,07,500/-
	TOTAL	Rs.3,55,700/-

10. Thus, the respondent-claimant is entitled for the total compensation of Rs.3,55,700/- (Rs. Three Lacs Fifty Five Thousand Seven Hundred only). The judgment and award passed by the tribunal requires modification. Hence, following order.

O R D E R

1. The appeal is hereby partly allowed. No costs.
2. The judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Ahmednagar dated 8.6.2007 in M.A.C.P. No.751/2001 is hereby modified in the following manner :-
 - a] The opponent shall pay compensation of Rs.3,55,700/- (Rs.Three Lacs Fifty Five Thousand Seven Hundred) excluding the amount of 'No fault Liability' to the claimant with interest @ 9% p.a. from the

date of claim petition till realization of the entire amount.

3. Rest of the judgment and award stands confirmed.
4. Award be drawn up as per the above modification.
5. If, any amount is paid as per the judgment and award passed by the Tribunal, the same shall be the part of the award after modification and, the claimant is permitted to withdraw the compensation amount as per the modified award, and, the compensation amount in excess, if deposited by the appellant-MSRTC, the same shall be refunded to it alongwith accrued interest to that extent.
6. Appeal is accordingly disposed of.

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(V.K. JADHAV, J.)

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