

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

FIRST APPEAL NO. 55 OF 2016

MANOJ SAKHARAM SHINDE
VERSUS
M.S.R.T.C. LTD. THR ITS DIVISIONAL CONTROLLER

...
Advocate for Appellant : Mr Kedar Balbhim R.
Advocate for Respondent : Mrs Reddy Ranjana

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CORAM : V.K. JADHAV, J.
Dated: February 01, 2017

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PER COURT :-

1. Heard finally with the consent at admission stage.
2. Being aggrieved by the judgment and award passed by the Member, Motor Accident Claims Tribunal Latur dated 2.2.2015 in MACP No.163/2012, the original claimant has preferred this appeal to the extent of quantum.
3. Brief facts, giving rise to the present appeal are as follows :-
 - a] On 12.1.2011 at about 4.30 am the claimant was returning towards Ambajogai from Mumbai as a passenger in S.T. Bus bearing registration No.MH-20/DL-0673. The driver of the said bus had driven it in

a rash and negligent manner and in excessive speed. Consequently, he has lost control over the bus and the bus dashed against the tractor and trolley coming from the opposite direction. After giving dash to said tractor and trolley, the S.T. Bus again dashed to the tempo coming from the opposite direction. In the said accident, two passengers travelling in the said bus died on the spot and other passengers including the claimant sustained severe injuries.

b] The claimant has sustained multiple injuries on the part of his body most particularly, injuries on his eyes. He was immediately shifted to Ashwini Hospital, Solapur, where he was initially treated and also undergone the surgery. Further, the claimant has taken treatment in J.J. Hospital, Mumbai. He was also operated in the said hospital at Mumbai. According to the claimant, he has lost his vision of both eyes and also suffering from dis-figuration of head and face on account of the injuries sustained by him. The claimant has therefore approached the Tribunal at Latur by filing MACP No.163/2012 for grant of compensation under the

various heads. It has contended in the claim petition that the claimant had to incur huge medical expenses and other consequential expenses. He was serving as a driver with LTC container movers at Mumbai on monthly salary of Rs.7,000/-. However, on account of loss of vision he is not able to drive the motor vehicle.

c]. Respondent MSRTC has strongly resisted the claim petition. It has contended that the accident was not occurred on account of the rash and negligent driving of the S.T. Bus. Respondent MSRTC has also denied age, occupation, income of the claimant and disablement sustained by the claimant.

d]. The claimant has adduced oral and documentary evidence in support of his contention. Respondent MSRTC has not adduced any evidence. Consequently, the Tribunal held that the accident had occurred on account of rash and negligent driving of the driver of the S.T. Bus and the claimant on account of the same sustained injuries in the accident.

e] Respondent MSRTC has not preferred any appeal so far as findings of rash and negligent act of the driver of the ST Bus recorded by the Tribunal. The learned Member of the MACT, Latur by its impugned judgment and award allowed the claim petition with costs and thereby directed the respondent MSRTC to pay Rs.12,85,200/-(Rs. Twelve Lakh Eighty Five thousand two hundred only) as compensation inclusive of amount of No Fault Liability with interest @ 6% from the date of the petition till realization of the entire amount to the claimant. Being aggrieved by the said judgment and award to the extent of quantum, the claimant has preferred this appeal.

4. The learned counsel for the appellant claimant submits that, the appellant claimant has lost total vision of his left eye and he has partially lost vision of his right eye. The appellant claimant also suffered from dis-figuration of face. The claimant has examined witness Dr. Vishwanath Kendre to substantiate his contention. Witness Vishwanath Kendre has opined that vision of the right eye was within the vicinity of

4/60 and vision of left eye was nil. He has accordingly issued permanent disability certificate which is duly proved by the claimant and the same is marked at exh.43. He has certified that the claimant has sustained permanent disablement to the extent of 75% including loss of vision as aforesaid and also on account of dis-figuration of the face. The witness Dr. Kendre has further deposed that the claimant cannot drive vehicle and he cannot do any work without taking help of others. Learned counsel submits that, prior to the accident, the claimant was working as driver with one LTC Container Movers, situated at Mumbai on monthly salary of Rs.7,000/-. The appellant claimant has produced on record his driving licence Exh.32.

5. In view of the permanent disablement certificate issued by witness Dr. Kendre and day to day difficulties being faced by the claimant, the claimant has lost his earning capacity to the extent of 100%. However, the learned Member of the Tribunal has erroneously considered the functional disability of the appellant-claimant to the extent of 85%. The learned counsel

submits that, the Tribunal has not considered future prospectus of the claimant and consequently no addition was made in the income of the claimant by considering the same. Learned counsel submits that, the Tribunal has not awarded the compensation under non-pecuniary heads such as pains and sufferings, loss of amenities in future life, charges of attendant and conveyance charges, special diet etc. Further the Tribunal has also not awarded any lump sum amount for dis-figuration of face. Learned counsel submits that, for no reason, the tribunal has awarded the compensation with interest @ 6% instead of 9%.

6. Learned counsel for respondent MSRTC submits that though the appellant claimant was treated in Ashwini Hospital, Solapur and in J.J. Hospital, Mumbai, he has not produced the certificate issued by those hospitals in respect of the permanent disablement sustained by him and relied upon the certificate issued by witness Dr. Vishwanath Kendre, who was not a treating doctor. Witness Dr. Vishvanath Kendre has also not mentioned in his certificate Exh.43 separately about

permanent disablement on account of the loss of vision and also on account of dis-figuration of face. The learned counsel submits that, the claimant has examined witness Ramesh Jagtap, representative of the LTC containers and movers company, Mumbai to prove the contents of the salary certificate Exh.39 and vouchers Exh.35 to Exh.38. However, in the salary certificate and also in the said vouchers, it is not mentioned that the claimant was working as a driver in the said company. Learned counsel submits that, considering this facts and taken into account the opinion given by Dr.Kendre, the Tribunal has rightly considered the functional disability sustained by the claimant to the extent of 85% instead of 100%. Learned counsel submits that, the claimant can do any other work with the help of some other person. The claimant has not sustained any other disability. Learned counsel submits that, the Tribunal has awarded just and reasonable compensation. No interference is required. There is no merit in the appeal and the same may be dismissed.

7. Learned counsel for respondent MSRTC submits that, before filing of the claim petition the Respondent MSRTC has paid an amount of Rs.1,95,822/- to the claimant. The claimant has also restricted his claim to the extent of Rs.1.00 lakh only. After considering the amount already paid by the respondent MSRTC, remaining amount as per the award passed by the Tribunal has been deposited and the claimant has withdrawn the same. Learned counsel submits that, no interference is required in the impugned judgment and award. There is no merit in the appeal and the appeal is liable to be dismissed.

8. On careful perusal of the evidence and documents placed on record and the impugned judgment and award, it appears that, considering the opinion given by witness Dr. Vishvanath Kendre and certificates produced on record, the Tribunal has rightly considered the functional disability of appellant claimant to the extent of 85%. The appellant claimant has lost total vision of his left eye. However, he has partially lost vision of his right eye. Learned Member of the Tribunal

has also considered that the employer of the claimant has failed to specify in the salary certificate Exh.39 and vouchers of per month salary being paid to the claimant that the claimant was serving in his company as a driver. It is true that, the claimant has produced on record driving licence Exh.32. It is also true that, said company is a LTC container movers and used to engage drivers to drive their vehicles for long destinations. However, in absence of any specifications about nature of the work assigned to the claimant, the learned Member of the Tribunal was constrained to consider the functional disability of the appellant claimant to the extent of 85%. No interference is required in it.

9. So far as future prospectus is concerned, the representative of the said company witness Ramesh Jagtap has not deposed about any future prospectus of the appellant claimant. Appellant claimant has also not deposed about the same before the Tribunal. In absence of any evidence about future prospectus only by considering the age, same cannot be considered.

10. The learned Member of the Tribunal has considered the salaried income of the appellant claimant to the tune of Rs.7,000/- p.m. as per evidence adduced by the claimant through representative of his employer and considering age of the claimant at the time of accident, applied relevant multiplier to assess the compensation. The learned Member of the tribunal has worked out total compensation and out of it, awarded compensation to the extent of 85% as per the functional disability sustained by the appellant claimant.

11. The learned Member of the Tribunal has however, not awarded any compensation under the non-pecuniary heads. It is a part of record that after accident the appellant-claimant has taken treatment in Ashwini Hospital, Solapur and further in J.J. Hospital, Mumbai. He was hospitalized near about 3-4 months and thereafter taken a treatment of witness Dr. Vishwanath Kendre. Immediately after the accident, the appellant claimant was shifted to Ashwini Hospital, Solapur where he had undergone surgery. The appellant

claimant has also deposed that he was also operated in the said Hospital at Solapur in respect of the injuries sustained by him on facial bones. So far as injuries sustained by him on his eyes, he was thereafter shifted to J.J.Hospital Mumbai, where he had undergone operation on right eye. He remained hospitalized for certain period. He has also deposed that he has lost total vision of left eye and so far as vision of right eye is concerned, he cannot see beyond 3-4 meters. He has also suffered from dis-figuration of face. His evidence is well supported by the medical evidence and the admission and discharge card of Ashwini Hospital, Solapur, J.J. Hospital Mumbai and further oral evidence of witness Dr. Vishwanath Kendre and disablement certificate Exh.43. Unfortunately, the learned Member of the Tribunal has not awarded any compensation under the non-pecuniary heads. In view of the above discussion, the appellant claimant is entitled for an amount of Rs.1,50,000/- for pains and sufferings, Rs.75,000/- for loss of amenities in future life. The appellant-claimant is also entitled to Rs.50,000/- for charges of attendance and special diet and Rs.25.000/-

for conveyance. The claimant is also entitled for interest @ 9% p.a. instead of 6% p.a. as awarded by the Tribunal.

12. The impugned judgment and award requires modification to that effect. So far as amount already paid to the claimant by the Respondent-MSRTC is concerned, the learned counsel for respondent MSRTC submitted that by deducting the said amount, balance amount is deposited before the Tribunal and the same has been paid to the claimant. However, respondent MSRTC has not placed relevant documents before the Tribunal to consider the same. If the appellant claimant has accepted the amount deposited before the Tribunal by deducting the amount already paid to him, the same is in between the appellant claimant and MSRTC. No interference is required in it.

13. In view of the above discussion, the claimant is entitled for the additional amount under the non pecuniary heads as worked out herein-above. Hence, I proceed to pass the following order.

ORDER

- i. First appeal is hereby partly allowed with proportionate costs.
- ii. the Judgment and award passed by the Member, Motor Accident Claims Tribunal, Latur dated 2.2.2015 in MACP No.163/2012 is hereby modified in the following manner :-
 - a] The claimant is entitled to compensation of Rs.15,85,200/- (Rs Fifteen Lakh Eighty five thousand two hundred) under section 166 of the Motor Vehicles Act, 1988 inclusive of 'NFL' together with interest @ 9% from the date of petition i.e. 18.6.2012 till its realization from respondent MSRTC.
- iii] Rest of the Judgment and Award stands confirmed.
- iv] Award be drawn up as per the above modifications.
- v] Needless to say that as per the earlier award, if the amount is deposited by the

respondent- MSRTC before the Tribunal, the same shall be adjusted in the modified award.

- vi] Appeal is accordingly disposed of.
- vii] The claimant shall pay the deficit court fees, if any, within a period of four weeks from today.

(V.K. JADHAV, J.)

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