

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

FIRST APPEAL NO. 566 OF 2017

SHIVAJI TUKARAM LATE
VERSUS
THE MAHARASHTRA STATE ROAD TRANSPORT
CORPORATION (MRTC), BEED AND ANOTHER

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Advocate for Appellant : Mr Avinash Patil h/f S S
Chapalgaonkar

Advocate for Respondents : Mr U B Shriram h/f Bagul
D. S. For R/1, Kale N. G. For R/2.

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CORAM : V.K. JADHAV, J.

Dated: July 26, 2017

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award dated 28.2.2013 passed by the Member, Motor Accident Claims Tribunal, Beed in MACP No.265/2011, the original claimant has preferred this appeal to the extent of quantum of compensation as awarded by the Tribunal.
3. The learned counsel for the appellant-claimant submits that, though the appellant-claimant has

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examined PW 2 Mohan Gawate exh.38 to prove the income of the claimant, the tribunal has erroneously considered the notional income of the claimant at Rs.3,000/- p.m. The appellant-claimant through PW 2 Mohan Gawate proved that the appellant-claimant was working in the field of said witness Mohan Gawate as a labour on yearly basis of Rs.50,000/-. Learned counsel submits that, the tribunal ought to have considered the said income for determination of the compensation under the head of loss of future income. Learned counsel submits that, the tribunal ought to have applied the multiplier '18' instead of '17'. Though the tribunal has recorded the finding that age of the claimant was 23 years as on the date of the accident, applied multiplier '17' instead of '18'. Learned counsel submits that, though the appellant-claimant has sustained permanent disablement to the extent of 45%, same has affected his earning capacity to the extent of 100%, however, the tribunal has considered his loss of earning capacity to the extent of percentage of the permanent disablement. Learned counsel submits that, the

tribunal has awarded meager amount under the non pecuniary heads such as pains and sufferings, loss of amenities in future life, etc. Tribunal has also awarded less amount under the head of future medical expenses though witness PW 3 Dr. Chetan Puram has deposed that the claimant required future treatment in the form of surgery for removal of rod and the approximate expenses for the same would be Rs.65,000/-. Even the tribunal has not awarded any compensation under the heads of attendant charges and transportation. It has come on the record that the appellant-claimant had to visit Sancheti Hospital, Pune frequently for his treatment as outdoor patient and as such, he incurred expenses for conveyance. Learned counsel further submits that, the Tribunal has awarded interest @ 7% instead of 9%.

4. Learned counsel for respondent MSRTC submits that, witness Dr. Chetan Puram has admitted in his cross-examination that fracture sustained by the claimant was united. In view of the same, tribunal has

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rightly considered the percentage of the said permanent disablement as a criteria for determination of the compensation. The tribunal has rightly considered percentage of the said disablement as loss of earning capacity and accordingly awarded just and reasonable compensation under the head of loss of future income. Learned counsel submits that, in absence of any documentary evidence, the tribunal has rightly considered the notional income of the appellant-claimant at Rs.3,000/- p.m. No interference is required. Learned counsel submits that, the tribunal has awarded just and reasonable compensation. There is no substance in the appeal and the appeal is thus liable to be dismissed.

5. I have also heard the learned counsel for respondent no.2-driver.

6. On perusal of the evidence and the impugned judgment and award passed by the tribunal, it appears that though the appellant-claimant has examined PW 2

Mohan Gawate exh.38, the tribunal has not considered his oral evidence. According to PW 2 Mohan, the appellant-claimant was working in his field as a labour on yearly wages of Rs.50,000/- for one year. I do not think that for such an employment any salary certificate would be issued. The tribunal has unnecessarily expected the documentary evidence in this regard. However, it also appears that, PW 2 Mohan has deposed about the income of the appellant-claimant on some higher side. It would be thus just and appropriate if the annual income of the appellant-claimant is considered at Rs.48,000/- per annum. It also appears that, the tribunal has erroneously applied multiplier '17' instead of '18'. In view of the above, re-determination of the compensation under the head of loss of future earning is required.

7. So far as future medical expenses are concerned, witness Dr. Chetan Puram has given his expert opinion that the appellant-claimant would require Rs.65,000/- for future treatment in the form of surgery for removal of

rod and approximate expenses for the same would be Rs.65,000/-. There is no reason to disbelieve this expert's opinion, however, for no reason tribunal has awarded the compensation of Rs.20,000/- for future medical expenses. The appellant-claimant is entitled for an amount of Rs.65,000/- under the head of future medical expenses. It also appears that tribunal has awarded meager amount under the heads of loss of amenities in future life (loss of beauty), and pains and sufferings at Rs.10,000/- each. The appellant-claimant is entitled for an amount of Rs.25,000/- each under the said heads. The appellant-claimant is also entitled for an amount of Rs.10,000/- for attendant charges and Rs.20,000/- for transportation. In view of the above discussion, break up of the compensation under the different heads awardable to the claimant can be broadly categorized as under :-

1	Loss of future earnings (as against Rs.2,75,400/- awarded by the tribunal)	Rs.3,88,800/-
2	Loss of beauty (loss of amenities in future life) as against Rs.10,000/- awarded by the tribunal	Rs.0,25,000/-
3	Future medical expenses [as against Rs.20,000/- awarded by the tribunal.	Rs.0,65,000/-

4	Mental pains and sufferings as against Rs.10,000/- awarded by the tribunal.	Rs.0,25,000/-
5	Attendant charges	Rs.0,10,000/-
6	Transportation/conveyance	Rs.0,20,000/-
7	Diet and nursing (as awarded by the tribunal)	Rs.0,05,000/-
8	Medical expenses as awarded by the tribunal	Rs.0,89,391/-
	TOTAL	Rs.6,28,191/-

8. The appellant-claimant is entitled for the total compensation of Rs.6,28,191/- (Rs. Six lacs twenty eight thousand one hundred and ninety one only) including the amount of NFL with interest @ 9% p.a. from the date of application, till realization of the entire amount. The impugned award thus requires modification. Hence, following order.

ORDER

1. The appeal is hereby partly allowed with proportionate costs.
2. The judgment and award passed by the Member, Motor Accident Claims Tribunal, Beed dated 28.2.2003 in MACP No.265/2011 is hereby modified in the following manner :-

- a] Respondent nos. 1 and 2 jointly and severally shall pay the amount of Rs.6,28,191/- (Rs.Six lacs twenty eight thousand one hundred and ninety one only) inclusive of No Fault Liability to the claimant, alongwith future interest @ 9% p.a. from the date of 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 modifications.
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.
6. Appeal is accordingly disposed of.

(V.K. JADHAV, J.)

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