

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 1402 OF 2002
WITH
CIVIL APPLICATION NO. 4098 OF 2014**

Shilpa Devappa Maskar	...	Appellant
V/s.		
Maharashtra State Road		
Transport Corporation	...	Respondent

- Mr.A.M. Gokhale for the Appellant.
- Mr.C.M. Lokesh i/b. Mr.G.S. Hegde for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 10th OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the Appellant and learned counsel for the Respondent.

2] This Appeal is preferred by the original claimant seeking enhancement of amount of compensation. It is submitted that the Appellant has sustained 10% permanent disability, in view of the fracture caused to Tibia-Fibula and the middle of her right leg. It is urged that the minimum compensation for the 10% of disability, as held by the Hon'ble Apex Court in the case of *Master Mallikarjun Vs. Divisional Manager, The National Insurance Co. Ltd. and Anr., in Civil Appeal No. 7139 of 2013*, is Rs.1,00,000/- and hence, the

compensation awarded by the Tribunal of Rs.51,336/- is inadequate and needs to be enhanced.

3] However, considering that, in this case the award was passed on 25th March, 1997, needless to state that the monetary value of the amount of Rs.51,336/- was far-far more than the amount of Rs.1,00,000/-, which is laid down by the Hon'ble Apex Court in the year 2013 in its judgment. Therefore, absolutely no interference is warranted on that score in the impugned award passed by the Tribunal.

4] It is further submitted that the Tribunal has reduced the amount of compensation to the tune of Rs.38,577/- on the count that it was a case of contributory negligence. In considered opinion of this Court, this finding of the Tribunal cannot be sustainable, having regard to the fact that the injured/Appellant was travelling as a passenger in the bus owned by the Respondent-MSRTC and the accident has occurred between the tractor and the S.T. bus. Hence, it cannot be a case of contributory negligence but it was a clear case of composite negligence. The Appellant is therefore entitled to recover the amount of compensation from the owner or Insurance Company of any of the offending vehicle. Therefore, it was not proper on the part of the Tribunal to deduct 25% amount of compensation from his claim,

on the count that there was contributory negligence to the extent of 25% on the part of tractor owner. Respondent-MSRTC is at liberty to recover the 25% amount from the owner or the Insurer of the tractor involved in the accident.

5] Learned counsel for the Appellant then submits that the interest at the same rate should be paid on this additional amount, which this Court is now awarding, from the date of the accident.

6] However, as rightly submitted by learned counsel for the Respondent, the rate of interest, as awarded by the Tribunal is on higher side i.e. 12% per annum. In view thereof, the Respondent cannot be directed to pay the interest at this exorbitant rate on the additional amount as awarded by this Court (25%) from the date of the application. Moreover, considering that the rate of interest at the rate of 12% per annum being definitely on higher side, it is required to be reduced for the entire amount of Rs.51,336/- at the current rate of 7.5% per annum from the date of application till its realization.

7] The Appeal is allowed in above terms.

8] In view of disposal of the Appeal, the Civil Application no more survives, hence stands disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]