

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

959 FIRST APPEAL NO.1365 OF 2003

Sunil S/o Eknath Palve
Age 33 years, Occu. : Service
R/o. Deorai, Tq. Pathardi
District - Ahmednagar

... Appellant

Versus

1. The Maharashtra State Road
Transport Corporation,
Vahatuk Bhavan, Balasis Road
Mumbai.
 2. Shri Balu Dagadu Gajare
Age : 42 years, Occu. : Driver
R/o. Nighoj, Tq. Parner,
Dist. Ahmednagar
(Driver of S.T. Bus No.MH-12/8513)
- ... Respondents.

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Mr. Shubham Jaybhar H/f Mr. D.R. Jaybhar, Advocate for Appellant.
Mr. Manoj Shinde H/f Mr. M.K. Goyankar, Advocate for Respondent No.1

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CORAM : P.R. BORA, J.

DATED : 10th JANUARY, 2019

ORAL JUDGMENT:-

1. The original claimant in Motor Accident Claim Petition No.824/1998 has preferred the present Appeal, seeking enhancement in the amount of compensation as awarded by the Motor Accident Claim Tribunal at Ahmednagar, vide judgment and award passed on 25.03.2003.

2. The appellant had filed the aforesaid petition claiming compensation on account of injuries caused to him in a vehicular accident happened on 09.05.1998, having involvement of a S.T. bus, bearing registration No. MH-12/8513. It was the case of the appellant before the Tribunal that while he was proceeding towards Ahmednagar from Deorai on a motorcycle, he was dashed by a S.T. bus, and in the accident so happened, he suffered severe injuries and was required to undergo a long treatment and was also subjected to incur huge medical expenses. It was also the contention of the appellant that because of the injuries caused to him in the alleged accident, he has been permanently disabled to the extent of 45%. It was also the contention of the appellant that because of the injuries caused to him and the disablement suffered, his earning capacity has been adversely affected. According to the appellant, the accident had occurred because of the rash and negligent driving of the driver of the S.T. bus. The appellant had, therefore, filed the aforesaid claim petition claiming compensation of Rs.2.00,000/- from S.T. Corporation. The petition was opposed by the S.T. Corporation on various grounds. The learned Tribunal after having assessed the evidence on record held the appellant entitled for the total compensation of Rs.1,20,000/- inclusive of the amount of NFL compensation. According to the appellant, the compensation as has been awarded by the Tribunal is inadequate and deserves to be enhanced. He has therefore preferred the

present appeal.

3. Learned counsel Mr. Jaybhar appearing for the appellant taking me through the evidence on record submitted that the appellant has sufficiently proved that because of the injuries caused in the accident, he has suffered 45% permanent disability, which has affected his working capacity. The learned counsel submitted that in view of the fact that the appellant had suffered 45% permanent disability, the compensation as has been awarded by the Tribunal under the said head for the loss of future income to the tune of Rs.35,000/- is quite insufficient and deserves to be adequately enhanced. The learned counsel in so far as the compensation awarded under the other heads is concerned, did not make any grievance. The learned counsel submitted that the appellant had claimed a very reasonable amount of compensation and as such the claim petition must have been allowed by the Tribunal in *toto*. The learned counsel, in the circumstances, prayed for enhancing the amount of compensation to the tune of Rs.2,00,000/-

4. Shri Shinde holding for Shri Goyanka, learned counsel appearing for the respondent-Corporation opposed the submissions made on behalf of the appellant. The learned counsel pointed out that nothing has been brought on record by the appellant showing the actual loss caused to him in his earning capacity. The learned counsel further submitted that in absence

of any such evidence, nothing more is liable to be granted than Rs.35,000/- as has been awarded by the tribunal. The learned counsel further submitted that the disability as has been said to have incurred by the appellant also cannot be said to be the permanent disability caused to the body as a whole and has to be held the temporary disability to the particular limb. The learned counsel submitted that considering the nature of injuries caused to the appellant, it is difficult to accept that the same would have adversely affected his earning capacity. On all these grounds, the learned counsel prayed for dismissal of the appeal, stating that the Tribunal has awarded a just and fair amount of compensation.

5. I have carefully considered the submissions advanced by the learned counsel appearing for the parties. I have also perused the evidence on record. From the material on record it is revealed that the respondent-Corporation did not dispute the factum of 45% disablement caused to the appellant because of the injuries caused to him in the road accident. Considering the fact that the disability was to the extent of 45% it appears that the compensation as has been awarded by the Tribunal to the tune of Rs.35,000/- towards the future loss of income is unjust and deserves to be appropriately enhanced.

6. It was the contention of the learned counsel appearing for the appellant that the claim petition must have been allowed by the Tribunal in *toto* by awarding the amount of compensation to

the tune of Rs.2,00,000/- as claimed by the appellant. I am, however, not convinced with the submission so made. The compensation as has been awarded by the Tribunal of Rs.35,000/- towards the future loss of income, however needs to be enhanced as noted by me herein above. Considering the entire material on record, I deem it appropriate to enhance the said compensation to Rs.65,000/- from the compensation of Rs.35,000/- as has been awarded by the Tribunal. Only to the aforesaid extent, the appeal needs to be allowed and the amount of compensation needs to be enhanced. In the result, the following order is passed

ORDER

[i] The appellant is entitled for the enhanced compensation of Rs.30,000/-

[ii] The respondents shall jointly or severally pay the enhanced amount of compensation to the appellant-claimant together with interest thereon at the rate of 9% p.a. from the date of filing of the appeal till its realisation.

[iii] The Award be modified accordingly.

[iii] The appeal thus stands partly allowed in the aforesaid terms.

**(P.R. BORA)
JUDGE**