

1. Satish Rangrao Desai
Age: 42 Yrs., occu. Service
Primary Teacher (Now Nil)

Next Friend wife
Mrs. Madhuri Satish Desai,
Age: 36 Yrs., occ. Household,
Both R/o Zodage,. Tq.Malegaon,
District Nashik. = **APPELLANT**
(orig. Claimant)

VERSUS

1. Maharashtra State Road Transport Corporation, Dhule, Dist. Dhule
Divisional Controller,
2. Sunil Pratapsing Pawar,
Age: 49 Yrs., occu. Bus Driver,
R/o Kusumbe, Tq. Raver,
District Jalgaon = **RESPONDENTS**

Mr.PR Nangre,Adv. h/for Mr.Ajay D.Pawar,Adv. for Appellant;

Mr. DS Bagul, Adv. For Respondent No.1.

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CORAM : P.R.BORA, J.
DATE : 7th February, 2019

ORAL JUDGMENT

1. Maharashtra Road Transport Corporation (hereinafter referred to as ST corporation) has preferred the present appeal in exception to the Judgment and Award passed in MACP No.767/2012 decided by Chairman, Motor Accident Claims Tribunal at Dhule (hereinafter referred to as the Tribunal) on 17th April, 2015.

2. Present respondent had filed the aforesaid claim petition, seeking compensation on account of the injuries caused to him in a vehicular accident happened on 21st October, 2011

having involvement of an ST bus bearing registration No. MH-14-BT-0449 owned by the ST corporation.

3. It was the contention of the respondent that the aforesaid ST bus gave him dash when he was proceeding on his motorcycle and in the accident so happened, he suffered severe injuries, which have resulted in losing his earning capacity to the extent of 100%. It was also the contention of the respondent that the accident happened because of sole negligence on part of driver of the ST bus. The respondent-claimant had, therefore, claimed the compensation of Rs. 75,00,000/-.

4. The claim petition was resisted by the ST corporation on various grounds. The main objection as was raised on behalf of the ST corporation was that, the accident did not happen because of any negligence on part of driver of the ST bus, but had happened because of sole negligence on part of the injured claimant. The objections as about quantum were also raised by the ST corporation.

5. In order to substantiate the claim raised by him, the claimant himself deposed before the Tribunal and also examined the doctor, who treated him and issued Certificate as about permanent disablement caused to him. The claimant had also placed his reliance on the police papers pertaining to the criminal case filed in relation to the alleged accident against the driver of the ST bus. The ST corporation had examined the driver of the offending ST bus to substantiate the defence raised by it in its written statement.

6. The learned Tribunal after having assessed the evidence brought on record by the parties, held that in happening of the alleged accident, the claimant had attributed vide his negligence. The Tribunal determined the proportion of the negligence interse the driver of the ST bus and claimant in the ratio of 90:10, i.e. 90% negligence on part of driver of the ST bus and 10% on part of the injured claimant.

7. The claimant was serving as primary teacher on the date of his accident. Having regard

to the salary which was being earned by him on the date of the accident and having considered the further fact that he had become incapable of performing the said job thenceforth, the Tribunal assessed the compensation by holding the loss of income caused to the claimant to the extent of 100%. The Tribunal also considered the medical expenses and awarded the separate compensation under the said head. The Tribunal also awarded sumptuous compensation under the head of Pains and sufferings and loss of amenities caused to the claimant. The Tribunal determined the amount of compensation to the tune of Rs.68,26,450/- and held the claimant entitled to receive 90% of the said amount, which comes to Rs.61,43,805/- from the ST corporation with proportionate interest thereon @ 8% from the date of filing of the claim petition. Aggrieved by, the ST corporation has preferred the present appeal.

8. The claimant has also filed Cross-objection, seeking enhancement in the amount of compensation and to set aside the finding recorded by the tribunal holding the claimant negligent to

the extent of 10% in occurrence of the alleged accident.

9. Shri DS Bagul, learned counsel appearing for the appellant - ST corporation, assailed the impugned judgment mainly on the finding recorded by the Tribunal, determining the negligence on part of the ST bus driver to the extent of 90%. The learned counsel, taking me through the evidence of the claimant himself; evidence of ST bus driver and the documentary evidence in the form of spot panchanama and FIR, submitted that the oral and documentary evidence, as above, if considered collectively, the negligence on part of the claimant apparently appears more than the negligence which can be attributed on par of bus driver.

10. The learned counsel submitted that the situation on the spot of occurrence clearly demonstrates that the claimant was negligent in plying his motorcycle and was proceeding from the middle of the road, which was of having heavy traffic. The learned counsel further submitted that

looking to the situation of the vehicles, i.e. the motorcycle and the ST bus, lying on the spot after occurrence of the alleged accident, leaves no doubt that the ST bus was from its correct side and the motorcyclist, i.e. injured claimant, dashed to the right side of the ST bus and got injured.

11. The learned counsel further submitted that as has come on record, the spot where the accident had occurred was of heavy traffic and it goes without saying that any vehicle, passing from the said road, like ST bus, could not have been driven at an excessive speed. The learned counsel submitted that the driver of the ST bus has specifically deposed in his evidence before the Court that the injured claimant, who was on his motorcycle and was coming from the opposite direction, was, in fact, plying the motorcycle at high speed and after he lost the control over his motorcycle, dashed with the right side of the ST bus. The learned counsel submitted that, in fact, no negligence in the circumstances, could have been attributed on part of the ST bus. The learned counsel further submitted that the situation on the

spot and the other evidence clearly suggest that the alleged accident happened because of sole negligence of the injured claimant. The learned counsel, in the circumstances, prayed for setting aside the impugned Judgment and Award stating that no liability can be fastened against the ST corporation.

12. In the alternative, the learned counsel submitted that, in no case, the Tribunal could have held the proportion of the negligence on part of the injured claimant only to the extent of 10%. The learned counsel submitted that considering from the evidence on record, the Tribunal must have attributed the negligence on part of the injured claimant proportionately more than the driver of the ST bus.

13. The learned counsel further submitted that even while calculating the amount of compensation, the Tribunal has wrongly applied the multiplier of 15, whereas having regard to the age of the injured claimant the appropriate multiplier in the present case would be of 14. The learned

counsel further submitted that the Tribunal has also arbitrarily awarded the amount of Rs. 3,00,000/- under the head of Pains and sufferings etc. The learned counsel, in the circumstances, prayed for passing appropriate orders considering the evidence on record. The learned counsel submitted that the medical bills though were not legally proved, they were exhibited by the Tribunal and accordingly the entire said amount has been awarded by the Tribunal under the head of medical bills.

14. The learned counsel appearing for the claimant submitted that the Tribunal has, in fact, erred in attributing the negligence to the extent of 10% on part of the injured claimant. The learned counsel submitted that in occurrence of the alleged accident, there is absolutely no negligence on part of injured claimant and as such, 100% negligence must have been attributed by the Tribunal on part of the ST driver. The learned counsel, to that extent, prayed for setting aside the finding so recorded by the Tribunal and consequently to hold the injured claimant entitled

for the total amount of compensation as has been determined by the Tribunal on the basis of the evidence brought on record.

15. I have given due consideration to the submissions made by Shri Bagul, learned counsel appearing for the ST corporation and learned counsel Shri Nangre, appearing for the injured claimant. I have perused the impugned judgment and the evidence on record. As noted herein above, the main objection raised by the ST corporation in exception to the impugned judgment is, that the Tribunal has wrongly determined the proportion of negligence on part of driver of the St bus to the extent of 90%. As against the objection so raised by the ST corporation, it is the contention of the injured claimant in the cross-objection filed by him that the Tribunal must have held the driver of the ST bus solely negligent in occurrence of the alleged accident and could not have attributed any negligence on his part much less to the extent of 10%.

16. In light of the rival contentions made by

the parties, when I perused the evidence of the claimant as well as the driver of the ST bus, adduced before the Tribunal and went through the documentary evidence available on record and more particularly the document of spot panchanama, it is revealed that there is substance in the objections raised by the ST corporation. The learned Tribunal in para 5 of its judgment has discussed the evidence on the point of negligence and has recorded its conclusion holding the driver of the ST bus negligent to the extent of 90% and the injured claimant to the extent of 10%. The observations made by the Tribunal in the said paragraph and the conclusions recorded by it cannot be supported in view of the evidence on record. The spot panchanama (Exh. 34) does not in concrete terms reveal that the ST bus was found at the middle of the road. What is contended in the spot panchanama is the fact that the motorcycle dashed to the ST bus at its right side bumper at the midst of the road. Unfortunately, the width of the road is nowhere mentioned in the spot panchanama. From the averments in the spot panchanama, it cannot be said that the ST bus entered on a wrong side. The

observations made by the tribunal that the bus was not keeping its left side, also appears to be incorrect. On the contrary, from the situation of the vehicles on the spot of occurrence after happening of the alleged incident, as has been described in the spot panchanama, there is every reason to believe that the motorcyclist was not keeping his left side and was plying his motorcycle as much as through center of the said road. The fact stated by the driver of the ST bus in his deposition that the ST bus was on ascending position whereas the motorcyclist was on a descending side and was, therefore, in a high speed than the ST bus also cannot be simply ignored. The further fact, which has come on record, showing that right side bumper and right side head light of the ST bus was found to be broken, also supports the contentions raised by the ST corporation that it was the motorcyclist, who rammed into the bus and fell down. Considering the evidence, as above, the proportion of negligence, as has been determined by the tribunal on part of the motorcyclist, apparently appears to be improper and incorrect. After having considered the entire

material on record, I have no hesitation in determining the proportion of negligence on part of the motorcyclist to the extent of 20%. Thus, the finding recorded by the Tribunal in that regard deserves to be modified to the aforesaid extent.

17. The next question which falls for my consideration is, whether the Tribunal has determined the amount of compensation correctly or otherwise. The injured claimant was admittedly serving as a Primary teacher on the date of the accident. It is also not in dispute that on the date of the accident, the claimant was above the age of 41 years. There is further no serious dispute about the gross monthly salary of the claimant to the tune of Rs.26,324/-. The pay sheet, showing the monthly salary of the claimant and his co-employees is at Exhibit-74. As shown in the pay sheet, the gross monthly salary of the claimant was to the tune of Rs.26,324/-, which annually comes to Rs.3,15,888/-. From the aforesaid amount, the conveyance allowance to the tune of Rs. 1,800/- per annum and the profession tax to the tune of Rs. 2,500/- per annum was liable

to be deducted. Thus, the net annual income of the claimant comes to Rs. 3,11,588/- as has been rightly held by the Tribunal. The Tribunal has rightly held the said income. The Tribunal has further rightly considered the addition of 30% of the said income towards the future prospects of the claimant, whereupon his prospective annual income is held as Rs.4,05,064/-. In view of the fact that the claimant had lost his 100% earning capacity, the aforesaid amount was liable to be multiplied by the appropriate multiplier. Having regard to the age of the claimant, in view of the law laid down by the Hon'ble Apex court in the case of Sarla Verma Vs. DTC - (2009) 6 SCC 121 the appropriate multiplier was of 14. The Tribunal has however applied the multiplier of 15. The mistake so committed by the Tribunal needs to be rectified. By applying the multiplier of 14, the amount of compensation under the head of 'loss of income' comes to Rs.56,70,896/-. The Tribunal has awarded the further sum of Rs.27,260/- towards the hospital bills of Siddheshwar Multi-specialty and a sum of Rs. 41,730/- towards the medicine bills. I do not see any reason to disallow the said amounts.

Amount of Rs.1500/- granted by the Tribunal towards the consulting charges of Dr.Gindodiya, needs to be accepted as it is. The Tribunal has further awarded a sum of Rs.1,80,000/- towards the future expenses of medicines. Having regard to the evidence on record, there seems no reason to disagree with the amount so awarded by the Tribunal. The Tribunal has further awarded a sum of Rs.3,00,000/- towards the pains and suffering, loss of amenities of life, expenses of attendant, future conveyance charges etc. It was sought to be contended by Shri Bagul that the amounts so awarded by the Tribunal is too exorbitant. I am, however, not convinced with the submission so made by Shri Bagul. In view of the fact that the claimant will have to lead his entire future life with the disability incurred by him, it does not appear to me that the amount awarded of Rs.3,00,000/-, is exorbitant. Thus, the claimant is found entitled for the compensation as below, -

Sr.No	Particulars	Amounts(In Rs.)
1.	Loss of income	56,70,896/-
2.	Hospital Bills	27,260/-
3.	Medicine Bills	41,730/-
4.	Consulting Charges	1,500/-
5.	Future expenses of medicines	1,80,000/-
6.	Pains & Sufferings; loss of	3,00,000/-

	amenities of life; expenses of attendant; future conveyance charges etc.	
	Total	62,21,386/-

18. Having regard to the finding recorded by me holding the negligence on the part of the injured claimant to the extent of 20%, it is obvious that the appellant corporation can be held liable to pay 80% of the said amount, which comes to Rs.49,77,108.80 ps., rounded to Rs.49,77,109/- In the facts and circumstances of the case, it appears to me that this would be just and fair compensation payable to the injured claimant. The impugned Award thus needs to be modified to the aforesaid extent.

19. The appellant corporation has deposited the amount of compensation in this Court as per the impugned Award. From the amount so deposited, the injured claimant is permitted to withdraw the amount in terms of the modified award. If the amount deposited by the appellant corporation falls short, to satisfy the modified Award, the appellant corporation shall deposit the balance amount as per the modified award in this Court within a period of

four months from the date of this order; and if the amount deposited by the appellant corporation is found in excess of the amount payable to the injured claimant in view of the modified Award, the balance amount be refunded to the appellant corporation with interest accrued thereon. The appeal filed by the ST corporation is, thus, partly allowed in the aforesaid terms. The cross-objection stands dismissed. Pending Civil Application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/