

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

FIRST APPEAL NO. 1363 OF 1996

Vinodbhai J. Master ... Appellant
V/s.

The Managing Director
Kadamba Transport Corpn. & Anr. ... Respondent

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Mr. Akshay J. Kandarkar i/b. Mr. Rajesh S.Datar, for Appellant.

None for Respondents.

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CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 13th SEPTEMBER, 2019.

ORAL JUDGMENT

1. The Appellant herein has challenged the judgment and award dated 21st December, 1994 passed by the Learned Member of Motor Accident Claims Tribunal, Ratnagiri, in Claim Petition No. 78 of 1992.

2. The appellant herein was the claimant in the Claim Petition No. 78 of 1993. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.99,868/- with the interest @12% per annum from the date of the application till final realisation. Being aggrieved by the quantum of compensation awarded by the Tribunal, the appellant claimant has filed this appeal u/s. 173 of Motor Vehicles Act.

3. The learned counsel for the appellant submits that the appellant had lost promotional prospects on account of the injuries sustained in the accident. He further submits that permanent disablement has affected day to day activities of the appellant. He contends that the Tribunal had not awarded adequate compensation on these two grounds.

4. The record indicates that on 22/10/1992 the appellant was traveling from Mumbai to Goa by Luxury bus No. GA-01/X-0055. The said bus met with an accident and the appellant sustained injuries in

the said accident. The Tribunal has recorded findings that the accident was caused due to rash and negligent driving by the driver of the bus. The Learned Member of the Tribunal has taken note of the fact that the appellant had sustained grievous injuries resulting in permanent disablement of 9%. The appellant was under treatment and was required to proceed on leave for 5 months and 12 days. Considering the monthly income of the appellant as Rs.8,546/-, the Tribunal has awarded compensation of Rs.42,500/- towards loss of income during leave period. The Tribunal also awarded compensation of Rs.11,682/- towards medical expenses, Rs.21,685/- towards transport, stay and other miscellaneous expenses.

5. The appellant had sustained fracture to radius ulna which has resulted in permanent disablement of 9%. Considering the evidence of the appellant that he is unable to lift heavy articles and drive a vehicle, the Tribunal has awarded compensation of Rs.12,000/- towards permanent disability. The Tribunal has also awarded additional compensation of Rs.12,000/- towards pain and suffering. Thus, the Tribunal has awarded total compensation of Rs.99,868/- with interest

@12% per annum.

6. The evidence of the appellant indicates that he continued to be in service with Dena Bank even after the accident. The appellant has not examined any officer of the bank and not adduced any other substantiated evidence to prove that he was not found suitable for promotional post and that he was denied promotional post on account of his disability. The appellant- claimant has failed to prove that he had lost earning capacity or that his present or future earning capacity was reduced due to permanent disability. Hence, the appellant is not entitled for any additional compensation on this ground. The appellant has already been awarded compensation of Rs.12,000/- towards pain and suffering. Considering the fact that the claim of the year 1993, in my considered view, the amount awarded is just and fair and does not warrant further enhancement on this count.

8. The appeal is devoid of merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)