

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

FIRST APPEAL NO.331 OF 2009

Jaihind Dadarao Gutte,
Age:28 years, Occ. Student,
r/o. Daithana, Tq. Parali,
Dist. Beed

..Appellant

Vs.

Maharashtra State Road
Transport Corporation,
through its Divisional Controller,
Beed Division, Beed

..Respondent

Mr.S.S.Dargad, Advocate for appellant
Mr.A.B.Dhongade, Advocate for respondent

**CORAM : R.G. AVACHAT, J.
DATE : OCTOBER 28, 2021**

JUDGMENT :-

This is an appeal for enhancement of compensation granted on account of permanent disability suffered in an accident involving motor vehicles.

2. Heard. Perused the impugned judgment and award. Also gone through the evidence relied on.

3. Admittedly, the appellant suffered injuries and permanent disability in the accident involving motor bike and S.T. bus belonging to respondent – M.S.R.T.C. Before the Tribunal, Dr. Lemade, Chairman of

Medical Board, was examined in proof of the disability. The Medical Board examined the appellant on 10.02.1999 to find that there was shortening of right lower extremity by 2.5" and ankylosis with limited movement at right knee joint severe. The total disability was assessed at 48%. The Tribunal, on appreciation of the evidence in the matter, awarded a sum of Rs.2,65,400/- as compensation with interest at the rate of 9% thereon. The split up thereof given in paragraph 27 of the impugned judgment of the Tribunal, is as under:-

"27. In view of the above discussion, the claimant is entitled for compensation of Rs.46,400/- on the count of medicines, hospital charges + Rs.5,000/- for visiting different places for taking treatment or advice + Rs.5,000/- on the count of pain and sufferings + Rs.5,000/- on the count of attendants to the claimant while visiting the hospitals for taking treatment or advice + Rs.2,04,000/- on the count of loss of earning during the period of treatment and future period. Thus, the claimant is entitled for total compensation of Rs.2,65,400/- (inclusive the amount granted under section 140 of the Motor Vehicles Act, 1988) on all the counts from the respondent....."

4. Learned counsel for the appellant would submit that the appellant was indoor patient for long at S.R.T.R. Medical College and

Hospital at Ambajogai; Sancheti Hospital, Pune; Hajgude Hospital, Latur; and J.J.Hospital, Mumbai. The appellant had also visited Apollo Hospital, Delhi, for the purpose of treatment and consultation. The Tribunal awarded a sum of Rs.5,000/- only towards travelling expenses. In spite of the medical bills amounting to Rs.1,00,000/- having been produced before the Tribunal, it only granted Rs.46,400/- towards medical expenditure. He would further submit that the injury suffered by the appellant herein has not been healed. On the contrary, it has been aggravated. The appellant has all along been taking treatment. He has now been advised to undergo surgery of debridement, sequestromy and stimulants. The appellant may require multiple surgeries. There is discharging sinus over lateral and antero-medical aspect of right thigh, right knee, etc. Learned counsel would further submit that a sum of Rs.2,00,000/- may require for undergoing such operation. Learned counsel further submitted that the disability has now been increased to 72%. He, therefore, urged for enhancement in the amount of compensation awarded by the Tribunal.

5. Learned counsel for the respondent - M.S.R.T.C. would, on the other hand, submit that a just and reasonable compensation

has been awarded by the Tribunal. He, therefore, urged for dismissal of the appeal.

6. The evidence on record indicates the appellant to have suffered shortening of right lower extremity by 2.5" and ankylosis with limited movement at right knee joint severe. In spite of the medical bills amounting to Rs.1,00,000/- having been filed on record, the Tribunal simply awarded a sum of Rs.46,400/- on that count. It refused to grant the medical expenditure in toto as some of the receipts did not bear seal of the institution issuing the same. Some of them are not in printed proforma. Some of the receipts are not in respect of the medical expenditure. The appellant has also placed on record a receipt of Rs.9,800/- indicating to have incurred that much amount towards hiring charges of vehicle for travelling to hospital. That much amount has not been granted on account of the appellant's failure to examine the person who has issued such receipt. Railway tickets were also placed on record to show that the applicant visited Delhi for treatment in Apollo Hospital.

7. In this factual backdrop, this Court is inclined to grant the appellant a sum of Rs.1,00,000/- as compensation to make up the deficit in the amount of compensation granted by the Tribunal.

8. The appellant filed Civil Application (11081 of 2021), seeking production of some medical papers, to suggest that the injuries suffered by him, have not yet been healed. He is required to undergo operation, etc. This Court has allowed the Civil Application. There is certificate issued by the Doctor of Sancheti Hospital, Pune. The appellant has been advised surgery for debridement, sequestromy and stimulants. Approximate estimate of the expenditure for said operation, is stated to be Rs.2,00,000/-. He will also be required to spend some more amount for medicines, attendance, conveyance, diet, etc. This Court is, therefore, inclined to grant the appellant a sum of Rs.3,50,000/- towards future medical treatment, as has been advised by the Medical Officer attached to Sancheti Hospital. No interest on the sum of Rs.3,50,000/- is, however, awarded for the period from the date of claim petition to the date of this order.

9. The appeal, thus, succeeds in terms of the following order:-

- (i) The appeal is allowed.
- (ii) The amount of compensation granted by the Tribunal is enhanced by a sum of Rs.1,00,000/- (Rupees One Lakh).

Said amount shall carry interest at the rate of 6% per annum from the date of the claim petition to the date of actual payment thereof.

- (iii) In addition to the above, the respondent - M.S.R.T.C. shall pay the appellant a sum of Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand) towards future medical treatment, on or before 01.02.2022. If the amount is not paid within the time-frame, it shall carry interest at the rate of 6% per annum from 01.02.2022 to the date of payment thereof.
- (iv) Rest of the terms of the impugned award to stand unaltered.

[R.G. AVACHAT, J.]

KBP

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BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.11081 OF 2021
IN FIRST APPEAL NO.331 OF 2009**

Jaihind Dadarao Gutte,
Age:28 years, Occ. Student,
r/o. Daithana, Tq. Parali,
Dist. Beed

..Applicant

Vs.

Maharashtra State Road
Transport Corporation,
through its Divisional Controller,
Beed Division, Beed

..Respondent

Mr.S.S.Dargad, Advocate for applicant
Mr.A.B.Dhongade, Advocate for respondent

**CORAM : R.G. AVACHAT, J.
DATE : OCTOBER 28, 2021**

ORDER :-

Heard.

2. For the reasons given in the application, the same is allowed in terms of prayer clause (B).

[R.G. AVACHAT, J.]

KBP