

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

**FIRST APPEAL NO.1487 OF 2021
WITH
CIVIL APPLICATION NO.2008 OF 2021**

Maharashtra State Road Transport
Corporation, through its Divisional
Controller, Division Office, Aurangabad ..Appellants

Vs.

1. Umesh s/o. Babulal Gurubhaiyya
Age : 42 years, Occ. Vegetable Seller,
r/o. Bhawani Nagar, Juna Mondha,
Aurangabad
2. Bharat s/o. Damu Pawar
(deleted as per Court's order
dated 12.08.2021) ..Respondents

Mr.A.D.Wange, Advocate for appellant-insurance
Mr.S.S.Panale, Advocate for respondent no.1

AND

**CIVIL APPLICATION NO.9662 OF 2021
IN FIRST APPEAL NO.1487 OF 2021**

Umesh s/o. Babulal Gurubhaiyya
Age : 42 years, Occ. Vegetable Seller,
r/o. Bhawani Nagar, Juna Mondha,
Aurangabad ..Applicant

Vs.

Maharashtra State Road Transport
Corporation, through its Divisional
Controller, Division Office, Aurangabad ..Respondents

Mr.S.S.Panale, Advocate for applicant
Mr.A.D.Wange, Advocate for respondent

CORAM : R.G. AVACHAT, J.
DATE : SEPTEMBER 30, 2021

ORDER :-

This is an appeal filed by the Maharashtra Road Transport Corporation (M.S.R.T.C.), challenging the award granting compensation of Rs.5,81,883/- with interest thereon at the rate of 6% per annum from the date of filing of the claim petition till realisation thereof, on account of injuries and permanent disability suffered in the accident involving motor vehicles. The challenge is to the extent of the quantum only.

2. Heard learned counsel appearing for the parties.

3. Mr.Wange, learned counsel for the appellant – M.S.R.T.C., would submit that it was an accident involving a truck and an S.T. bus. On due investigation, drivers of both the vehicles have been charged for being responsible to the accident. The owner and the insurer of the truck involved in the accident were not made parties to the claim petition. It, therefore, suffered for non-joinder of the necessary parties. On the question of quantum, learned counsel

would submit that the claimant was a vegetable vendor. There was no concrete evidence of his income. A sum of Rs.3,000/- per month ought to have been considered as his notional income instead of Rs.6,500/-. He would further submit that the Doctor, who had treated the claimant, has unequivocally deposed the claimant to have not suffered any permanent disability resulting into permanent loss of earning capacity. The Medical Officer, who was examined in proof of disability certificate, had not treated the claimant. The award of compensation is on very much higher side. He, therefore, urged for allowing the appeal.

4. Mr.Panale, learned counsel for respondent-claimant, would support the impugned award.

5. The claimant held hawker's license issued by the Municipal Corporation. The Tribunal, therefore, found him to be a professional vegetable vendor. For want of concrete proof of income, the Tribunal considered it at Rs.6,500/- per month. The claimant was 37 years of age when the accident took place. This Court, therefore, has no reason to disagree with the Tribunal in holding his notional income.

6. Dr.Pimpale was an Orthopedic Surgeon with AIMS Hospital, Aurangabad. He did examine the claimant. The evidence of Dr.Pimpale indicates the claimant to have had suffered both femur, right scapula and shoulder fracture. The claimant was operated upon. He denied the suggestion that the claimant would not suffer shortening in future. He, however, admitted that the claimant would not suffer movement restrictions. Based on his evidence, it has been proved that the claimant had incurred medical expenditure amounting to Rs.2,69,383/- (medical bills Exhs.34 to 40). The quantum of medical expenditure would indicate the nature of the injuries suffered by the claimant.

7. True, there is no evidence to indicate the loss of earning capacity. The disability certificate on record suggests the claimant to have suffered 37% disability. The Tribunal has, however, rightly assessed it to 25%. The Tribunal worked out the amount of compensation at Rs.2,92,500/- towards loss of earning capacity. It is reiterated that from the evidence on record, there is nothing to suggest the claimant to have, in

fact, suffered loss of earning capacity. The compensation, under that head, therefore, ought not to have been granted.

8. It appears that the Tribunal has awarded only Rs.20,000/- for pains and suffering, attendant and transportation charges, etc. In view of this Court, it ought to have been a sum of Rs.1,00,000/- considering the nature of injuries, quantum of medical expenditure, etc. A sum of Rs.1,30,000/- is awarded towards permanent disability. This way, the total amount comes to Rs.5,02,500/- and rounding it off, it would come to Rs.5,00,000/-. As such, the claimant would be entitled to get compensation Rs.5,00,000/- (Rupees Five Lakhs).

9. In the result, the appeal partly succeeds. The impugned award is modified. The amount of compensation awarded by the Tribunal of Rs.5,81,883/- is reduced to Rs.5,00,000/- (Rupees Five Lakhs). Rest of the terms of the impugned award are unaltered. The appeal stands disposed of accordingly.

10. The amount in deposit be paid to the claimant with interest accrued thereon. Balance amount be returned to the appellant - M.S.R.T.C. with interest accrued thereon. Civil Application stands disposed of accordingly.

[R.G. AVACHAT, J.]

KBP

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Mr.A.D.Wange, Advocate for applicant
Mr.S.S.Panale, Advocate for respondent no.1

**CORAM : R.G. AVACHAT, J.
DATE : SEPTEMBER 30, 2021**

ORDER :-

In view of disposal of the appeal, Civil Application
stands disposed of.

[R.G. AVACHAT, J.]