

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

**FIRST APPEAL NO.2025 OF 2018**

Shivshanker S/o Sakharam Pawar,  
Age-65 years, Occu:Advocate,  
R/o-Lokmanya Nagar, Parbhani

**...APPELLANT  
(Orig. Claimant)**

**VERSUS**

Maharashtra State Road Transport  
Corporation,  
Through its District Controller,  
Office at Gangakhed Road,  
Parbhani.

**...RESPONDENT  
(Orig. Respondent)**

...  
Mr.P.C. Mayure Advocate for Appellant.  
Mr.A.D. Wange Advocate for Respondent.  
...

**CORAM: ANIL S. KILOR, J.**

**DATE : 17<sup>th</sup> MARCH, 2021**

**ORAL JUDGMENT :**

1. The present appeal is filed by the claimant for enhancement of compensation granted by the Motor Accident Claims Tribunal, Parbhani in M.A.C. Petition No. 420 of 2016 vide

Judgment dated 26<sup>th</sup> April 2018, to the tune of Rs.1,70,000/- (including no-fault liability amount of Rs.25,000/-) along with interest at the rate of 7% p.a. from the date of petition till realization of the entire compensation amount.

2. I have heard learned respective counsel for the parties.

3. The brief facts of the present case are that, the claimant who is an advocate by profession, was travelling on 15<sup>th</sup> February 2016, to attend a funeral of his relative at village Kapadsinghi, in a State Transport bus bearing No. MH-20-D-9852. When the said bus was crossing a broken bridge near Kapadsinghi, it gave unexpected jerk and due to which the claimant sustained severe injuries. The claimant was, therefore, required to shift to primary health center, Kapadsinghi. But looking to the nature of injuries, he was referred to Parbhani in the hospital of Dr. Navandar, who treated him during the period from 15<sup>th</sup> February 2016 to 21<sup>st</sup> February 2016 for injuries to L1 vertebrae compression fracture without neurodeficit and continuous pain. The doctor has certified the disability to the extent of 40%, caused due to said accident. However, the

claimant claimed the compensation on the ground that he is not able to now practice as an advocate and therefore, there is 100% loss of earning capacity.

4. The learned Tribunal after considering the oral as well as documentary evidence on record, granted an amount of Rs.1,70,000/- including no-fault liability towards compensation along with interest.

5. The learned counsel appearing for the appellant submits that the learned Tribunal has committed error in not considering that the appellant used to attend court cases in various courts and he was a standing counsel for M.S.R.T.C., United Insurance Company and Zila Parishad, Parbhani and now because of disability he is not able to travel outside Parbhani and attend the court cases in other cities, which he used to do prior to the accident.

6. It is further submitted that the fact that M.S.R.T.C. is not engaging him in any matters because of his disability, is sufficient to show that the claimant has lost his 100% earning capacity after the accident.

7. Per contra, learned counsel for the respondent – M.S.R.T.C. submits that the compensation granted by the learned Tribunal is just and fair and the said amount was granted by the Tribunal after considering the case of the claimant about his disability to earn due to the impact of the accident.

8. He submits that the learned Tribunal has considered the evidence produced on record, showing that the appellant is still attending the cases in various courts outside Parbhani and the appellant is not living a restricted life as he has alleged in the claim petition.

9. Learned counsel for respondent further states that, whether to engage a lawyer in a case or not is a prerogative of the client and if the M.S.R.T.C. is not engaging the appellant in the matters of M.S.R.T.C. after his accident, that does not mean that the appellant – claimant has suffered 100% disability to earn. By arguing so, he prays for dismissal of the appeal.

10. To consider rival contentions of the parties, I have gone through the record and proceedings of the Tribunal, the depositions and the Judgment.

11. It is a well settled law that physical disability and loss of earning capacity due to impact of physical disability are two distinct and separate things and therefore, even though in this matter the doctor has certified that the appellant has suffered 40% physical disability, that does not mean that the appellant has lost earning capacity to the extent of 40%.

12. In the case of **Syed Sadiq and others vs. Divisional Manager, United India Insurance Company Limited<sup>1</sup>**, the Supreme Court has categorically observed the difference between the physical disability and capacity to earn in following words:

“6. This Court in Mohan Soni v. Ram Avtar Tomar, (2012) 2 SCC 267, has elaborately discussed upon the factors which determine the loss of income of the claimant more objectively. The relevant paragraph reads as under: (SCC pp. 271-272, para 11)

“11. In a more recent decision in Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 this Court considered in great detail the correlation between the physical disability suffered in an accident and the loss of earning capacity resulting from it. In paras 10, 11 and 13 of the

<sup>1</sup> (2014) 2 S.C.C. 735

judgment in Raj Kumar, this Court made the following observations: (SCC pp. 349-50)

“10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, rising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.”

13. On a above referred touchstone, I revert back to the facts of the present case. There is no dispute that the claimant is a practicing advocate and looking at the injuries he suffered in the accident, he can continue his profession as an advocate. The record shows that even after accident he is continuing with his profession and attending the court cases outside Parbhani. The learned Tribunal has observed and quoted various cases in which

the claimant appeared as an advocate and conducted the cases outside Parbhani.

14. The instances which are recorded by the Tribunal all are of the period after the date of accident. Thus, from the record and looking to the profession of the appellant – claimant, it is difficult to accept the case of the appellant that he is not able to continue with his practice. In the circumstances, the said contention of the appellant is rejected.

15. Next contention raised by the appellant is that the M.S.R.T.C. has stopped engaging the appellant to conduct its cases after the accident which sufficiently shows that the appellant has lost the earning capacity. The said contention also cannot be accepted, as it is a prerogative of the client whether to engage a particular lawyer or not and only because the M.S.R.T.C. is not engaging the appellant as a lawyer to conduct its cases, cannot be the basis to arrive at a conclusion that the appellant has lost his capacity to earn, to the extent of 100%.

16. In that view of the matter, I do not find any merit in the present matter. Hence I pass following order:

**ORDER**

(I) The Appeal is dismissed.

(II) No order as to costs.

**[ANIL S. KILOR, J.]**

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