

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

FIRST APPEAL NO.1658 OF 2018

The Maharashtra State Road Transport
Corporation, through Divisional Controller,
The Maharashtra State Road Transport
Corporation, Beed ..Appellant

Vs.

Subhash s/o. Pundlikrao Bhalerao,
Age:32 years, Occ. Nil,
r/o. Parli Vaijnath, Tq. Parli Vaijnath,
Dist. Beed. ..Respondent

Mr.S.R.Bagal, Advocate for appellant
Mr.S.B.Solanke, Advocate for respondent

AND

**CIVIL APPLICATION NO.9558 OF 2021
IN FIRST APPEAL NO.1658 OF 2018**

Subhash s/o. Pundlikrao Bhalerao,
Age:32 years, Occ. Nil,
r/o. Parli Vaijnath, Tq. Parli Vaijnath,
Dist. Beed. ..Applicant

Vs.

The Maharashtra State Road Transport
Corporation, through Divisional Controller,
The Maharashtra State Road Transport
Corporation, Beed ..Respondent

Mr.S.B.Solanke, Advocate for applicant
Mr.S.R.Bagal, Advocate for respondent

CORAM : R.G. AVACHAT, J.
RESERVED : OCTOBER 06, 2021
PRONOUNCED ON : JANUARY 21, 2022

ORDER :-

This appeal is filed by Maharashtra Road Transport Corporation, challenging the judgment and award dated 17.05.2017 passed by Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claim Petition No.125 of 2011. Vide the impugned judgment and award, a sum of Rs.12,64,000/- has been awarded as compensation on account of injuries and permanent disability suffered in the accident involving motor vehicles. The Tribunal considered it to be a case of contributory negligence in proportion of 10:90 between the claimant and the offending S.T. Bus. The challenge is mainly on the ground of quantum and percentage of contributory negligence.

2. Heard learned counsel appearing for the parties.

3. Mr.S.R.Bagal, learned counsel for the appellant – M.S.R.T.C., would submit that the Tribunal ought to have, at least, considered it to be a case of contributory negligence in equal proportion. Both the claimant and the bus driver are bound to give self-serving evidence. The scene of accident panchnama would,

undoubtedly indicate that the S.T. bus was proceeding closely along the road median. The claimant tried to overtake S.T. Bus from its left side. In the process, his motorbike dashed with the bus, as a result of which, the claimant and his companion fell of the motor bike. On the question of quantum of compensation, learned counsel would submit that the claimant was 26 years of age. Multiplier of 17 would be applied and not 18. There was no concrete evidence of his salary. There was no reason for the Tribunal to grant compensation towards future prospects. After having recovered from the accidental injuries, the claimant resumed his job. As such, there is no loss of earning capacity. The compensation on that count ought not to have been awarded. Learned counsel, therefore, urged for modification of the impugned award.

4. Mr.S.B.Solanke, learned counsel for the claimant, would, on the other hand, submit that the offending bus knocked the claimant down. His monthly salary was Rs.18,000/-. A representative of the employer was examined in proof thereof. The claimant was working as a Sales Executive. As a result of the permanent disability he suffered, there is necessarily functional disability. The quantum of medical expenditure incurred by the

claimant would itself suggest the severity and nature of disability suffered by the claimant. Learned counsel reiterated the reasons given by the the Tribunal in support of the impugned award.

5. It was an accident between the motorbike and the S.T. bus. The Tribunal held the respondent/claimant (motorbike rider) to be contributory negligent to the extent of 10%. The respondent is not in appeal either for enhancement of compensation or for setting aside the finding of the Tribunal, holding him to be contributory negligent.

6. The respondent-claimant had come with a case that the S.T. bus knocked his motorbike from behind. Said fact, however, appear to have not been proved. The Tribunal, on appreciating the evidence before it, found that the S.T. bus was proceeding closely along the road median. It was the motorbike ridden by the claimant that tried to overtake from the wrong side of the S.T. bus and in the process, brushed therewith. From the reasoning given by the Tribunal, it held the bus driver rash and negligent to the extent of 90%, only on the ground that in the rear-view mirror of the S.T. bus, he could notice the motorbike approaching from behind and it was he, who had a last opportunity to avoid the accident. As such, the

reasoning given by the Tribunal does indicate that it placed entire blame on the respondent-claimant. However, the S.T. bus, being a heavy vehicle, and its driver had an opportunity to avoid the accident, the Tribunal placed blame on him to the extent of 90%. In view of this Court, said proportion needs to be as `25%:75%'. It was, in fact, more.

7. On the question of quantum of compensation, the Tribunal has considered the monthly income of the respondent-claimant at Rs.18,000/- per month, deducted 10% towards tax, made addition of 50% on account of future prospects and granted compensation. The details of compensation granted by the Tribunal are as under :-

Sr. No.	Particulars	Amount (Rs.)
1	Future loss of income	10,45,440
2	Loss of income during hospitalisation	29,040
3	Medical bill and treatment expenses	3,13,915.50
4	Traveling expenses	5,000
5	For pain and sufferings	20,000
6	Future medical expenses	25,000
7	Loss of amenities and enjoyment of life	10,000
8	Special diet/nourishment	10,000
9	Less NFL	(-) 25,000
	Sub-total	14,04,355.50

10	Less 10% contributory negligence	(-) 1,40,435.55
	Total	Rs.12,63,919.95 rounded of to Rs.12,64,000/-

8. It is the case of the respondent-claimant that he was working as Sales Executive and as a result of the permanent disability suffered, he has become unable to pursue his job. The respondent-claimant suffered disability (Exh.114) of the following nature:-

Sr. No.	Name of injury	Dimensions of injury	Nature of Injury
1	Subtrochanteric fracture – Right femur	Right femur	Grievous
2	Right tibia and fibula fracture	Right tibia	Grievous
3	Abrasions over back	Multiple abrasions	Simple

Form Comp-"B" (Exh.32) issued by Medical College and Hospital, Ambajogai, shows that the respondent-claimant was operated. It has been stated as under :-

“ c/o. RTA with fracture of right femur upper third with fracture T/F Right. Operated with implant in situ with partial ankylotis of right hip and right knee joint.”

It has been stated that the permanent disability is 20%.

9. The employer was examined as witness in proof of the income of the respondent-claimant. It has come in his evidence that the respondent-claimant was serving as an Accountant. The same suggest the respondent to have come with the false claim of having been serving as Sales Executive. Moreover, it is not his case that as a result of the permanent disability suffered in the accident, he has been rendered jobless. As such, it is not the case of loss of his earning capacity. The Tribunal, therefore, ought not to have granted 50% addition on account of future prospects.

10. On the question, whether multiplier of 17 or 18 is to be applied, this Court is inclined to apply the higher multiplier. The monthly income of the respondent-claimant is considered at Rs.16,200/- (Rs.18,000 – 10% amount towards tax). As such, considering the functional disability of the respondent-claimant as 20%, the future loss of earning capacity would be Rs.6,99,840/- i.e. $\text{Rs.16,200} \times 12 \text{ months} \times 18 \text{ (multiplier)} \times 20\%$. This Court is, therefore, inclined to re-work out the compensation as under:-

Sr. No	Particulars		Amount (Rs.)
1	Future loss of earning capacity		6,99,840
2	Loss of income during hospitalisation	(+)	29,040

3	Medical bill and treatment expenses	(+)	3,13,915.50
4	Traveling expenses	(+)	5,000
5	For pain and sufferings	(+)	20,000
6	Future medical expenses	(+)	25,000
7	Loss of amenities and enjoyment of life	(+)	10,000
8	Special diet/nourishment	(+)	10,000
	Sub-total		11,12,795.50
10	Less 25% contributory negligence	(-)	2,78,198.87
	Total		Rs.8,34,596.63 rounded of to Rs.8,34,597/-

11. In view of the above, the appeal partly succeeds.

Hence, the following order:-

- (i) The appellant-M.S.R.T.C. shall pay the respondent/claimant a sum of Rs.8,34,597/- as compensation with interest at the rate of 6% per annum from the date of the claim petition to the date of deposit/payment thereof.
- (ii) The amount in deposit, either with this Court or the Tribunal, be paid to the respondent/claimant with interest accrued thereon.
- (iii) Balance amount be paid back to the appellant – M.S.R.T.C with interest accrued thereon.

- (iv) The appeal stands disposed of accordingly.
- (v) Pending Civil Application stands disposed of.

[R.G. AVACHAT, J.]

KBP