

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.263 OF 2022
ALONG WITH
INTERIM APPLICATION NO.2516 OF 2022
ALONG WITH
INTERIM APPLICATION NO.1605 OF 2022

Maharashtra State Road Transport]
Corporation, through General Manager,]
Mumbai.] ... Appellant

Versus

Mohd. Yunus Abdul Rahman Mansoori] ... Respondent

ALONG WITH
FIRST APPEAL NO.520 OF 2021

Mohd. Yunus Abdul Rahman Mansoori] ... Appellant

Versus

Maharashtra State Road Transport]
Corporation, through General Manager,]
Mumbai.] ... Respondent

...

Mr. Nitesh Bhutekar for the appellant in First Appeal No.263 of 2022 and for the respondent in First Appeal No.520 of 2021.

Mr. Sunil S. Bhide for the appellant in First Appeal No.520 of 2021 and for the respondent in First Appeal No.263 of 2022.

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CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 04TH MAY, 2022.

PRONOUNCED ON : 08TH JUNE, 2022.

ORDER :-

1. Being aggrieved by the judgment and award dated 01/07/2021 passed by the Motor Accident Claims Tribunal, Mumbai in M.A.C.P. Application No.619 of 2014, directing the appellant to pay compensation of Rs.6,01,248/- along with interest thereon at the rate of 7.5% per annum from the date of application till realization to the claimant, who sustained an injury in an accident caused by the vehicle belonging to the appellant, First Appeal No.263 of 2022 is instituted by the MSRTC.

2. First Appeal No.520 of 2021 is instituted by the claimant being aggrieved by the very same judgment delivered by the Tribunal, being dissatisfied with the compensation awarded and claiming that though he was able to establish before the Tribunal that the accident occurred on account of gross negligence of the driver belonging to the MSRTC and the accident left him disabled and doomed his career as a labour contractor, the compensation awarded is highly inadequate. The appellant in

the said appeal, therefore, claim compensation to the extent of Rs.32,24,558/- along with interest on the said amount.

3. Since both the first appeals impugn the very same judgment, they are clubbed together and respective counsel are permitted to advance arguments, common to the respective stand.

I have heard learned counsel Mr. Sunil Bhide appearing of the appellant in First Appeal No.520 of 2021, who represents the respondent-claimant in First Appeal No.263 of 2022. Mr. Nitesh Bhutekar represents the MSRTC and argued on behalf of the appellant in First Appeal No.263 of 2022 and for respondent in First Appeal No.520 of 2021.

4. Since both the parties have placed on record a compilation of documents, comprising of the evidence led before the Tribunal and also the necessary documents, including the FIR and other papers, the appeals are taken up for final hearing and are decided by this common judgment.

5. The claimant before the MACT, Mumbai, is one Mr. Mohd. Yunus Abdul Rahman Mansoori, aged 42 years. He filed an application under Section 166 of the Motor Vehicles Act (MACT Application No.619 of 2014), claiming compensation of Rs.10 lakhs for various losses suffered by him in the accident, which took place on 05/01/2014. It was pleaded by him that on

the fateful day, the applicant was riding on his motorcycle bearing No.MH-04-CN-8443 at about 6.45 hours and was proceeding from Ekta Chowk to Talawali Naka Chowk Road and when he reached opposite Katai Shiv Sena Office, besides Prakash Hotel, Bhiwandi, the offending bus bearing No.MH-12-CH-7930, being driven in excessive speed and in rash and negligent manner, rammed into his motorcycle from behind. The impact of the collision was so severe that the applicant fell down on the road and was dragged several feet away. He came to be admitted to Shiraj Hospital for preliminary treatment but shifted to Good Nursing Home, Bhiwandi on the very same day and subsequently, admitted in Upadhyay Nursing Home on 16/01/2014 and was discharged on 03/02/2014. He alleged that the accident took place on account of the rash and negligent driving by the driver of the offending bus and the accident resulted into degloving injury on the left knee region coupled with open grade – III fracture (L) proximal fibula neck fracture (undisplaced) and other multiple serious injuries as per the medical papers. Alleging that the gross negligence and rash driving on the part of the vehicle driver was the cause for his injuries, which resulted in unbearable pain and suffering to him and also disrupted his normal functions of life, as he was advised to take complete rest, causing loss of his earnings. Claiming that he was earning a sum of Rs.16,000/- per month being employed as a labour contractor (*Mukadam*), he claimed compensation of Rs.10 lakhs.

6. In support of his claim, he filed supporting documents, which included a copy of the FIR, copies of statements of eye-witnesses recorded during the course of investigation, certified copy of spot panchnama and the necessary medical papers. He filed his affidavit evidence reiterating the manner in which the accident took place and also examined 10 witnesses in support of his claim.

7. The MSRTC, which was impleaded as Opposite Party, filed its written statement and denied the claim of the applicant. There was a specific denial of the manner in which the accident is alleged to have taken place and the injuries sustained by the applicant were also denied. The Corporation denied its liability to pay any compensation for the medical bills incurred by the applicant and even denied any disability.

On the contrary, it was specifically pleaded that on 05/01/2014, at about 6.45 hours, the alleged MSRTC bus was proceeding from Bhiwandi to Borivali, being driven in careful manner with a proper look out on either side of the road. At that very moment, the applicant riding on his motorcycle in rash and negligent manner on the wrong side of the road, dashed the left portion of the S.T. bus i.e. the conductor's side and lost control and fell down on the road. The defence taken by the MSRTC is that there is no negligence on the part of the driver of the S.T. bus, but the accident occurred on account of sheer negligence on

the part of the applicant, who was driving the motorcycle without adequate care and caution that too, on the wrong side of the road. The claim was, therefore, prayed to be dismissed as false and frivolous.

In order to oppose the application, the MSRTC examined the driver of the vehicle as well as the conductor present in the vehicle, when the accident took place.

8. In the wake of the claim of the applicant and the defence of the MSRTC, the Tribunal proceeded to determine the issue whether the applicant before it had proved that he sustained injuries in an accident, which took place on 05/01/2014 due to rash and negligent driving of S.T. bus belonging to the Corporation and whether the applicant is entitled for any compensation for the injuries sustained.

9. I shall first turn to the findings rendered by the Tribunal, which have been assailed by the contesting parties in two distinct appeals.

The Tribunal appreciated the evidence brought before it in determining the question whether the accident took place on account of rash and negligent driving of the offending vehicle. It recorded that the factum of accident is not seriously disputed by the opposite party but the stand taken by the Corporation is, the accident occurred on account of the sole negligence on part of the applicant. The Tribunal appreciated the evidence on oath,

coming through the applicant when he deposed that the offending bus came in speed and dashed his motorcycle from behind. The evidence of two other witnesses i.e. AW-2 Jaiprakash Sahu and AW-3 Abdul Raeen, who are the eye-witnesses to the said accident was accepted by the Tribunal, since it was corroborated by the statement given by him to the police. The witnesses examined by the applicant deposed that the accident took place because the offending bus hit the applicant from behind and the Tribunal rendered a finding in favour of the contention of the applicant, that the accident took place on account of the fault of the driver of the offending bus. As far as the evidence of the driver and conductor i.e. DW-1 and DW-2 is concerned, the Tribunal did not find favour with the testimony of the said witnesses since it recorded that on perusal of the cross-examination of DW-1, the witness has contradicted himself when he had deposed that though the applicant came from the opposite direction, still he dashed into the left rear door of the S.T. bus, which is quite improbable. Relying upon the F.I.R. and spot panchanama, the Tribunal safely held that the driver of the offending vehicle ought to have taken proper caution while driving the vehicle and in absentia, the accident had taken place on account of its rash and negligent driving.

10. While determining the amount of compensation to be awarded, the Tribunal proceeded on the premise that the applicant is not entitled to compensation under the head of

‘functional disability’ unless it is established that the injuries caused to the victim resulted in functional disability and reduction or loss to his earning capacity.

11. Accepting the case of the applicant that he was aged 42 years at the time of accident and was working as a labour contractor and earning income of Rs.16,000/- per month, the Tribunal referred to the evidence of AW-4, AW-5 and AW-6, who had brought on record the electrical bills of Power Loom Industry to show that they were running the Power Loom Industry and also the salary certificate depicting the earning of the applicant.

Since the witnesses failed to produce on record any document to show the payment being made to the applicant in cash and since the applicant has failed to prove his earning through the Income Tax Returns, the Tribunal on scrutiny of the evidence of his employer deposing in favour of the applicant, who categorically admitted that there were no vouchers prepared when they paid wages to the workers, accepted that the applicant ought to have been undertaking some work to make both ends meet and the notional income of Rs.8,000/- was accepted for computation of compensation. Granting a sum of Rs.24,000/- under the head ‘loss of income for 3 months’, the Tribunal awarded the compensation.

12. Placing reliance upon the judgment of the Hon’ble Apex

Court in the case of **Rajkumar v. Ajaykumar & Ors. Reported in 2011 ACJ 1 (SC)**, which had propounded the parameters for payment of compensation under the head of 'loss of future earnings', the Tribunal recorded that the percentage of permanent disability shall not be mechanically computed as percentage of the economic loss or loss of earning capacity.

Referring to the evidence brought on record by the applicant through the medical experts Dr. Abhijeet Kale (AW-9) and Dr. Rajesh Desai (AW-10), the Tribunal did not accept the percentage of permanent partial disability as worked out by Dr. Desai in his certificate. On the basis of certain admissions given in the cross-examination, the Tribunal did not deem it fit to accept the percentage of disability assessed by the said doctor since he had admitted that he could not recall, whether the MRI report on the basis of which he had mentioned the injury in the certificate is obtained. He admitted that he had not even confirmed whether the fibular fracture had healed or not.

However, considering the nature of injuries, the Tribunal concluded that it can be presumed that the applicant must have suffered pain and suffering and the aforesaid injuries must have resulted in physical disability. Therefore, he was held entitled to compensation of Rs.1,50,000/- under the head 'physical disability' and a sum of Rs.1,50,000/- towards pain and suffering.

13. The compensation of Rs.1 lakh came to be awarded

towards deprivation of amenities and pleasure, to which the applicant was entitled before the accident and a sum of Rs.5,000/- each was awarded towards special diet and conveyance. The medical expenses amounting to Rs.1,67,248/-, which were proved through the medical bills brought on record, also came to be granted.

14. The break-up of the total compensation awarded was summarized by the Tribunal as under:

<u>Head</u>	<u>Amount in Rs.</u>
Physical Disability	Rs.1,50,000/-
Pain and Suffering	Rs.1,50,000/-
Loss of amenities of life	Rs.1,00,000/-
Medical Expenses	Rs.1,67,248/-
Loss of income (3 months)	Rs. 24,000/-
Special Diet & Conveyance	Rs. 10,000/-
Total	Rs.6,01,248/-

The claim application was partly allowed with the MSRTC being directed to pay a sum of Rs.6,01,248/- inclusive of no fault liability amount with interest at 7.5% from the date of application.

15. It is this judgment, which is assailed in two distinct first appeals, one filed by MSRTC and the other filed by the applicant.

16. The MSRTC assailed the judgment basically on two grounds, firstly, the Tribunal has erred in not applying the principles of contributory negligence, by ignoring the testimony of the driver and the conductor of the vehicle and, has fastened the liability of compensation upon the appellant. The second ground on which the said appellant assailed the impugned judgment is, the claimant had not placed on record any Income Tax Returns to establish his earnings and mere examination of the witnesses stating that he was working in their Power Loom Industry does not conclusively establish his earning since all the said witnesses in support of the claim have merely referred to a salary certificate, without maintaining any register of his attendance, demonstrating his nature of duties. One additional ground, which is sought to be canvassed in the appeal is, that the Tribunal has granted compensation of Rs.1,50,000/- towards pain and suffering and Rs.1,50,000/- towards physical disability though it had failed to accept the claim of the applicant relying upon the disability certificate issued by AW-10.

17. Per contra, in the appeal filed by the claimant, the foremost challenge is the non-consideration of the certificate issued by AW-10, assessing his permanent partial disability to the extent of 58% and the advise for future surgery for re-construction of the left posterior cruciate ligament of the left knee with an estimate cost of Rs.1,70,000/-. The claimant, who assailed the judgment

would urge that degloving injury sustained by the applicant along with avulsion of attachment of posterior cruciate ligament is one of rare, but serious injury, which has deprived the applicant of his earning capacity and the submission is, the compensation to be awarded in case of such injury ought to have been computed by applying multiplier basis, as held by the Hon'ble Apex Court in **Arvind Kumar Mishra v. New India Assurance Company Limited** reported in **2010 ACJ 2867**. The argument on behalf of the claimant/applicant is that it is the duty of the Tribunal/court to award just compensation under the provisions of the Motor Vehicles Act, 1988 and it is permissible for the appellate court in appeal to grant compensation more than what was claimed before the Tribunal, depending upon the requirement of monetary assistance by an applicant or his family members, in the wake of the subsequent events, post the event of accident.

18. Another ground, which is raised in the appeal by the claimant is, the Tribunal ought to have taken on record the proved income and not presumptive income and since the witnesses examined by the applicant had brought on record the salary certificate, there was no reason why the said evidence ought to be disregarded and notional income was accepted as the basis in awarding the compensation.

19. Since both the appeals involve common evidence and

common judgment, let me proceed with the points raised by the appellants in the respective appeals.

20. Coming to the point of negligence, which is sought to be canvassed by learned counsel Mr. Bhutekar for the MSRTC, the applicant has filed his evidence and has narrated the manner in which the accident took place by specifically stating that his motorcycle was hit by a fast and rashly and negligently driven S.T. bus from behind and that is how he sustained the injuries. He supported his claim, with the FIR, spot panchanama, charge-sheet and police statement of Jaiprakash Sahu (AW-2), who is an eye-witness to the accident.

21. AW-2 Jaiprakash Sahu, who had also given his statement to the police deposed before the Tribunal and narrated the actual version of the accident, as witnessed by him when he states that while he was present in his hotel/kiosk offering tea/coffee situated adjoining Shiv Sena office Katai area, when the accident occurred. He described the accident in the following words:

“I state that Passion M/cycle which bears No. MH-04-EN-8443 was heading from Katai Baug towards Talawadi Naka and was driven by the said Mr. Mohd. Yunus Abdul Rahman Mansoori which was followed by an S.T. Bus bearing No. MH-12-CH-7930 coming from Ekta Chowk and hit the driver of the Passion M/Cycle behind by the front left show of the said S.T. Bus, due thereto the said Mr. Mohd. Yunus Abdul

Rahman Mansoori fell down on the road along with the M/Cycle, stood hooked to front left bottom metal portion of the said S.T. Bus, stood dragged with the said bus and due thereto Mr. Mohd. Yunus Abdul Rahman Mansoori started shouting due to pain and due thereto S.T. Bus Driver stopped the said bus at a sizable distance as the bus was in speed. I state that due to the impact of the accident sizable crowd got gathered at the spot of the accident along with me and when the injured was seen, it was observed that the muscles portion below the left knee of the applicant stood detached from the body of the applicant, thereby applicant stood gravely injured along with bruises on the left hand elbow portion of the applicant. I state that the crowd that had gathered at the spot of the accident took him to the hospital.”

22. AW-2 reiterated that the accident took place due to negligence of the S.T. bus driver. In the cross-examination, he denied the suggestion that he has not witnessed the accident and that the injured came in contact with the bus at its left side rear wheel.

23. Another witness AW-3 Abdul Raeen, who was running a Paan shop on the road side, where the accident took place, also narrated the accident in the following words:

“Mr. Mohd. Yunus Abdul Rahman Mansoori fell down on the road along with the M/Cycle, stood hooked to front left bottom metal portion of the said S.T. Bus, stood dragged with the said bus and due thereto. Mr. Mohd. Yunus Abdul Rahman Mansoori started shouting due

to pain and due thereto S.T. Bus Driver stopped the said bus at a sizable distance as the bus was in speed. I state that due to the impact of the accident sizable crowd got gathered at the spot of the accident along with me and when the injured was seen, it was observed that the muscle portion below the left knee of the applicant stood detached from the body of the applicant thereby applicant stood gravely injured along with bruises on the left hand elbow portion of the applicant.”

The two eye-witnesses categorically deny the suggestion that the applicant had contributed to the accident, but rather squarely blamed the S.T. bus driver for his negligence.

24. As against this, MSRTC has examined the driver and the conductor of the bus, who have solely blamed the applicant by alleging that he came on motorcycle, without helmet from wrong side of the road and lost control of the vehicle and tumbled down on account of high speed. In cross-examination, the driver states that the applicant was hit by the left rear tyre of the S.T. bus, but admits that no damage was caused to the S.T. bus. The statement of the driver was recorded by the police after eight days. The conductor reiterates the same version as of the driver and blamed the applicant, for the accident.

25. Appreciating the evidence brought on record, which includes the spot panchanama and the panchanama of the motorcycle belonging to the applicant, which is seen to have

been damaged from the left side, the panchanama records that it was broken, but no damage is recorded to have been caused to the S.T. bus. The panchnama also records that the road at the spot of the accident is 20 ft. broad, without any divider and on both side ends, strips of the road are painted in white, with no katcha portion of the road on either side or the shop line skirting the line without any footpath.

26. With this scenario, it was suggested that the bus could not have been driven in high speed in the early hours of the day. Recording that since there is no bus stop near the spot of the accident, it was held that the bus was driven in high speed. The three eye-witnesses to the incident, who run either shops or kiosks on the road, have witnessed the accident and categorically stated that the S.T. bus hit the applicant's motorcycle from behind. The police statements, which form part of the investigation also narrate the similar version.

27. It is in the background of the factual scenario, which has come on record, the Tribunal has rightly concluded that the accident occurred due to rash and negligent driving of the S.T. bus and I see no reason to disturb the said finding and the claim of the MSRTC in its appeal being First Appeal No.263 of 2022 deserves to be turned down.

28. Another vital aspect of the matter is the amount of

compensation awarded in favour of the applicant. The Tribunal has awarded a compensation of Rs.6,01,248/- under different heads, which are set out in its judgment. The applicant claimed compensation of Rs.10 lakhs in the application, who in the appeal, claims enhancement of the said compensation and Mr. Bhide, learned counsel for the applicant/victim has prayed that since it is a permanent partial disability sustained by the applicant, the compensation ought to have been arrived at by applying the multiplicand method, which is the only way of awarding the compensation in case of a permanent partial disability.

29. As far as the medicine bill expenses of Rs.1,67,248/- are concerned, the MSRTC did not question the award of compensation under the said heads since the medicine bills are awarded to the tune of Rs.1,67,248/- based on the medical papers placed on record. For, special diet, an amount of Rs.10,000/- has been awarded whereas, according to the applicant, the amount to which he is entitled is Rs.24,000/- i.e. at the rate of Rs.3,000/- per month for eight months. For pain and suffering, a compensation of Rs.1,50,000/- is awarded along with an amount of Rs.1,50,000/- towards physical disability and the appeal of the applicant is primarily on this amount, since it is the submission of Mr. Bhide that as per the medical history, the degloving injury with avulsion of attachment of posterior cruciate ligament (PCL), is a traumatized injury that results in top layers of the

skin and tissue being ripped from the underlying muscle, connective tissue, or bone. They can affect any body part, but they are more common in the legs and frequently associated with underlying fractures because they typically involve large amounts of blood loss and tissue death and they are often life threatening. Degloving injuries are associated with accidents including motorcycle accidents, car accidents, sports mishaps, etc. When the skin and tissue are ripped away and the muscles and bones underneath are exposed, this is characterized as an open degloving injury and in some cases, the skin may still be partially attached and hanging as a flap near the wound. The treatment options for a degloving injury depend upon its severity and location, and where broken bones are also present. The treatment may, at times, include skin reattachment, reattachment of fingers or toes, skin grafts or amputation. Less severe injury can be fixed with skin grafts while more serious one would require reattachment or amputation.

30. A degloving injury is a type of avulsion, in which an extensive section of skin is completely torn off the underlying tissue, severing its blood supply. Post-operative physiotherapy is of particular importance for degloving injuries involving the hand and treatment options include replantation or revascularization of the degloved skins. So far as the posterior cruciate ligament injury is concerned, it is a strong avulsion fracture of the posterior cruciate ligament, which runs along the

back of your knee and connects your thighbone to the top of your lower leg bone. This ligament keeps the bones in place and helps your knee move smoothly. When the PCL is sprained or torn, it's called a posterior cruciate ligament injury. The most common treatment used for complete restoration of PCL function after an avulsion fracture is surgery using internal fixation. Surgical treatments for PCL avulsion fractures of the tibia include arthroscopic repair as well as open reduction and internal fixation (ORIF). The internal fixation can be by means of steel wires, hollow lag screws and absorbable screws, nails, etc.

31. It is in the light of this medical literature about the said injury by Amanda L. Weller, Craig S. Mauro and Christopher D. Harner, which can also be accessed through wikipedia and books on medicines, the certificate of injury issued by PW-10 is required to be examined.

32. AW-9 and AW-10 are the two witnesses examined by the applicant to establish the gravity of the injury sustained by him. PW-9 Dr. Abhijeet Kale attached to Upadhyay Nursing Home as Ortho Surgeon, where the applicant was admitted deposed that the patient has suffered degloving injury to the left lower limb around the knee joint, fibula fracture and ligament injury. He specifically deposed as under:

“2. On 17.01.2014, the patient had undergone surgical debridement of the left lower limb. On 31.01.2014, patient underwent split thickness skin grafting for the left lower limb.

3. During second hospitalization from 07.02.2014 to 01.03.2014 patient was treated for degloving injury.”

33. In cross-examination, though the doctor admitted that he was not the immediate treating doctor, he was aware of the treatment offered and the papers of treatment and discharge papers came to be exhibited through him. He categorically admitted that all the injuries were healed except ligament injury and though he admitted that the patient can walk, travel and stand with these injuries, he clarified that the patient requires support of orthotics.

34. AW-10 Dr. Rajesh Desai, who issued the disability certificate examined the applicant on 25/08/2018 for assessment of the disability in the accident. On referring through the post medical history of the patient and the treatment offered to him, AW-10 has deposed as under:

“On clinical examination, his wounds had healed but he suffered from a large unsightly scar from about his left knee till about the left ankle. He also suffered loss of muscles from the thigh and leg. He suffered from Valgus and antero posterior instability of left knee. He suffered loss of mobility of his left knee till about the left ankle. He suffered from instability of his left knee resulting in

difficulty in climbing stairs, inability to run, inability to stand unsupported on the left lower limb. He needed to wear knee brace while standing and walking. Accordingly, his permanent partial disability was assessed at 58% of his left lower limb. He was advised future surgery of reconstruction of left posterior cruciate ligament of left knee.”

35. Admittedly, AW-10 did not treat the patient, but he assessed his disability. When particularly questioned in cross-examination that there was only one fracture, AW-10 responded as under:

“There was a fibular neck fracture and I had gone through the MRI report which shows that posterior cruciate ligament was an avulsion fracture and therefore, I had mentioned it in my certificate as PCL avulsion.”

36. Pertinent to note that fibular bone in the lower leg stretching from knee to ankle. A fibula fracture is a break to a fibula caused by forceful impact that results in injury and based on this injury, the disability of the patient was assessed by Dr. Desai to be 58%. Worth it to mention that the said certificate accepted through the said witness has followed the guidelines for assessment of the disability, by applying the clinical method and assessed it on various factors like the mobility component, stability component, inability to undertake activities in percentage. The said assessment, according to Mr. Bhide, is assessed on the basis of Manual for Doctors to Evaluate

Permanent Physical Impairment, which is placed on record. The said Manual is based on Expert Group Meeting on Disability Evaluation and National Seminar on disability Evaluation and Dissemination (DGHS – WHO – AIIMS), New Delhi – 1981 in the Composite Regional Centre, Srinagar and is available on the website www.crcsrinagar.com. The said manual provides guidelines for evaluation of physical impairment in lower limbs and comprised of the components Muscle Strength, Stability Component to be tested by clinical method and extra points of 10% for deformities, pain, loss of sensations and shortening, etc.

37. The said guidelines need a reproduction since it is very rare that the disability is assessed by medical experts in this manner by considering the mobility and stability components.

Guidelines for Evaluation of Permanent Physical Impairment in Lower Limbs

The lower extremity is divided into two components: Mobility component and Stability component.

MOBILITY COMPONENT

Total value of mobility component is 90%. It includes range of movement and muscle strength.

Principles of Evaluation of Range of Movement

1. The value of maximum range of movement in the mobility component is 90%.

2. Each of the three joints i.e. hip, knee, foot-ankle component, is weighted equally – 0.30.

Example

A Fracture of the right hip joint may affect range of motion so that active abduction is 27° . The left hip exhibits a range of active abduction of 54° . Hence, there is loss of 50% of abduction movement of the right hip. The percentage loss of mobility component in the hip is 50×0.30 or 15% loss of motion for the mobility component.

If more than one joint is involved, same method is applied and the losses in each of the affected joints are added.

For Example :

Loss of abduction of the hip = 60%
 Loss of extension of the knee = 40%
 Loss of range of motion for
 the mobility component = $(60 \times 0.30) + (40 \times 0.03) = 30\%$

Principles of Evaluation of Muscle Strength

1. The value for maximum muscle strength in the leg is 90%.
2. Strength of muscles can be tested by manual testing like 0-5 grading.
3. Manual muscle gradings can be given percentages like

Grade 0 = 100%
 Grade 1 = 80%
 Grade 2 = 60%
 Grade 3 = 40%
 Grade 4 = 20%
 Grade 5 = 0%

4. Mean percentage of muscle strength loss is multiplied by 0.30.

5. If there has been a loss of muscle strength of more than one joint, the values are added as has been described for loss of range of motion.

Combining Values for the Mobility Component

Let us assume that the individual with a fracture of the right hip joint has in addition to 16% loss of motion 8% loss of strength of muscles.

Combing Values

Motion 16% $16 + 8(90-16)/90 = 22.6\%$

Strength 8%

Where a = higher value b = lower value

STABILITY COMPONENT

1. Total value of stability component is 90%
2. It is tested by 2 methods
3. Based on scale method.
4. Based on clinical method

Three different readings (in kilograms) are taken measuring the total body weight (W), scale 'A' reading and scale 'B' reading. The final value is obtained by the formula :

$$\frac{\text{Difference in body weight}}{\text{Total body weight}} \times 90$$

In the clinical method of evaluation nine different activities are to be tested as given in the proforma. Each activity has a value of ten percent (10%).

Extra Points :

Extra points have been given for pain, deformities, contractures, loss of sensations and shortening. Maximum points to be added are 10% (excluding shortening). Details are as following :

(i) Deformity	In functional position	3%
	In non-functional position	6%
(ii) Pain	Severe (grossly interfering with function)	9%
	Moderate (moderately interfering with function)	6%
	Mild (mildly interfering with function)	3%

(iii) <i>Loss of sensation</i>	<i>Complete Loss</i>	9%
	<i>Partial loss</i>	6%
(iv) <i>Shortening</i>	<i>First ½"</i>	<i>Nil</i>
	<i>Every ½"</i>	4%
(v) <i>Complications</i>	<i>Superficial complications</i>	3%
	<i>Deep complications</i>	6%

38. The MSRTC has not questioned the assessment of disability on any scientific reasons, but the said witnesses who had issued the disability certificate is argued to be not trusted, since he was not the treating doctor. Certain other lacune in cross-examination viz. that he is not remembering the date of the MRI has been sought to be projected as creating doubt in the certificate.

39. I do not think that the said argument has any substance, since the doctor issuing the disability certificate necessarily has assessed the effect of the accident, after four years of the accident taking place, and with the type of injury sustained by the applicant, he has to be tested on its after effects and how the injury had impacted his normal way of life. Therefore, in absence any material brought on record by the MSRTC, the scientific assessment of the disability sustained by the applicant cannot be disbelieved. The said certificate, which has declared the permanent partial disability at 80% on his left lower limb and has advised future surgery on reconstruction of left PCL, deserves to be accepted.

40. In any case, before me is a medical expert, an Ortho Surgeon, who has assessed the current disablement of the applicant after four years.

I must also make a specific mention that the applicant was present in the court at the time of hearing and, I personally had an opportunity to have a look at his injury, which was shown to me after removing his braces, when I could notice his pain and the discomfort in his movement, which was apparently visible. His slow and cautious steps, the site of his wounds was also extremely deplorable as the muscles were torn apart at places and one can just imagine the mental and physical anguish suffered by him on account of the said injury.

41. The question that arises, is what is the nature of his functional disability depending upon the assessment of his physical disability at 50%.

AW-9 has deposed that his ligament injury had not healed. AW-10 has deposed about loss of mobility of his left knee till left ankle and instability of his left knee, which caused a difficulty in running, walking, standing without support. The applicant was working as a Mukadam/Labour contractor and the witnesses AW-4 and AW-5, who were examined by him, have stated so, in their affidavit. His distinct employer, who had engaged him on part time basis, deposed that he used to work in the Power Loom for the work of beam, necessarily involve movement. It appears

that the applicant was engaged as part time Mukadam and working in different Power Looms. With the nature of injury suffered by him, it can be safely inferred that with the restrictive movement, it will pose extreme difficulty in continuing his business activity. The applicant in his affidavit has specifically stated that after the accident, he had left his work as labour contractor and he is an unemployed person. However, it cannot be said that the applicant has completely incapacitated in undertaking any work and considering that the applicant can take any other work, which would require less mobility or a sitting job, his functional disability has to be assessed at the rate of 58%. However, it can be said that he will not be able to undertake the same work, which he was undertaking prior to the accident with his restrictive movements and, therefore, his functional disability can be safely assessed as 30%, since he will not be able to undertake a job of driving or even cannot undertake, long journey to attend the job work at long distance, which would necessarily involve extensive travelling, climbing stairs, getting into crowded trains and buses and at times facing the rush rush moments. Thus, despite his disability being assessed at 58%, the functional disability would be appropriately computed as 30%, since he can undertake any suitable sitting job, which would avoid him excessive movements and mobility.

42. The Tribunal has clearly erred in not following the method of computing the compensation by adopting the multiplier

method and has awarded compensation only for the physical disability and pain and suffering.

43. In the case of Arvind Kumar Mishra (supra), dealing with a case of accident on account of rash and negligent driving of a truck, the Hon'ble Apex Court has held that the multiplier method is the proper measure of compensation. Their Lordships of the Apex Court have explicitly expressed their opinion in the following words:

“7. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand.

8. In General Manager Kerala State Road

Transport Corporation, Trivandrum v.. Susamma Thomas (Mrs.) and Ors1., this Court laid down the following principles:

"13. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the (1994) 2 SCC 176 deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last."

17. The multiplier represents the number of years' purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs 10,000. If a sum of Rs 1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs 10,000 would be 20. Then the multiplier, i.e., the number of years' purchase of 20 will yield the annual dependency perpetually. Then

allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependants, whichever is higher) goes up."

9. The principles laid down in Susamma Thomas still hold the field; the only variation has been in respect of maximum multiplier. In the present case the Tribunal as well as the High Court seriously erred in not assessing the compensation for personal injury to the appellant in accord with the recognized mode i.e., by taking an appropriate multiplier of an appropriate multiplicand."

The multiplier method being a well accepted method for assessing the compensation for personal injury being the well recognized mode, the Tribunal has clearly erred in ignoring the same.

44. In the aforesaid circumstances, when the duty of the Tribunal is to adopt a proactive approach and compensate the victim by awarding a just compensation, the Tribunal is not expected to lose sight of the fact that the medical treatment is a costly affair and, at times, not affordable to the common men. The compensation to be awarded must be just and adequate to

restore the life of the victim as far as possible and to put him in the same position as he was insofar as the money can do so in a fair and reasonable and equitable manner. Perfect compensation is not possible, since a person suffered a disability will also feel anguish and pain particularly, because he has committed no wrong but has suffered at the hands of wrong doer and it is the duty of the court to award him full and fair compensation for the injury suffered by him.

45. In **Raj Kumar (supra)**, the Hon'ble Apex Court has specifically held as under:

“The provision of the Motor Vehicles Act, 1988 (“the Act”, for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries.”

46. In the wake of the above, though I am not inclined to disturb the findings of the Tribunal in accepting the monthly income of the applicant being assessed as Rs.8,000/-, but the award of compensation of Rs.24,000/- under the head loss of income for three months, deserve a modification as the applicant was undergoing a treatment for a period of 12 months and unable to earn any income. The award of the Tribunal, therefore, deserves a modification and the applicant is entitled for compensation to the following effects:

<u>Sr.No.</u>	<u>Particulars</u>	<u>Amount (Rs)</u>
A]	<u>Pain & Suffering</u> i) Degloving injury with avulsion of posterior cruciate ligament, ii) Fibular neck fracture.	2,00,000/- 25,000/-
B]	Medicines bills – vouched	1,67,248/-
C]	Conveyance	15,000/-
D]	Special Diet @ Rs. 3,000/- p.m. x 8 months.	24,000/-
E]	Loss of income for 12 months	1,92,000/-
F]	Permanent partial disability certificate @ 58% by Dr. Rajesh R. Desai, resultin into functional disability of 30% i.e. (Rs.8,000/- x 30% x 12 months x 13 years.)	3,74,400/-
G]	Loss of amenities of life	1,00,000/-
H]	Future surgery – Reconstruction of left posterior cruciate ligament, left knee, as estimated by Dr. Rajesh R. Desai.	1,70,000/-
	Total	12,67,648/-

47. With the above modification being effected in the impugned judgment, First Appeal No.520 of 2021 is partly allowed. The applicant is entitled for interest on the enhanced amount at the rate of 9% per annum from the date of the judgment of the Tribunal till its realization.

48. In view of the disposal of the first appeals, all connected interim applications are also disposed off.

[SMT. BHARATI DANGRE, J.]