

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

FIRST APPEAL NO.3463 OF 2018

Guljar @ Guljarsingh s/o Ranveer
@ Ranveersingh Gautam,
age 23 years, Occ. Education,
R/o Madaj, Tq. Omerga,
District - Osmanabad

Appellant.
(orig claimant)

Versus

1. Sheshrao Maruti Pawar,
age major, Occ. Driver,
R/o. Dabka, Tq. Omerga,
District Osmanabad.
2. Maharashtra State Road Transport
Corporation, Vahtuk Bhavan,
Mumbai, The Divisional Controller,
MSRTC, Osmanabad.

..Respondents..
(orig. resp.nos.1 & 2)

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Mr. A.U. Chandel Advocate for appellant.
A. B. Dhongade, advocate for respondent nos.1 and 2.

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CORAM : S.G. CHAPALGAONKAR, J.

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RESERVED ON : 7th AUGUST, 2023.

PRONOUNCED ON : 18th AUGUST, 2023.

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JUDGMENT :-

. The appellant/original claimant impugns the judgment and award dated 19.9.2017 passed by the Motor Accident Claims Tribunal, Omerga, District Osmanabad in MACP No.149 of 2015 in this appeal filed under section 173 of the Motor Vehicles Act.

2. The appellant had approached the Tribunal raising the claim for compensation under section 166 of the Motor Vehicles Act with the contention that while he was travelling in M.S.R.T.C. Bus bearing registration No.MH-20/B-1182, suddenly door of the bus was opened, resultant, he escaped from bus causing multiple injuries. The offence was registered against the S.T. Bus driver vide crime No.167 of 2015 with the police station, Omerga, Dist. Osmanabad. The appellant was initially treated at Dr. Vishvekar Hospital, Omerga. Thereafter, he was shifted to Dr. Vijay Clinic, Omerga and then to S.P. Institutes of Neuro Sciences at Solapur. He was indoor patient from 15.9.2015 to 13.10.2015. He incurred Rs.5.00 Lakh towards medical treatment. The claimant contend that he was taking education in First Year M.Com and earning Rs.9,000/- per month out of the tuition of Junior College students. Due to the accidental injury, he suffered permanent disablement resulting into loss of earning capacity.

3. The claimant relied upon his own evidence so also documentary evidence which includes injury certificate exhibit 28. The claimant examined PW 2 Dr. Nitin Loharekar on the point of permanent disablement, who has certified 24% permanent disability. The Tribunal, after considering the evidence on record, partly allowed the claim petition and awarded the compensation of Rs.3,12,000/- alongwith interest @ 9% p.a. from respondent nos.1 and 2.

4. Mr. A.U. Chandel, learned advocate appearing for the appellant would submit that, although, the Tribunal has recorded finding of permanent disablement of 24% suffered by the claimant, the compensation is assessed on lumpsum basis. He would submit that the Tribunal ought to have applied multiplier method and awarded the compensation accordingly. He would further submit that the claimant was merely 21

years of age. He has lost his future prospects. Paltry sum is awarded towards non-pecuniary heads.

5. Per contra, Mr. A.B. Dhongade, learned counsel appearing for the respondents contend that although claimant has suffered permanent disablement, there is nothing to infer loss of earning consequential to the injuries. He would submit that the claimant was student at the time of the accident. Therefore, in absence of the evidence regarding actual earning, there is no basis to grant compensation by applying the multiplier method. He would submit that Tribunal has awarded adequate compensation towards non-pecuniary heads.

6. Having considered the submissions advanced, it is apparent that there is no dispute about accident involving M.S.R.T.C. Bus so also the disability suffered by the claimant due to injuries in the accident. The claimant has relied upon the evidence of PW-2 Dr. Nitin Loharekar, who has issued the permanent disability certificate exhibit-49 to certify that the claimant has suffered 24% permanent disablement. The injury certificate shows that the claimant had suffered Carnial Trauma-DAI left Temporo parietal SDH fracture of distal humerus. During cross examination of doctor, nothing can be elucidated to disbelieve his evidence. Apparently, the claimant has suffered permanent disablement at young age which may affect his future earning capacity. The contention of the claimant that he was engaged in tuition of under graduate students could not be established, however, for any work involving physical strength, loss of earning consequential to the permanent disablement is natural consequence inferable on the basis of medical record. In absence of income proof, it would be appropriate to fix notional income of the claimant @ Rs.5,000/- p.m. Although the percentage of disability is shown to be 25%, in absence of exact nature of the work that the

claimant was doing, loss of earning can be considered @ 20%. In that view of the matter, the claimant would be entitled for compensation as shown in the tabular form.

Sr. No.	Heads	Amount
1.	Annual income of the claimant Rs.5,000/- x 12	Rs.60,000/-
2.	Add 40% towards future prospects. Rs.60,000 + 24,000 =	Rs.24,000/- Rs.84,000/-
3.	20% loss of earning	Rs.16,800/- p.a.
4.	Multiplier of '18' =16,800 x 18	Rs.3,02,400/-
5.	Medical expenses	Rs.1,87,000/-
6.	Pain and suffering	Rs.20,000/-
7.	Nutritious food	Rs.10,000/-
8.	Loss of income	Rs.10,000/-
9.	Transportation	Rs.10,000/-
	TOTAL	Rs.5,39,400/-

Hence following order.

ORDER

- i. The appeal is partly allowed.
- ii. The judgment and award passed by the Motor Accident Claims Tribunal, Omerga dated 19.9.2017 in M.A.C.P no.149 of 2017 is modified.
- iii. The respondent nos.1 and 2 shall jointly and severally pay compensation of Rs.5,39,400/- (Rs. Five Lakh Thirty Nine Thousand four hundred) (inclusive of NFL) to the claimant together with interest @ 6% p.a. from the date of filing of the claim petition.

- iv. The compensation paid/deposited in terms of the award passed by the Tribunal shall be appropriated.
- v. Modified award be drawn subject to payment of deficit court fees.
- vi. On deposit of the compensation amount as per this award, the claimant shall be at liberty to withdraw the same.
- vii. First appeal disposed off. Pending civil application, if any, also stands disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

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