

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

FIRST APPEAL NO. 621 OF 2004

Sayed Mohaseen s/o Sayad Jalal,
age: 18 years, Occ: Education,
R/o Jahagir Colony, Railway
Station, Aurangabad.

Appellant

Versus

01 The Maharashtra State Road
Transport Corporation,
Depot No.1, Aurangabad,
through its Controller.

02 Sk. Ismail s/o Sk. Kasim,
age: major, Occ: Bus Driver,
R/o Hamalwadi, Railway
Station, Aurangabad.

Respondents

Mr. R. F. Totla, advocate for the Appellant.

Mr. A. B. Dhongade, advocate for Respondent No.1.

CORAM : SANDIPKUMAR C. MORE, J.

Reserved on : 07th February, 2023.

Pronounced on : 06th April, 2023.

JUDGMENT :

1 The appellant, who is the original claimant, has challenged the dismissal of his claim i.e. M. A. C. P. No. 07 of 1999 at the hands of learned Member, Motor Accident Claims

Tribunal, Aurangabad, (hereinafter referred to as “the learned Tribunal), under judgment dated 17.11.2003. The appellant had claimed compensation of Rs.3,50,000/- on account of injuries which he sustained in the motor vehicle accident took place on 26.01.1998 at about 10.15 p.m. at Railway Station, Aurangabad.

2 According to the appellant-claimant, the accident took place on the aforesaid date at about 10.15 p.m. at Railway Station City Bus Stop at Aurangabad. At the relevant time, the appellant, in order to go to Shahganj, boarded ST Bus No.MCA-7213 but the Respondent No.2 i.e. driver of the said bus, in the absence of any signal from the conductor, abruptly started the bus and, therefore, left leg of the appellant got crushed between the footsteps of the bus and platform. The appellant fell down from the bus and became unconscious. The appellant was thereafter taken to Government Medical College & Hospital, Aurangabad, locally known as “Ghati” Hospital, wherein he was treated. Due to crush injury, his four fingers of left leg were amputated

resulting into 43% permanent disability. Thus, it is claimed by the appellant that the accident took place due to negligence of Respondent No.2 i.e. driver of the said bus and, therefore, the respondent-MSRTC is liable to pay him compensation.

3 The learned Tribunal, after holding trial, rejected the claim and hence this appeal.

4 The learned Counsel for the appellant-claimant submits that the learned Tribunal has dismissed the Claim Petition erroneously without considering the evidence on record in proper perspective. He pointed out that the learned Tribunal ignored the spot panchanama Exhibit-26 where from it appears that there was a platform at the place of accident. He further submitted that the learned Tribunal wrongly held that the accident had taken place only due to negligence of the appellant and, there was no role of Respondent No.2-driver in it. According to him, the learned Tribunal unnecessarily relied upon the report filed by the concerned

Police Inspector who investigated the matter, without examining him. In the alternative, he submitted that the report itself indicates two versions and, therefore, cannot be relied upon to arrive at a conclusion that the appellant himself was negligent. He further pointed out that the evidence of conductor is of no use in determining who was at fault. He further submitted that the learned Tribunal, without examining the concerned Police Inspector, relied upon the MLC statement without confronting the same to the appellant. He pointed out that the statements recorded by the Police Inspector, upon which his report was based, cannot be considered as a documentary proof in respect of negligence of the appellant-claimant since the same were recorded under Section 161 of the Code of Criminal Procedure for the purpose of contradicting only. He, therefore, submits that considering the age, notional income and appropriate multiplier, the learned Tribunal should have determined just and proper compensation. The learned Counsel for the appellant, in support of his contentions, relied upon following two judgments:

01 **Mallikarjun Vs. The National Insurance Company**
 Limited and others, (2014) 14 SCC 396; and

02 **Mohd. Sabeer alias Shabir Hussain Vs. Regional**
 Manager, U.P. State Road Transport Corporation, 2022
 SCC OnLine SC 1701.

4 On the contrary, learned Counsel for Respondent
No.1-MSRTC has strongly opposed the submissions made on
behalf of the appellant-claimant and supported the impugned
judgment. He submits that the report Exhibit-15 clearly
indicates that the accident took place due to sole negligence
of the appellant-claimant himself and, therefore, the learned
Tribunal has rightly rejected his claim.

5 Heard rival submissions and also perused the
entire record and proceedings of the original Claim Petition
along with impugned judgment.

6 On perusal of the impugned judgment, it appears
that the learned Tribunal has rejected the claim of the
appellant-claimant on the ground that the spot panchanama

Exhibit-26 did not indicate any existence of platform at the bus stop where the accident took place and that CW No.3-Arshad was having close acquaintance with the appellant and, therefore, his evidence was not believable. Further, it appears that the learned Tribunal, by relying upon the report of Police Inspector, Kranti Chowk Police Station, Aurangabad, submitted to District & Sessions Judge, Aurangabad, at Exhibit-15, came to the conclusion that the appellant, in MLC case No.54 of 1998, told the police otherwise and contrary to his version in the Claim Petition. The learned Tribunal has relied the statement given by the appellant-claimant during the course of investigation wherein he had stated that he boarded the running bus and as his one leg remained outside the bus and he sustained injuries as it struck to the road. Thus, it appears that the learned Tribunal has rejected the Claim mainly on the basis of aforesaid report.

7 It is the case of the appellant that at about 10.15 p.m., at City Bus Stop, Railway Station, Aurangabad, he boarded the offending bus to go to Shahganj and at that time,

Respondent No.2 – driver of the said bus, without waiting for signal from the conductor, abruptly started the bus and, therefore, left leg of the appellant crushed between the foot-board of the bus and the platform. The learned Tribunal has observed that there was no existence of platform on the place of incident. However, this observation is totally contrary to the contents of the spot *panchanama* Exhibit-26. The said spot *panchanama* clearly indicates that the spot was inside the bus stand and there was existence of platform made up of sand and metal where buses were used to be parked. Thus, the aforesaid observation about non existence of platform is *prima facie* erroneous. Further, the learned Tribunal has heavily relied upon the report submitted by the concerned Police Inspector at Exhibit-15. Though it is mentioned in the said report that the appellant had stated that since he was standing in the door of that bus and his one leg was hanging outside the bus and he sustained injury to said leg, however, there is one more report at Exhibit-17 on the record submitted by the same Police Inspector to the District and Sessions Judge, Aurangabad, wherein it is

mentioned that the appellant told him that he boarded the running bus and since his one leg remained outside the bus, he sustained injuries. He also mentioned in the said report at Exhibit-17 that the appellant had not stated that Respondent No.2 – bus driver drove the bus negligently at the relevant time. Further, it is also evident from the said report that statements of nearby people were recorded but they did not tell that the said bus has given dash to the appellant. Moreover, driver i.e. present Respondent No.2 had also not stated, whether the appellant had boarded the said bus. As such, the report at Exhibit-17 indicates that there was request from the Investigating Officer to file MLC as no offence was made out.

8 It is extremely important to note that there is difference between the aforesaid reports, which are at Exhibits-15 and 17 submitted by the same Investigating Officer. In the first report at Exhibit-15, the said Police Inspector has not stated that the appellant told him that he had boarded the running bus. Though the Investigating

Officer had recorded statements of witnesses, but those statements are merely recorded under Section 161 of the Code of Criminal Procedure and the same cannot be used as documentary proof of negligence of the appellant. Such statements are to be used only for contradicting the person who stated so. Moreover, it is significant to note that Respondent-MSRTC did not examine the said Police Inspector who had submitted such reports to verify contents of the same. Moreover, the MLC was not shown to the appellant in his cross-examination to show him that he had stated so before the police. Thus, without examining the concerned Police Inspector, the reports at Exhibits-15 and 17 cannot be relied upon.

9 The High Court of Punjab and Haryana, in the case of **National Insurance Co. Ltd. Vs. Suman and others**, reported in 2018 Legal Eagle (P & H) 483, has observed that the findings of Criminal Court as to the guilt of acquittal of the driver are wholly irrelevant for the purpose of trial on merit of the Claim Petition before the Motor Accident Claims

Tribunal. Further, it is also held that the report filed under Section 169 of the Code of Criminal Procedure, in respect of the accused driver of the offending vehicle, has no bearing at all on the validity of the accident claim. Similar view has been taken by the Madras High Court in the case of **Bajaj Allianz General Insurance Company Limited Vs. Munni & others** (MANU/TN/1432/2022).

10 Here, in this case, the Police Inspector, who was investigating the crime in respect of the accident, had also submitted that no substance was found in the report of the appellant in respect of negligence of Respondent No.2- driver. However, as observed aforesaid, this report cannot be considered for the purpose of establishing negligence on the part of the appellant-claimant. Moreover, it is extremely important to note that the concerned Police Inspector has also not been examined by the Respondent-MSRTC to prove the contents of the same. On the contrary, it appears that the appellant himself has stated as to how the accident took place. Moreover, it is also supported by one eye witness and,

therefore, the fact cannot be denied that the appellant had sustained crush injury to his left leg due to the platform as the same was crushed between the foot-board of the offending bus and the platform.

11 In the light of above discussion, negligence of the appellant has also not been proved by the Respondent-MSRTC. Therefore, the learned Tribunal has definitely erred in holding that since the appellant was negligent, he was not entitled for the compensation. It is significant to note that the learned Tribunal, by holding the appellant negligent, has dismissed the Claim Petition without making further calculation in respect of the compensation amount.

12 Since I have found that the appellant has proved that he sustained injury in the accident and that his negligence could not be proved, I have to determine just and proper compensation as per the guidelines given by the Hon'ble Apex Court in the case of **Raj Kumar Vs. Ajay Kumar & another**, reported in (2011) 1 SCC 343, which is a landmark

judgment in determining the compensation amount in injury claims.

13 Admittedly, the appellant had produced medical prescriptions and a Bill at Exhibits-42 to 44. Exhibit-44 clearly indicates that there was expenditure of Rs.7520/- on account of medicines. Therefore, considering the same and the period for which the appellant was admitted to Government Medical College & Hospital ('GHATT'), Aurangabad, lump sum amount of Rs.10,000/- can be granted to him under the head of medical expenses and allied charges.

14 Further, though the disability certificate at Exhibit-30 indicates that the appellant suffered from permanent disability to the extent of 43%, but the appellant has not examined the Medical Officer to that effect. Further, it is significant to note that only 4 fingers of left leg of the appellant were amputated and, therefore, it is highly difficult to determine whether the aforesaid percentage of permanent

disability was in respect of whole body or to the extent of that specific limb itself. Further, while determining correct compensation and assessing future loss of income, the functional disability needs to be considered. In this case, there is no evidence to show as to what was the notional disability of the appellant. Through the evidence of CW4 – Dr. Akram Ahmed Khan, it has been brought on record that the appellant could not run fast or jump, however, he can certainly do other work even after losing 4 fingers of his left foot. Therefore, for assessing the future loss of income, his notional disability can safely be taken to 8%.

15 Further, the appellant was 16 years old at the time of accident and was not a earning member and, therefore, his notional income can be taken to Rs.3000/- per month. Since his notional disability is determined at 8% on permanent basis, his loss of income per month comes to Rs.240/-. Further, considering his age being 16 years at the relevant time, multiplier of 18 is applicable as per the observations of the Hon'ble Supreme Court in the case of **Sarla Verma and**

others Vs. Delhi Transport Corporation and another, (2009) 6

SCC 12. Hence, when said multiplier is applied to the future loss of income of the appellant, the future loss of income comes to Rs.51,840/-(Rs.240/- X 12 X 18). Further, an amount of Rs.10,000/- can also be awarded to the appellant on the ground of pain and sufferings. As such, I assess the compensation, which is awarded to the appellant, as follows:

Sr. No.	Head	Amount
01	Future loss of income	Rs.51,840/-
02	Medical expenses & allied charges	Rs.10,000/-
03	Pain and sufferings	Rs.10,000/-
	Total:	Rs.71,840/-

16 It is to be noted that I am deciding this appeal in the year 2023 and, therefore, prevailing rate of interest @ 6% p.a. needs to be awarded on the aforesaid compensation amount from the date of Claim Petition till its realisation.

17 In the result, following order is passed:

(A) Appeal is hereby partly allowed.

(B) Respondent No.1-MSRTC shall pay compensation

of Rs.71,840/- (Rs. Seventy-one thousand Eight hundred Forty) to the appellant along with interest @ 6% p.a. from the date of Claim Petition till its realisation within the period of three months from the date of this judgment.

(C) Award be drawn accordingly.

(D) No costs.

(SANDIPKUMAR C. MORE)
JUDGE

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