

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

FIRST APPEAL NO.1452 OF 2004

Sk. Rafiuddin Sk. Samsuddin
Age 34 yrs. Occ. Rikshaw Driver,
R/o Malegaon, Tal. Malegaon,
Dist. Nasik

**... APPELLANT /
(ORIG. CLAIMANT)**

VERSUS

The Maharashtra State Road
Transport Corporation, Divisional
Office, Dhule, Tal. & Dist. Dhule

**...RESPONDENT
(ORIG. OPPONENT)**

...

Advocate for the Appellant : Mr. M. H. Patil
None present for the Respondent

...

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 17.01.2023.

PRONOUNCED ON : 31.01.2023.

JUDGMENT :

1. By way of this appeal, the appellant i.e. original claimant has taken exception to the judgment and award dated 03.04.2004 passed by the Member, Motor Accident Claims Tribunal, (hereinafter referred to as the 'learned Tribunal') in M.A.C.P. No. 733/2000, only on the ground of quantum of compensation. The impugned judgment indicates that the

learned Tribunal has awarded compensation of Rs. 47,000/- inclusive of NFL amount from the respondent -MSRTC along with the interest @ 9 % per annum from the date of petition till its realization. The aforesaid amount of compensation appears to be received by the present appellant.

2. Heard learned counsel for the appellant. On the contrary, the learned counsel for respondent -MSRTC despite appearance remained absent.

3. According to the learned counsel for the appellant, the learned Tribunal has granted meager amount of compensation ignoring the percentage of disability to the extent of 50% which was sustained by the appellant- claimant. He pointed out that the appellant had in fact claimed amount of Rs. 1,50,000/- being just compensation, but the learned Tribunal did not consider the documents on record in proper perspective.

4. With the assistance of learned counsel for the appellant perused the impugned judgment and award along with the original record and proceeding of MACP No. 733/2000.

5. On going through the impugned judgment, it is evident that the learned Tribunal has granted lump-sum amount of Rs. 35,000/- on account of suffering permanent disability and Rs. 5,000/- towards medical expenses and Rs. 2,000/- on account of loss of income. The learned Tribunal has also awarded amount of Rs. 5,000/- towards pain and sufferings. As such, the learned Tribunal has awarded total compensation of Rs. 47,000/-. However, as per the observation of Honourable Apex Court in case of *Rajkumar and Ajaykumar and another reported in (2011) 1 SCC 143* : a specific mode of calculating the amount of compensation in personal injury claims is there. Though the said judgment was not in existence when the present claim has been decided, but it is substantially made clear by the Honourable Apex Court that its subsequent judgments in respect of award in compensation in death cases and injury cases are applicable to pending cases and even the pending appeals. As such, as per the aforesaid mode of calculations, the just compensation needs to be determined in the instant matter.

6. The record shows that the appellant did not examine any witness from the medical field to substantiate that he suffered

from permanent disability to the extent of 50% due to the injuries sustained by him in the accident. Further, there are also no medical bills on record in support of the medical expenses claimed by him. However, the permanent Disability Certificate is there on record at Exhibit 27 which indicates that the appellant suffered from permanent disability to the extent of 50%. Since the appellant has not examined the doctor, who issued the said certificate, it is highly difficult to believe that he suffered from 50% permanent disability. Further, in absence of evidence of doctor, it also cannot be concluded as to whether the percentage of said disability was to the extent of full body or to the particular affected part of the body. Further, nothing is there on record to determine functional disability of appellant which is necessary for determination of just compensation and for assessing the future loss of income. Though it is mentioned in the said disability certificate that there was 50% permanent disability to the appellant, but considering the nature of injury i.e. fracture of humerus, it can be safely inferred that the appellant must have recovered from the said injury by the passage of time. Therefore, for want of any specific medical evidence, the functional disability suffered by the appellant on permanent basis can be taken as

10% for determination of future loss of income. There is no dispute by the learned counsel for the appellant in respect of his income of Rs. 3,000/- per month. Therefore, considering the percentage of functional disability to the extent of 10%, future loss of income of the appellant comes to Rs. 300/-. Further, the leaving certificate of the applicant at Exhibit 28 indicates his date of birth as 01.06.1972 and therefore on the date of accident i.e. on 11.07.2000, he was 28 years old. Therefore, a multiplier of 17 will be applicable as per observation of Honourable Apex Court in the case of ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another***, reported in ***AIR 2009 (6) SCC 3104***. Thus, applying the said multiplier to the actual loss of income of appellant, his future loss of income comes to Rs. 61,200/-.

7. It appears that the learned Tribunal has awarded amounts of Rs. 5,000/- each and Rs. 2000/- under the heads of medical expenditure, pain and sufferings and loss of sufferings respectively. However, considering the nature of injury and period undergone for recovery from the injuries amount of Rs. 10,000/- can be granted instead of Rs.2,000/- under the head of loss of actual income. As such, I assess the amount of

compensation of the applicant as follows :

Particulars	Amount
Loss of future Income	Rs. 61,200/-
Medical expenses	Rs. 5,000/-
Pain and sufferings	Rs. 5,000/-
Loss of income	Rs. 10,000/-
Total	Rs. 81,200/- =====

Thus, the appellant is now entitled for total compensation of Rs. 81,200/- which appears to be a just compensation. The said compensation is inclusive of award under Section 140 of Motor Vehicle Act under the principle of 'No Fault Liability'.

8. The respondent -MSRTC has already satisfied the impugned award by paying amount of Rs. 47,000/- along with the accrued interest and therefore, the amount of Rs. 47,000/- needs to be deducted from the aforesaid compensation. As such, the appellant is now entitled for enhanced compensation of Rs. 34,200/-. Since I am deciding the appeal in the year 2023 the prevailing rate of interest at the rate of Rs. 6% per annum will be applicable.

9. In the result, following order is passed :

ORDER

- (i) Appeal is hereby partly allowed.
- (ii) The respondent -MSRTC shall pay the enhanced compensation amount of Rs. 34,200/- to the appellant along with the interest at the rate of 6% per annum from the date of petition till its realization within the period of three months from the date of this order.
- (iii) On depositing the aforesaid amount by respondent - MSRTC, the appellant will be entitled to withdraw the said amount.
- (iv) Award be modified and prepared accordingly.
- (v) No order as to costs.

(SANDIPKUMAR C. MORE)
JUDGE

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shp/-