



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3101 OF 2016
WITH CA/9107/2023

Maharashtra State Road Transport Corporation, Through Divisional ...Appellants
Controller, Division Office, At (Orig. Respondent
Aurangabad No. 1)

Versus

1. Madhav S/o Ganpatrao Gawande,
Age 65 yrs, Occu. Nil,
R/o T.V. Centre, Hadco,
Aurangabad. Dist. Aurangabad.
 2. Anita W/o Madhav Gawande,
Age 65 yrs, Occu. Nil,
R/o T.V. Centre, Hadco,
Aurangabad. Dist. Aurangabad
Through Madhav S/o Ganpatrao
Gawande, R/o T.V. Centre, Hadco,
Aurangabad. Dist. Aurangabad
 3. Chandu S/o Dharma Salam
Age Major, Occu. Driver,
R/o Asoli, Post Mohada,
Tq. Kelpur, Dist. Yeotmal,
At present R/o. Bhiwandi,
Tq.dist. Aurangabad
- ...Respondents**

WITH
CROSS APPEAL NO. 01 OF 2019

1. Madhav S/o Ganpatrao Gawande,
Age 70 years, Occu – Nil,
 2. Anita D/o Madhav Gawande (Injured)
Age- 40 years, Occu-Nil,
Both R/o. T.V. Centre, Hudco,
Aurangabad
- ...Appellants**
(Ori. Claimants)

Versus

1. Maharashtra State Road Transport Corporation, Through Divisional Controller, Division Office, At Aurangabad
2. Chandu S/o Dharma Salam
Age Major, Occu. Driver,
R/o. Bhivdikh,
Tq & Dist. Aurangabad

...Respondents

Ms. R. D. Reddy, Advocate for Appellant in FA/3101/2016 & for Respondent No. 1 in Cross Appeal No. 01/2019
Mr. R. V. Gore, Advocate for Respondent No. 1 in FA/3101/2016 & for Appellants in Cross Appeal No. 01/2019

CORAM : R.M. JOSHI, J.

RESERVED ON : FEBRUARY 16, 2024
PRONOUNCED ON : FEBRUARY 29, 2024

JUDGMENT:

1. These Appeals are preferred under Section 173 of Motor Vehicle Act, 1988 (for short "**M. V. Act**") by the claimants and the Maharashtra State Road Transport Corporation (for short "**MSRTC**") against the judgment and award dated 23.03.2016 passed in MACP No. 532/2012.
2. Parties are referred to as claimants and MSRTC for the sake of convenience.
3. The facts which led to the filing of these Appeals can be narrated in short as under:

On 20.12.2011 claimant/injured was travelling

in Bajaj Tempo Taxi bearing registration no. MH-20-AA-5906 from Aurangabad to Paithan. When the said vehicle reached near Balanagar, MSRTC bus bearing registration no. MH-20-D-9302 gave dash to the taxi. As a result of the said dash, claimant sustained injuries to her head, hand and eye. She was admitted in Apex Hospital, Aurangabad wherein surgery was performed on her. It is the case of the claimant that she was employed with Nath School, Paithan as a teacher and was drawing Rs. 35,000/- per month salary. In the accident, she sustained permanent disability and due to the same she cannot perform any work including her service as teacher. Claimant sought compensation for pecuniary as well as for non-pecuniary damages.

4. MSRTC filed written statement at Exh. 29 denying the allegations in the Petition. It is denied that the accident has occurred due to the negligence of the driver of the bus. It is claimed that MSRTC is not liable to pay any compensation to the claimants.

5. Tribunal framed issues at Exh. 34. On behalf of the claimant her father Madhav Gawande was examined at Exh. 35. He led evidence on the basis of the police

papers as he was not eye witness to the accident in question. Claimant has also examined Dr. Jaiswal to prove permanent disability caused to her. For the purpose of proving the employment and income, Santosh Kharat was examined at Exh. 58. MSRTC did not examine any witness in order to rebut the evidence led by the claimant. Learned Tribunal by passing impugned judgment and award directed MSRTC to pay compensation of Rs. 70,48,325/- along with interest @ 9% p.a.

6. MSRTC filed Appeal by challenging the impugned judgment and award taking exception to the amount of compensation granted by the Tribunal. It is the contention of the MSRTC that the Tribunal has awarded not just but exorbitant compensation. It is also claimed that the Tribunal has committed error in holding that the driver of the bus negligent. It is claimed that the taxi driver ought to have been examined by the claimant in order to prove there was no negligence on his part. It is also claimed that the claimant was not passenger of the bus and as such, MSRTC is not liable to pay any compensation. There is also contention that the claimant ought to have added

owner and driver of the bus as Respondents to the claim Petition and in absence of the same, the claim Petition ought to have been rejected for non-joinder of necessary parties.

7. Claimant, on the other hand, has sought enhancement of the claim particularly on the count that the future prospects are not considered by the Tribunal while determining the compensation towards loss of income on account of permanent disability, so also no adequate damages are granted on the heads such as loss of marital prospects, painant suffering, future medical expenses etc.

8. Learned Counsel for MSRTC submits that owner and driver of the taxi were not made as party and hence, Petition is not maintainable for non-joinder of necessary parties. It is her further contention that the Tribunal has granted exorbitant compensation without considering the fact that there is no evidence on record to indicate that the claimant is actually terminated from the services owing to the permanent disability caused to her. It is also submitted that this is not the case wherein future prospects can be

granted. By referring to the judgment of Hon'ble Apex court in case of *R. D. Hattangadi Vs. Pest Control India Private Limited, LAWS (SC) 1995 1 109*, it is submitted that in case of grant of future prospects the Court would not be justified in awarding any interest thereon as the said money is due in future.

9. Learned Counsel for the Claimants, on the other hand, opposed the said contentions and stressed that the compensation in fact is inadequate as it does not consider the future prospects. It is submitted that by following the dictum of Hon'ble Supreme Court in case of *National Insurance Co. Ltd. v. Pranay Sethi and Others, 2017 16 SCC 680*, 50% amount ought to have been added towards future prospects. It is also claimed that the claimant was aged about 35 years old at the time of unfortunate accident and that owing to the disability caused to her she has lost her marital prospects and on that count too she needs to be compensated adequately.

10. The principle behind grant of compensation to a victim of motor vehicular accident, is that, though no amount of compensation can restore the loss of limb or pain experienced of loss of life, but damages to be

awarded are to be adequate in terms of money so that an injured/claimants are put in the same position had they not suffered loss on account of wrong of Respondent. In the instant case, claimant sustained injury and permanent disability in the motor vehicular accident. Perusal of the record indicates that there is overwhelming evidence on record to hold that the claimant was travelling on the fateful day in the taxi which met with an accident with MSRTC bus. Since claimant was a passenger in taxi, she is no way responsible for the occurrence of the accident. Documentary evidence/police papers indicate that offence came to be registered against driver of ST bus. The claimant, therefore, has discharged initial burden to prove that accident occurred due to negligence of driver of MSRTC and that she suffered injuries in the said accident.

11. Evidence of Dr. Jaiswal indicates that owing to the accidental injuries the claimant has suffered 87% disability. His evidence also shows the nature of injuries caused to claimant and the nature of disability. As per evidence of expert witness, who has

assessed disability of the claimant, she is paraplegic and not in a position to perform even her daily routine. She is dependent upon others for her sustainment physically and financially as well.

12. By examining Santosh Kharat, claimant has established that she was working as 'Teacher' with salary of Rs. 22,000/- per month as rightly held by the Tribunal. His evidence further discloses that after accident claimant was not able to attend her duties. Having regard to the medical evidence as well as nature of permanent disability caused to her, this Court finds no substance in the contention of learned Counsel for MSRTC that there no evidence to show that the claimant is terminated from service, she is not entitled for compensation for loss of income. The evidence on record leads only to the conclusion that she would never perform any work much less as a teacher.

13. Needless to reiterate that owing to the nature of injuries and permanent disability to the claimant, it is impossible for her to perform her duties as teacher. Even if, she is not formally terminated from services, she would not have been paid any salary as

she could have never performed her duties. In such circumstances, it is incumbent on the part of the Tribunal to consider 100% loss of earning capacity of the claimant, which has rightly been done considering facts of this case. The Tribunal, however, has not granted future prospects while determining the compensation on this count. Once it is accepted in principle that the intention of grant of compensation to victim is to put him/her in the position had they not suffered accident and consequential injury/loss, it would be absolutely necessary to consider what would have been the earning of such person. Having worked as teacher, claimant ought to have earned more and by no stretch of imagination could have stagnated to same salary. Thus, the future prospects are necessarily to be included while determining amount of compensation. This would be more required in the case one in hand, where a woman of young age is completely dependent upon others for her survival due to permanent disability. The inflation would hurt her more than any one else and unless she is financially secure, there is no guarantee that she could be looked after properly.

14. In case of Pranay Sethi (supra) the Hon'ble Apex Court has laid down criteria for determination of future prospects. In case of employed person aged below 35 years is entitled for 40% compensation in addition to the existing income. In the instant case, claimant was aged 35 years at the time of accident. Evidence led by Santosh Kharat proves that she was in employment of the school as a teacher. There is nothing to show that she was ad-hoc/temporary employee. In such circumstances, it is a fit case to grant 40% future prospects while deciding the loss of income.

15. In the instant case, learned Tribunal has calculated the number of years of service remained to be performed by claimant and on that basis compensation is calculated. This method does not get support from the provisions of the Act or by binding precedents. The loss of income in this case would have to be determined on the basis of the calculation of compensation towards loss of dependency, since the claimant has become 100% disable i.e., wont be able to perform any work, at any time, in entire life. The last drawn income of claimant is Rs. 22,000/-. By addition

of 40% income the said amount comes to Rs. 30,800/-. Her age at the time of accident was 35 and hence, multiplier of 16 would apply. Since it is injury claim, there is no need to deduct any amount towards personal expenses as done in case of death claim filed by dependents. Thus, the claimant would be entitled to receive a sum of Rs. 59,13,600/- towards loss of income. This finding is inevitable as the Court is expected to determine just compensation.

16. As far as the non-pecuniary heads is concerned, Tribunal has not considered the fact that the claimant is a lady and was aged about 35 years at the relevant time. No doubt, owing to the disability caused to her she would never be able to get married and is being deprived of marriage life/prospects. In such circumstances, though any amount of damages would not be enough to compensate such loss but some reasonable amount needs to be granted towards the same. Having regard to the present total amount of compensation determined, amount is determined @ Rs. 2,00,000/- (Rupees Two Lacs Only). Similarly, considering the fact that the dependency of claimant on

others is for lifetime, compensation granted by Tribunal on heads like pain and suffering, aftercare expenses are not adequate, and hence, deserves enhancement. Learned Tribunal has considered other aspects of the case and has granted compensation for painant suffering, medical expenses etc. This Court finds no reason to modify the same.

17. With regard to the challenge to the judgment and award by MSRTC for non-joinder of necessary parties, there is no substance in the objection raised with regard to the maintainability of the claimant, as it is settled law that it is choice of the claimant to seek compensation from both joint tortfeasor or either of them. Here in this case, claimant has decided to seek compensation from MSRTC. Claimant has proved that the accident in question has occurred due to the negligence on the part of the driver of MSRTC bus. In such circumstances, objection with regard to the non-joinder of necessary parties deserves no consideration.

18. As far as interest is concerned, in the peculiar facts and circumstances of the case, interest would have to be granted on enhanced amount as the

amount is enhanced on non-pecuniary heads. Hence, amount of compensation payable is determined as follows:

Sr. No.	Heads	Calculations in Rs.
1.	Loss of income Rs.3,69,600/- pa x multiplier of 16 (total income Rs. 2,64,000 + 40% future prospects Rs.1,05,600)	59,13,600/-
2.	Pain and Suffering	1,00,000/-
3.	Transportation Expenses	20,000/-
4.	Special Diet	10,000/-
5.	Aftercare Expenses/assistance	1,00,000/-
6.	Medical Expenses	8,49,325/-
7.	Marital Prospects	2,00,000/-
	Total	71,92,925/-

19. In view of this, this Court finds no substance in challenge to the impugned judgment and award sought by MSRTC. Hence, First Appeal No. 3101 of 2016 is dismissed. Since claimants have succeeded in seeking enhancement of compensation, Cross Appeal No. 01/2019 is partly allowed. Hence, the order:

O R D E R

- (a) Cross Appeal No. 01/2019 is partly allowed. Impugned judgment and award dated 23.03.2016 passed in MACP No. 532/2012 stands modified. Total compensation is Rs. 71,92,925/- along with interest @ 9% p.a. as determined above.
- (b) The difference of compensation be deposited within a period of six weeks.

- (c) Rest of judgment and award to remain unchanged.
- (d) Claimants to pay Court fee on enhanced compensation as per rules.
- (e) Amount deposited (along with interest) by MSRTC is permitted to be withdrawn by Claimants.
- (f) No order as to costs.
- (g) In view of disposal of Appeals, pending applications, if any, are also disposed of.

(R. M. JOSHI, J.)

Malani