



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2414 OF 2019

Somnath s/o Suresh Mogal,
Age 31 years, Occu: Service & Agri.
R/o Deogaon Rangari,
Tq. Kannad, Dist. Aurangabad

... **Appellant**
(Orig. Claimant)

VERSUS

1. Maharashtra State Regional Transport Corporation, Through Divisional Controller, M.S.R.T.C., Aurangabad Division, Aurangabad

...

2. S. A. Dhaneshwar,
Age- Major Occu: Driver
R/o Vaijapur Depot,
Through M.S.R.T.C., Aurangabad

... **Respondents**
(Orig. Respondent
Nos.1 and 2)

WITH
FIRST APPEAL NO. 3852 OF 2019

Maharashtra State Regional Transport Corporation, Through Divisional Controller, M.S.R.T.C., Aurangabad Division, Aurangabad

... **Appellant**
(Orig. Respondent
No.1)

VERSUS

1. Somnath s/o Suresh Mogal,
Age 31 years, Occu: Service & Agri.
R/o Deogaon Rangari,
Tq. Kannad, Dist. Aurangabad

2. S. A. Dhaneshwar,
Age- Major Occu: Driver
R/o Vaijapur Depot,
Through M.S.R.T.C., Aurangabad

... **Respondents**
(R-1 Orig.
Claimant and
R-2 Orig.
Respondent No.2)

Mr. Shrikant Y. Patil & V. D. Sonawane Advocate for Appellant/Claimant
Mr. Manoj Shinde h/for Mr. Mr. M. K. Goyanka, Advocate for the
Respondents/M.S.R.T.C.

CORAM : Y. G. KHOBRAGADE, J.
RESERVED ON : 2nd May, 2024
PRONOUNCED ON : 9th May, 2024

JUDGMENT:

1. Both these Appeals are arising out of Judgment and Award dated 1st of December, 2018 passed by learned Member, Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. No. 336 of 2017. First Appeal No. 2414 of 2019 is preferred by the original Claimant seeking enhancement of compensation. Whereas another First Appeal No. 3852 of 2019 is preferred by the original Respondent/M.S.R.T.C., challenging the quantum of compensation on the ground of contributory negligence on part of Respondent No.1/original Claimant as well as on part of Respondent No. 2/Driver. Therefore, both these appeals are being decided together. (For the sake of brevity parties to both the present Appeals are referred in their original capacity.)

2. After hearing both the sides in First Appeal No. 3852 of 2019, following questions arise as under:

- A. Does the Appellant/original Respondent M.S.R.T.C., proves collision of S.T. Bus and Motorcycle on head to head?

B. Whether contributory negligence 50-50% can be attributed to the Claimant and Bus driver of S.T. Bus?

3. In First Appeal No. 2414 of 2019 question arises that, Whether the learned Tribunal has granted compensation in disproportionate?

4. In nutshell the facts giving rise to the claim petition are that, on 18.04.2017, the Complainant was proceeding on motorcycle bearing registration No. MH-20-EB-7422 and at about 20.30 hours he reached near Divashi-Pimpalgaon, Tq. Gangapur District Aurangabad at that time, the Respondent No. 2 Bus Driver was plying the S.T. Bus bearing registration No. MH-20-BL-2326 in high speed in rash and negligent manner and gave dash to his motorcycle, due to which he sustained grievous injuries on several parts of his body. The Respondent No.1/ M.S.R.T.C., is owner of the said Bus. After the accident, he was shifted to Government Medical College and Hospital, Aurangabad, where he was indoor patient w.e.f. 18.04.2017 to 22.04.2017. Thereafter Shri Manjinath Abarao Jadhav reported accident to Police Station Sillegaon, on basis of which Crime No. 114 of 2017 registered against Respondent No. 2/Driver for the offences punishable under Sections 279, 337 and 338 of Indian Penal Code.

5. Since, the Claimant has not satisfied with the medical treatment given in Government Hospital and Medical College, Aurangabad therefore, he was shifted to Sahyadri Multi Specialty Hospital, Mukundwadi, Aurangabad, where he was medically treated being indoor patient from 22.04.2017 to 26.04.2017. During the course of medical treatment, necessary surgery was performed and steel rod was inserted in his right leg. He incurred expenditure to the tune of Rs. One Lakh towards his medical treatment.

6. According to the Claimant, at the time of accident he was 28 years old. He was working being daily wager with M.S.E.B.. He was drawing amount of Rs. 700/- per day. Beside this, he having agricultural land and earning Rs. Two Lakhs per year. He suffered 16% permanent disability to his right leg, due to which, he is unable to work with M.S.E.B. and perform agricultural operation, hence, prayed for compensation to the tune of Rs. 50 Lakhs.

7. The Respondent Nos. 1 and 2 filed their written statement at Exh. 13 and denied the claim of the Claimant. According, Respondents, the Claimant was riding his motorcycle at high speed in middle of the road in rash and negligent manner, due to which the complaint lost control over his motorcycle and in consequence given dash on front side of the bus from driver side. Therefore, the claimant is negligent to the extent

of 50% for occurrence of said accident.

8. On the basis of rival pleadings, the learned Tribunal framed Issues at Exh.14. The Claimant examined himself as CW-1 at Exh.15, Navnath Karde as CW-2 at Exh.18 and Dr. Sachin Surendra Bedmutha as CW-3 at Ex. 28. Beside oral testimony, the Claimant proved documentary evidence viz., FIR at Exh. 23, Spot Panchanama at Exh.24, Form-AA at Exh.25, Bill issued by Sahyadri Multi Specialty Hospital at Exh.29, Disability Certificate at Exh.30 and Charge sheet at Exh.36.

9. On 01.12.2018, the learned Tribunal partly allowed the claim petition holding that the claimant is entitled for compensation of Rs. 3,39,328/- and directed the Respondents to pay jointly and severally said amount with interest @ 8% per annum from the date of filing of the claim petition till its realization.

10. The learned counsel appearing for the Claimant vehemently submits that, at the time of accident, the Claimant was 28 years old and he suffered 16% permanent disability in accident occurred on 18.04.2017 near Divashi-Pimpalgaon, Tq. Gangapur District Aurangabad because of dash given by the Respondent no. 2.

11. The claimant sustained 16% disability at his right leg and steel rod inserted, which is duly proved in evidence of CW-3, Dr. Sachin

Surendra Bedmutha, who issued disability certificate at Exh. 30. It is further canvassed that, due said disability the claimant is unable to move and execute his normal activities. However, the learned Tribunal failed to consider evidence of P. W. 3 and granted meagre amount of compensation.

12. The learned counsel for the claimant further canvassed that prior to accident, the Claimant was working with M.S.E.B., on daily wages and was drawing income Rs. 700/- per day i.e. Rs.21,000/- per month. But due to permanent disability, the claimant is deprived from his income of Rs. 2,52,000/- per annum. Therefore, considering 16% disability and loss of earning, the claimant is entitled for benefit of 25% of his annual income.

13. Therefore, the Claimant is entitled for compensation to the tune of Rs. 10,71,000/- (Rs.63000 x 17=Rs. 10,71,000/-) and loss of future prospects, however, the learned Tribunal granted meager compensation of Rs.3,39,328/-, hence, prayed for enhancement.

14. According the claimant he is entitled for reassessment of the compensation as under:

1	Compensation for future earning and benefits	Rs.10,71,000/-
2.	Medical Expenses	Rs.1,00,000/-
3.	Pain and suffering	Rs.1,00,000/-

4.	Loss of amenities of life	Rs.2,00,000/-
5.	Loss of expectation of life	Rs.2,00,000/-
6.	Disfigurement of leg	Rs.1,00,000/-
7.	Discomfort, inconvenience and Hardship in future	Rs.1,00,000/-
8.	Compensation for continuing permanent disability in future	Rs.2,00,000/-
9.	Loss of Salary during trial period of 2 months (Rs.21,000/- x 2)	Rs. 42,000/-
10.	Misc. Expenses	Rs.50,000/-
	Total	Rs.21,63,000/-

Thus the claimant has prayed for enhancement i.e. 21,63,000

(-) 3,39,328 = Rs. 18,23,672/-.

15. Per contra, the learned counsel appearing for M.S.R.T.C. submits that as per Spot Panchanama at Exh. 24, the Claimant was riding his motorcycle in middle of the road and gave dash on front right side of the bus. The sketch map of the accident proves about occurrence of accident in middle of the road. However, the learned Tribunal failed to consider the fact that claimant is contributory negligent to the extent of 50% as the claimant/motorcyclist gave dash on front right side of the Bus. Therefore, the Respondent No. 1 as well as the Claimant are contributory negligent 50-50%, hence, the learned Tribunal ought to have awarded 50% compensation only.

16. In support of these submissions, the learned counsel appearing for the M.S.R.T.C. relied on the case of ***Municipal Corporation***

of Greater Bombay Vs. Shri Laxman Iyer and another, AIR 2003 Supreme Court 4181.

17. It is further canvassed on behalf of learned counsel for M.S.R.T.C., that, the evidence of CW-3 Dr. Sachin Surendra Bedmutha who medically treated the claimant and issued Disability Certificate Exh.30 proves that, the claimant suffered 16% permanent disability, but said disability does not appear in reference to the entire body, but it is only in reference to the right leg of the claimant. Therefore, the learned Tribunal ought to have granted compensation to the extent of 16% disability on right limb/leg of the Claimant.

18. To buttress this submissions, the learned counsel appearing for the appellant M.S.R.T.C., placed reliance on the case of **Raj Kumar Vs/ Ajay Kumar and another**, (2011) Supreme Court Cases 343.

19. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the record. Though, the claimant prayed for enhancement of compensation to the tune of Rs. 18,23,672/- under different heads as described herein above.

20. The claimant examined himself at Exh. 15 and deposed that, at the relevant time he was serving being a daily wager in

M.S.E.B., and was drawing wages @ Rs. 700/- per day. Beside this he was earning income of Rs. 2,00,000/- from agricultural produce. He suffered 16% permanent disability as per Disability Certificate Exh. 30. In cross examination, the claimant admitted that he has not produce wage certificate. The claimant has not examine any officer/competent person of M.S.E.B., to prove wage/salary certificate to prove that he was drawing Rs. 700/- per day wages.

21. Needless to say that, though the claimant claimed that he having agricultural land and drawing income of Rs. 2 lakhs per year, from the agricultural product, but the claimant has not produced documentary evidence to support his income. Therefore, in absence of documentary evidence, the learned Tribunal considered complaint's notional income of Rs. 5500/- which comes to Rs. 66000/- per annum only.

22 Though the claimant claimed that, at the time of accident he was 28 years old but no documentary evidence produced before the learned Tribunal to prove his age. The claimant produced disability certificate at Exh. 30 which described age of claimant as 29 years. Therefore, as per case of ***Sarla Verma Vs. Delhi Transport Corporation***, reported in **(2009) 6 SCC 121**, the learned Tribunal has applied multiplier of '17' and ascertained the gross compensation to the tune of

Rs.11,22,000/- and considering 16% disability as per medical certificate Exh.30) compensation comes to Rs.1,79,520/-. In addition, the learned Tribunal granted Rs. 71,808/- i.e. 40% of 1,79,520/- towards loss of income. Further, the learned Tribunal has granted Rs.38,000/- towards medical expenses incurred by the claimant and Rs.50,000/- towards pain and suffering and nutritious diet, the total of which comes to Rs.3,39,328/-.

23. In the case in hand, the claimant has proved about sustaining 16% disability. However, as per evidence of RW-1, S. A. Dhaneshwar, driver of S.T. Bus bearing registration No. MH-20-BL-2326, at about 8.00 to 8.30 p. m, he reached near Devshi Pimpalgaon on Nashik-Aurangabad Highway and he was driving his bus from the left side of the road in moderate speed. There is Hotel and Petrol Pump near the spot of incident. He saw the police personnel and took the bus behind police van to stop the Bus but at the same time, the claimant came from opposite direction in high speed, in rash and negligent manner and gave dash to the ST Bus from front on driver side.

24. The CW-2, Navnath karde deposed at Exh. 18 that on 18.04.2017, at about 8.30 p.m., he received a phone call informing that the claimant met with an accident at Devashi-Pimpalgaon, Tq. Gangapur Dist. Aurangabad. Thereafter, within 15-20 minutes, he reached at spot of accident and noticed that, the S.T. Bus bearing

registration No. MH-20-BL-2326 was standing on left side of the road and the claimant was lying on right side of the road. Thereafter, some one called Ambulance and the claimant was taken to Hospital.

25. The Spot panchanama at Exh. 24 proves that, the claimant was riding the motorcycle in middle of the road and gave dash on head of the Bus on driver side. Therefore, it prima facie appears that the Motorcycle and Bus collided on head to head. As per Exh. 24 Spot Panchnama, the accident occurred in middle of the road. Since, the complaint was riding Motorcycle, therefore, he could have easily notice the Bus while coming opposite direction but evidence of the claimant is silent to this fact and gave dash to Bus on front of right side of the bus. Therefore, the driver of the offending vehicle cannot be held 100% liable for causing the accident. At the same time, the claimant could have been vigilant and cautious while riding the motorcycle.

26. In case of ***Raj Kumar Vs/ Ajay Kumar & Anr., cited supra***, the Hon'ble Supreme Court observed in Para Nos. 5 to 12 as under:

"5. The provision of the Motor Vehicles Act, 1988 ('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 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, and his inability to earn as much as he used to earn or could have earned. (See C. K. Subramonia Iyer vs. T. Kunhikuttan Nair - AIR 1970 SC 376, R. D. Hattangadi vs. Pest Control (India) Ltd. - 1995 (1) SCC 551 and Baker vs. Willoughby - 1970 AC 467).

6. The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/ disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case.

Assessment of future loss of earnings due to permanent disability

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part

of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%.

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in

terns of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. - 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010 (8) SCALE 567).

12. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement,

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity. "

27. In the case of **Municipal Corporation of Greater Bombay** cited supra, the Hon'ble Supreme, in Paragraph Nos. 6 and 7, has held as under:

6. A plea which was stressed strenuously related to alleged contributory negligence. Though there is no statutory definition, in common parlance 'negligence' is categorised as either composite or contributory. It is first necessary to find out what is a negligent act. Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations who ordinarily by reason of conduct of human affairs would do or obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such

other person suffers injury. The idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is a negligent act. Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of other's negligence. Whichever party could have avoided the consequence of other's negligence would be liable for the accident. If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See Charlesworth on Negligence, 3rd Edn. Para 328). It is now well settled that in the case of contributory negligence, courts have power to apportion the loss between the parties as seems just and equitable. Apportionment in that context means that damage are reduced to such an extent as the court thinks just and equitable having regard to the claim shared in the responsibility for the damage. But in a case where there has been no contributory negligence on the part of the victim, the question of apportionment does not arise. Where a person is injured without any negligence on his part but as a result of combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled by Pollock as injury by composite negligence. (See Pollock on Torts, 15th Edn. P361).

7. *At this juncture, it is necessary to refer to the 'doctrine of last opportunity'. The said doctrine is said to have emanated from the principle enunciated in Devies v. Mann (1842 (10) M&W 546) which has often been explained as amounting to a rule that when both parties are careless the party which has the last opportunity of avoiding the results of the other's carelessness is alone liable. However, according to Lord Denning it is not a principle of law, but test of causation. (See Davies v. Swan Motor Co. (Swansea) Ltd. (1949 (2) KB 291). Though in some decisions, the*

doctrine has been applied by courts, after the decisions of the House of Lords in The Volute (1922 (1) AC 129) and Swadling v. Cooper (1931 AC 1), it is no longer to be applied. The sample test is what was the cause or what were the causes of the damage. The act or omission amounting to want of ordinary care or in defiance of duty or obligation on the part of the complaining party which conjointly with the other party's negligence was the proximate cause of the accident renders it one to be the result of contributory negligence.

28. In the case in hand, it prima facie appears that as per spot panchanama at Exh. 24, said accident occurred in the middle of the road and the claimant gave dash by his motorcycle on front right side of the Bus, which corroborates by CW-2, Navnath Karde. Therefore, Respondent No. 2/Driver of the offending Bus cannot be attributed 100% negligence, but it has to be contributory 50-50% negligence on the part of claimant as well as Respondent No. 2/Bus driver. However, the learned Tribunal fail to consider contributory negligence 50-50% on part of Claimant and Respondent No.2/Bus Driver. In view of above discussion, I am of view that, impugned Judgment and Award requires modification holding that, the claimant and Respondent no. 2 both are contributory negligent to the extent of 50%-50% for occurrence of accident.

29. Since, the Claimant held responsible for contributory negligence of 50%, therefore, he would be entitled for 50% of the compensation granted under the impugned judgment and award dated 01.12.2028. Accordingly, the compensation granted by the learned Tribunal requires to be reduced by 50%.

30. In view of the above discussion, First Appeal No. 3852 of 2019 preferred by the M.S.R.T.C. deserves to be partly allowed and First Appeal No. 2414 of 2018 preferred by the Claimant deserves to be dismissed. Accordingly I proceed to pass the following order:

::O R D E R::

- (I) First Appeal No. 3852 of 2019 is hereby partly allowed.
- (ii) The Impugned Judgment and Award dated 01.12.2018 passed by the learned Tribunal in M.A.C.P. No. 336 of 2017 is hereby modified only to the extent quantum of compensation.
- (iii) The Claimant is entitled to total compensation of Rs.1,69,664/- (i.e. 50% of Rs.3,39,328/-) including of No fault Liability with interest @ 8% per annum from the date of filing of Petition i.e. 16.06.2017 till realization of the entire amount.
- (iv) First Appeal No. 2414 of 2019 preferred by the Claimant is hereby dismissed.
- (v) No Order as to cost.
- (vi) Award be drawn up accordingly.

(Y. G. KHOBRAGADE, J.)

JPchavan