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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3269 OF 2015

Bhagwan Nagnath Mude
Age - 25 years, Occ - Now Nil
R/o Chincholi, Taluka - Nilanga
District - Latur

APPELLANT

VERSUS

1. Abbas Mohammad Patel
Age - 49 years, Occ - Service
R/o Kazi Galli, Osmanabad
Taluka and District - Osmanabad
2. Divisional Controller,
M.S.R.T.C. Ltd., Latur

RESPONDENTS

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Mr. Shrimant Munde h/f Mr. N. B. Ghute, Advocate for appellant
Mr. Vinesh C. Solshe, Advocate for respondent No.1
Mrs. Ranjana D. Reddy, Advocate for respondent No.2.
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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 2nd SEPTEMBER, 2024

ORAL JUDGMENT :

1. Admit. Taken up for final disposal by consent of the learned advocates for the parties.
2. This appeal, filed by appellant - original complainant, under section 173 of the Motor Vehicles Act, challenges the judgment and award passed by the learned *ex-officio* Member of the Motor Accident Claims Tribunal, Latur, in MACP No. 204 of 2009.

3. On 24th November, 2008, claimant, along with Agriculture Officer and Security Officer was proceeding towards Nilanga in a jeep. When he reached Harangul Railway Station, at about 7.45 p.m., one ST bus came from opposite direction and while wrongly overtaking, gave dash to the jeep driven by the claimant, which was on its correct side i.e. left side. In the accident, the claimant suffered grievous injuries and was referred to Civil Hospital, Latur. From there, he was shifted to Planet Critical Care Center, Latur and was admitted there from 25th November, 2008 to 29th November, 2008. Thereafter, he was indoor patient in Gandhi Hospital, from 30th November, 2008 to 2nd December, 2008. Then he took treatment at Dinanath Mangeshkar Hospital at Pune. In spite of the treatment, he is not fully recovered and has suffered 30% permanent disability i.e. total loss of vision of right eye and 20% disability towards limbs. Due to loss of vision of right eye, he is unable to drive vehicle. He, therefore, claimed compensation of Rs.6,00,000/- from the driver of the ST bus and the MSRTC,

4. The respondents opposed the claim, by filing written statements, contending that one travels bus was coming from the backside of the jeep driven by claimant, which had given dash to the jeep and due to that dash, the claimant has given

dash to the ST bus and hence, they are not liable to pay compensation.

5. The Tribunal, after considering the evidence brought on record, partly allowed the claim and awarded compensation of Rs.2,56,175/- along with interest @ 6% p.a. Being aggrieved by the inadequate compensation awarded by the Tribunal, claimant has filed present first appeal for enhancement of compensation.

6. Heard learned advocate for the appellant - claimant, learned advocate for respondent No. 1 - ST bus driver and learned advocate for respondent No.2 - MSRTC. Perused the impugned judgment and award, Record and Proceedings and the citations relied on by the learned advocate for the appellant.

7. Learned advocate for appellant - claimant submits that since the claimant has permanently lost complete vision of his right eye and he is not in a position to drive vehicle, his functional disability ought to have been taken at 100% by the Tribunal. However, in spite of there being disability certificate showing 30% permanent disability to the vision and 20% disability due to malunited fracture of right radius ulna, the Tribunal has erroneously held 25% total disability and has awarded inadequate compensation to the claimant. The age of the claimant, at the time of the accident, was 23 years and,

therefore, in view of the decision of the Hon'ble Apex Court in ***"Sarla Warma and Others V/s Delhi Transport Corporation and Another"* 2009 (5) Mh.L.J. 775**, the multiplier applicable is 18, however, the Tribunal has wrongly applied the multiplier of 17. Further submission is that interest @ 9% p.a. should have been awarded by the Tribunal instead of 6% p.a. In support of this submission, he relied on a decision of learned Single Judge of this Court in ***"National Insurance Co. Ltd., V/s Nilesh Suresh Bhandari"* LAWS (Bom)-2022-3-255**. He submits that the Tribunal has awarded less compensation towards non pecuniary damages, therefore, according to him, claimant is entitled for just and fair compensation of Rs.13,27,525/- along with interest @ 9% p.a.

8. Learned advocate for respondent No. 2 - MSRTC supported the impugned judgment and award. She submits that the disability certificate (Exhibit-75) is not issued by the doctor, who has treated the claimant. Disability certificate (Exhibit-71) showing 20% disability issued by the doctor, indicates that there is malunited fracture of right radius ulna, which cannot be said to be a cause of any disability. She therefore, supported the impugned judgment and award, submitting that the Tribunal has awarded adequate compensation to the claimant and no case is made out by the claimant to interfere in impugned judgment and

award.

9. Learned advocate for respondent No.1 – ST bus driver, adopted the submissions of MSRTC. In addition he submits that the Tribunal has failed to deduct one third amount towards personal expenses of the claimant, by deducting that amount, in fact the compensation awarded to the claimant needs to be reduced.

10. Neither the accident in question nor the injuries suffered by the claimant are in dispute. By producing injury certificate of Civil Hospital at Exhibit-27, the claimant has brought on record that he sustained fracture of right radius ulna middle 1/3 and grievous head injury. The discharge card issued by Dinanath Mangeshkar Hospital, also shows that the claimant had suffered these injuries. The discharge card also shows that the claimant has lost vision of his right eye. Dr. Amol Gaddikar, an eye specialist (CW-3) is examined and he has deposed that he examined the claimant on 3rd May, 2010 and found that due to the injury to his right eye, post optic nerve is damaged and there is total damage of vision of right eye. He, therefore, issued permanent disability certificate (Exhibit-75) stating that the claimant has suffered 30% permanent disability. Dr. Gaddikar has specifically deposed that the claimant is unable to drive vehicle due to the disability of

right eye. Dr. Khaled Kazi (CW-2), has proved the disability certificate (Exhibit-71) of fracture injury of right radius ulna, which is to the effect that the claimant has suffered 20% disability.

11. In view of evidence Dr. Gaddikar that the claimant is unable to drive vehicle, the Tribunal ought to have assessed functional disability of the claimant, however, the Tribunal has observed that - *“... besides driving the vehicle, the claimant can do any suitable work and something earn for his livelihood. Hence, in the absence of any exact evidence regarding disability specifically i.e. whether it is limbwise, bodywise or functional, the said disability cannot be taken into consideration to infer that there is a total loss of income of the claimant and therefore, considering 30% disability as per Exh.75, for loss of right eye vision and 20% disability for malunited fracture of right radius ulna, it will be proper to take it 25% disability as bodywise and for assessing the compensation.”*

12. From the above observations of the Tribunal, it is clear that the Tribunal has failed to appreciate the evidence of Dr. Gaddikar in the proper perspective and has erred in assessing bodywise disability of the claimant at 25%. When it is specifically deposed by Dr. Gaddikar that the claimant is unable to drive vehicle because of the permanent disability, the Tribunal ought to have taken functional disability of the claimant at least at 75%. True it is that the claimant can earn his livelihood by doing other work,

but the fact remains that due to the permanent disability incurred because of the accident, he is not in a position to drive vehicle, which was his avocation at the time of the accident.

13. There is merit in the contention of the claimant that in view of the decision in **“Sarla Warma”** (*supra*), since at the time of accident, age of the claimant was 23 years, multiplier of 18 is applicable in his case. The Tribunal has assessed monthly income of claimant at Rs.3580/- and yearly income at Rs.42,960/-on the basis of evidence led by the claimant. The Tribunal has rightly awarded compensation of Rs.15,000/- for pains and sufferings and has also awarded medical expenses for which bills were produced by the claimant.

14. Learned advocate for respondent No.1 - ST Bus driver is right in submitting that one third amount needs to be deducted from the compensation towards personal expenses of the claimant in view of decision in **“Sunil Kumar V/s Ram Singh Gaud and Others” 2007 (14) SCC 61.**

15. In **“Nilesh Bhandari”** (*supra*), learned Single Judge of this Court, by relying on the decision of the Apex Court in **“Kaushnuma Begum and Others V/s New India Assurance Co.” 2001 (1) SCR 8**, has awarded 9% interest p.a. Accident in this case is of the year 2005, whereas in the present case,

accident is of the year 2008. Therefore, claimant is entitled for interest @ 7.5 % p.a.

16. For the aforestated reasons, the claimant is entitled for following compensation:

Sr. No.	Particulars	Amount
01	Income of the claimant 3580 X 12	42,960
02	Loss of income = 42960 X 75%	32,220
03	Minus 1/3 towards personal expenses 32220 / 3	21,480
04	Future prospects @ 40% = 21480 X 40% + 21480	30,072
05	Multiplier of "18" 30,072 X 18	5,41,296
06	Compensation towards pains and suffering	15,000
07	Medical bills	24,645
08	Total compensation	5,80,941
09	Compensation awarded by the Tribunal	2,56,175
09	Enhanced compensation = 580941-256175	3,24,766

17. In the result following order

ORDER

- A. First Appeal is partly allowed with proportionate cost.
- B. Impugned judgment and award passed by learned *Ex-officio* Member, Motor Accident Claims Tribunal, Latur in MACP No. 204 of 2009 dated 18th March, 2011 is modified to the effect that the claimant is entitled for enhanced compensation of Rs. 3,24,766/- along with interest @ 7.5% p.a. on the entire compensation, from the date of filing of the claim petition till realization.

- C. Respondent No.2 MSRTC is directed to deposit the amount of enhanced compensation, along with interest in the Tribunal, within 12 weeks from the date of receipt of writ of this judgment in the Tribunal.
- D. Claimants to pay court fee on enhanced compensation as per rules.

**[NITIN B. SURYAWANSHI]
JUDGE**