

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 2089 OF 2007

Pandurang Bahiru Shingate	}	
Age-52 years, Occ : Service (Talathi)	}	
R/at Plot No.3, Ganesh Housing Society,	}	
Yeshwant Nagar, Wai, District-Satara.	}	...Appellant

Versus

NILAM
SANTOSH
KAMBLE

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1. General Manager,	}	
Maharashtra State Road Transport Corp.,	}	
Thr. Divisional Controller, Talegaon,	}	
Dabhade S.T. Depot, District-Pune,	}	
Thr. Divisional Controller, Satara Depot,	}	
Satara	}	
2. Bhanudas Sadashiv Gavali	}	
Age-38 years, Occ: S.T. Driver,	}	
R/at Pansare, Taluka-Baramati,	}	
District-Pune.	}	...Respondents

Ms.Gargi Warunjikar a/w Dr.Uday Warunjikar, for the Appellant.
Ms.P.M. Bhansali i/b Mr.G.S. Hegde, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4th DECEMBER 2024

ORAL JUDGMENT :-

. By this Appeal, the Appellant is seeking enhancement
of compensation.

2. It is contention of the learned counsel for the Appellant that, due to accidental injuries the Appellant has suffered 80% permanent physical disability. He was in Government Service and due to disability he resigned from the service. But this fact is not considered by the Tribunal. The learned counsel further submitted that, the Appellant was getting agricultural income. Due to disability he is not getting agricultural income as compared to before the accident. He had to appoint some other person to supervise the agricultural work. The Tribunal has not considered loss of agricultural income. The learned counsel further submitted that the Tribunal has not awarded amount for special diet, pain and suffering and loss of enjoyment of life. The learned counsel further submitted that the Appellant has spent amount of Rs.6,69,768/- for medical expenses, but the Tribunal has awarded only Rs.5 lakh. No compensation for future medical expenses is awarded. The Tribunal has applied multiplier of 10 it should be 11 as at the time of the accident the Appellant was 52 years old. The Tribunal has considered monthly income on lower side. The

Tribunal should have considered the monthly salary of the Appellant as monthly income.

3. The learned counsel further submitted that, the Tribunal has awarded 6% interest it should be 9% and the Tribunal has considered 70% contributory negligence of the Appellant and 30% of the driver of the ST bus, which is erroneous as accident occurred due to sole negligence of the ST bus driver. Hence, requested to allow the Appeal.

4. It is contention of the learned counsel for the Respondent-Corporation that, accident occurred due to sole negligence of the Appellant as he gave dash to the offending bus. The Police papers produced on record shows accident occurred due to sole negligence of the Appellant, but the Tribunal has fixed 30% negligence on the ST bus driver, which is erroneous. The learned counsel further submitted that, the Appellant was government servant. After the accident he continued in service and he was getting monthly salary so there is no loss to the monthly income of the Appellant. The learned counsel further submitted that, as the Appellant was government servant, he can't

do agricultural work so no question of agricultural income arises. After the accident the said agricultural income is continued so there is no loss of agricultural income. The Tribunal has considered evidence produced on record, on that basis well reasoned judgment and order is passed. No interference is required in it and requested to dismiss the Appeal.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Satara.

6. It is Claimants case that at the time of the accident he was serving as a Talathi at Loni Taluka Khandala. At the same time, he was also cultivating his agricultural land and getting sumptuous yearly income. On the day of accident i.e. on 16-4-1998 he was going to attend his office at Loni by motorcycle bearing No.MH-11/9461. He was driving motorcycle in moderate speed. At about 10.45 a.m. his motorcycle was passing through Khambatki mountain pass. The road was zig zag and having downward slope. At that time, one ST bus bearing No.MH-12/FA-1688 came from the opposite direction in high

and excessive speed. Due to excessive speed, S.T. driver could not control the bus, therefore a head on collision took place between the ST bus and his motorcycle. The accident occurred due to negligence of the S.T. Driver.

7. While dealing with the issue of negligence, the Tribunal has observed that, it appears from record that, the Appellant attempted to overtake the truck ahead of him, he was riding motorcycle and while doing so the motorcycle of the Appellant suddenly came in front of the S.T. bus and it collided against the front portion of the ST bus, resulting the accident. The learned Tribunal further observed that, at the time of the actual collusion motorcycle of the Appellant went on wrong side of the road by crossing the distance of 4 feet from the middle of the tar road. On that, basis the Tribunal has considered 70% negligence of the Appellant and 30% of the ST Bus driver, as ST bus driver also contributed in the said accident and he could have avoided head on collision and could have applied the break. I do not find infirmity in the observations of the Tribunal in respect of observations of head on collision. It appears from record that ST

bus was in high and excessive speed though it was ghat section. The ST bus driver should have driven in it moderate speed. Hence, I hold that there was 50% contributory negligence of the ST bus driver and 50% of the Appellant.

8. To prove the income of the Appellant, the Appellant has examined himself at Exhibit-30. He has stated that, he was working as Talathi and his gross salary was Rs.4,901/- per month. Salary certificate is at Exhibit-17 and his net salary was Rs.3,251/-.

9. While dealing with the issue of income, the Tribunal has considered net salary as monthly income of the Appellant. I am unable to understand the observations of the Tribunal as it is settled principle of law that the Tribunal has to consider gross salary after deducting the professional tax and income tax. The salary of the Appellant was Rs.4,901/- per month, hence I am considering this salary as monthly income of the Appellant. The Appellant has stated that, he had agricultural land and he was getting income from it.

10. It is contention of the learned counsel for

Respondent-Corporation that, the Appellant was government servant, he could not have been able to cultivate agricultural land and agricultural income is continued after the accident. In my view, the Appellant has suffered 80% permanent physical disability. After the accident he has resigned from the service. He has to appoint someone for agricultural supervision. Hence I am considering Rs.12,000/- as yearly supervisory charge for agriculture land. It has come on record that, at the time of accident the Appellant was 52 years old. The Tribunal has applied multiplier of 10, it should be 11. Hence, I am considering this multiplier.

11. It has come on record that, the Appellant has spend around Rs.6,69,768/- for medical expenses, but Tribunal has considered Rs.5 lakhs. The Tribunal has awarded Rs.1 lakh for future medical expenses. The Certificate at Exhibit-43 shows that, the future medical expenses is Rs.2,22,000/-. Hence, I am considering Rs.1,22,000/- more for future medical expenses. I am considering Rs.30,000/- for special diet, Rs.30,000/- for pain and suffering, Rs.30,000/- for loss of enjoyment. The Tribunal

has granted 6% interest, it should be 7.5%.

12. Considering above calculations, the Claimant's are entitled for following compensation:-

Particulars	Amount
Monthly Income	Rs.4,901/-
Yearly Income (4901 x 12)	Rs.58,812/-
Add : Agricultural Income	Rs.12,000/-
Total Income	Rs.70,812/-
Disability 80%	Rs.56,649.6/-
Multiplier : 11 X 56649.6	Rs.6,23,145.6/-
Add: Future Medical	Rs.2,22,000/-
Add: Medical Bills	Rs.5,00,000/-
Motorcycle	Rs.10,000/-
Pain & Suffering	Rs.30,000/-
Special Diet	Rs.30,000/-
Loss of Enjoyment	Rs.30,000/-
Total	Rs.14,45,145.6/-
50% Contributory negligence	Rs.7,22,573/-

13. In view of above, I pass following order.

ORDER

(i) The Appeal is allowed.

(ii) The Claimants are entitled for compensation of

Rs.7,22,573/- @ 7.5% per annum from the date of the filing of Claim Petition till realization of the amount.

(iii) The Claimants are permitted to withdraw the deposited amount alongwith interest.

(iv) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(v) Record and Proceedings be sent back to the Tribunal.

(vi) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)