

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 1071 OF 2023
WITH
CROSS OBJECTION (ST) NO. 29956 OF 2019**

Depot Manager,)
Maharashtra State Road Transport)
Chiplun Depot, Tal. Chiplun, Dist. Ratnagiri)
Through Divisional Controller, Sangli Division,)
Sangli)... Appellant

Versus

- | | | | |
|---|--|------------------|--|
| 1 | Abhijet Sopan Satpute |) | |
| | Age : 25 years, Occ. At present Nil, |) | |
| | R/o. Sakharale, Tal. Walwa, Dist. Sangli |) | |
| 2 | Hemantkumar Ramchandra Kadam |) | |
| | Age : 38 years, Occ. Service, |) | |
| | MSRTC Central Bus Stand, Chiplun Depot, |) | |
| | Tal. Chiplun, Dist. Ratnagiri – 425 605 |)... Respondents | |

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Mr. D.D.Rananaware, Advocate for the Appellant.

Mr. Avesh Ghadge i/b. Mr. Akshay Kulkarni, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATED : 17th DECEMBER, 2024.

ORAL JUDGMENT :

1. The issue involved in this appeal are accident caused due to negligence of the respondent/claimant and income of the respondent/claimant is considered on higher side. The respondent/claimant has also filed cross objection for enhancement of compensation.

2. It is contention of learned counsel for the appellant/Corporation that accident occurred due to sole negligence of the respondent/claimant. Respondent/claimant was occupant in the rickshaw which was overloaded. The driver of said rickshaw driven it rashly and negligently and he was not having licence and permit. Due to overload, he could not control the speed of rickshaw and gave dash to the offending bus. The said fact is proved before the Tribunal but it has not been considered. Learned counsel further submitted that the Tribunal has considered monthly income of the claimant at Rs.7,000/- per month without any evidence on record and on that basis compensation is awarded which is on higher side, hence requested to allow the appeal.

3. It is contention of learned counsel for the respondent/claimant that due to accidental injury the claimant has suffered 85% disability and his right leg is amputated. At the time of accident, he was 23 year old but the Tribunal has awarded compensation on lower side. At the time of accident, the claimant was working as a Manager in Transport Agency and he was getting monthly salary at Rs.13,000/- per month but the Tribunal has considered monthly salary at Rs.7,000/- per month which is on lower side. The Tribunal has not awarded amount for prosthetic leg. Considering the age of the claimant, the Tribunal should have awarded amount for prosthetic leg, hence requested to dismiss the appeal and allow

the cross objection.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Sangli (for short “the **Tribunal**”). It is claimant’s case that on 11.11.2016 at about 6.30 p.m., the claimant along with his brother-in-law and sister and their children were traveling in rickshaw from Pandharpur to Dighanchi. At about 3.40 a.m., one S.T. bus of Chiplun Depot going towards Pandharpur came from opposite side in high and excessive speed and dashed the rickshaw from right side. Consequently, the rickshaw turned turtle and all the passengers were injured. The claimant sustained serious injuries and bones of right leg were fractured. He was admitted in various hospitals.

4.1. While dealing with the issue of negligence, the Tribunal has observed that the driver of offending bus has examined himself and in evidence he has stated that the place of accident was on straight road. At the time of accident he was seeing the road from the height of 8 to 9 ft. There was no hurdle in seeing the distance of 500 to 600 ft. If the S.T. bus or truck are in slow speed, they can take it on the side of road immediately. He further admitted that rickshaw involved in the accident was seen by him from distance of 500 to 600 ft. width of S.T. bus was of 10 ft. There was no other vehicle on the left side of S.T. bus. He further admitted that he had not made complaint about the panchanama drawn by

the police and about the accident shown in the panchanama. He further admitted that both the vehicles were not collided from their front side. Right side of each vehicles were brushed to each other. Considering evidence on record learned Tribunal has concluded that accident occurred due to negligence of driver of offending bus. I do not find infirmity in it. In my view, the offence was registered against the driver of offending bus. The spot panchanama shows that bus had gone on other side of the road for one feet, where rickshaw was coming and brushed it. It is contention of learned counsel for the appellant that the width of the road was 18 ft. and the width of the bus was 10 ft., so it was bounden on the bus driver to go slightly on other side of road. In my view, when the driver of bus was aware about the width of bus, he should have driven the bus from left side of the road. It appears from sketch of the incident spot at Exhibit-42 that the offending bus had gone 1 or 2 ft. on other side of the road., it was not head on collusion between the two vehicles but by going other side of the road. The bus brushed to the auto-rickshaw which was small vehicle and due to the big size of bus, the auto-rickshaw got damaged and two persons died on the spot whereas the claimant and other passengers suffered injury. Hence, I do not see merit in the contention of learned counsel for the appellant that accident occurred due to negligence of the claimant. Moreover, the appellant / claimant was passenger in the rickshaw so no

question of his contributory negligence arises. Considering evidence on record, I do not see merit in the contention that accident occurred due to contributory negligence of rickshaw driver as due to dash, rickshaw turned turtle and the other passengers injured in it. It proves that accident occurred due to negligence of the bus driver. To prove the income of the claimant, the claimant Abhijit has examined himself. He has stated that he was working with Baban Gaikwad and he was getting salary of Rs.16,000/- per month and he was also getting Rs. 10,000/- from milk business. So total he was earning Rs.26,000/- per month. In cross examination he admitted that he has not filed attendance Register before the Tribunal and he has not produced documents to show that he has received the salary amount through cheque or in cash.

To prove his income the claimant has examined PW-3 Pravin Gaikwad. He has stated that the claimant was working with him since 2013 and at the time of accident he was paying him Rs.13,000/- per month. In cross examination he admitted that he has not produced on record the income tax returns in respect of the salary paid to the claimant nor he produced any document in this regard. Considering the evidence on record, the Tribunal has considered monthly income of the claimant at Rs.7,000/- per month. In my view, it is on lower side. At the time of accident the claimant was 23 year old. He was the only karta member of

his family and he was maintaining his family. There is no reason to disbelieve the evidence of PW-3 employer of the claimant. Considering the evidence on record, I am considering monthly income of the claimant at Rs.9,000/- per month. The Tribunal has not awarded compensation for prosthetic leg.

5. It is contention of learned counsel for the appellant/ Corporation that there is no evidence produced before the Tribunal about the requirement of prosthetic leg. The Tribunal has observed in the Judgment that the claimant has not produced any evidence for requirement of prosthetic leg and on that basis the Tribunal has not awarded amount for prosthetic leg which is proper. In my view, it has come in evidence of PW-2 Dr. Patil that due to accidental injuries right leg of the claimant has been amputated. If amputation is there, the prosthetic leg is required. At the time of accident the claimant was 23 year old so for rest of the life he has to use the prosthetic leg hence, I am considering Rs.15,00,000/- for prosthetic leg. The claimant is entitled for loss of income during period of treatment.

6. In view of above calculations, the claimant is entitled for following compensation :

Particulars	Rs.	Entitlement
Monthly Income	Rs.	9,000/-
Loss of Income (Rs. 9,000 X 12 X 18)	Rs.	19,44,000/-
40% Future prospects	Rs.	7,77,600/-
Loss of Income during treatment	Rs.	36,000/-
Medical Expenses	Rs.	1,91,206/-
Pain and Suffering	Rs.	3,00,000/-
Loss of expectation of life	Rs.	2,00,000/-
Attendance & Special diet	Rs.	25,000/-
Traveling expenses	Rs.	25,000/-
Prosthetic leg	Rs.	15,00,000/-
Total	Rs.	49,98,806/-
Compensation awarded by the Tribunal	Rs.	29,11,006/-
Enhanced amount	Rs.	20,87,800/-

Considering the above calculations, claimant is entitled for enhanced amount of Rs.20,87,800/-.

7. In view of the above, I pass following order:

ORDER

- (i) The appeal is dismissed.
- (ii) Cross objection (St.) No. 29956 of 2019 of is allowed.
- (iii) The claimant is entitled for enhanced compensation of Rs.20,87,800/- @7.5% per annum from date of filing of claim petition till realisation.

- (iv) The appellant shall deposit enhanced amount along with interest within six weeks after receipt of the order.
- (v) The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
- (vi) The statutory amount in appeal be transmitted to the Tribunal. The parties are at liberty to withdraw it as per rule.
- (vii) The claimant shall pay deficit Court fees on enhanced amount, if any.

8. All pending applications, if any, also disposed of.

(SHIVKUMAR DIGE, J.)

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by SONALI
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