



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL STAMP NO.31884 OF 2024

Maharashtra State Road Transport Corporation Through
Divisional Controller, Tq. & District Nanded

Versus

Mohammed Bilal Mohammed Khaja U/g Of Father Mohammed
Khaja Mohammed Mahamood, age 11 years, Occ. Education,
R/o Nizam Colony, Nizamabad.

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Advocate for Appellant : Mr. D S Bagul

Advocate for Respondents : Mr. K M Nagarkar

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WITH

CIVIL APPLICATION NO. 4446 OF 2025 IN FAST/31884/2024

CORAM : S. G. CHAPALGAONKAR, J.

Dated : April 23, 2025

FINAL ORDER :-

1. The appellant/MSRTC (original respondent) filed present appeal under section 173 of the Motor Vehicles Act taking exception to the judgment and award dated 22.7.2024 passed by the Motor Accident Claims Tribunal, Biloli, District Nanded in MACP no.97 of 2022. (Parties hereinafter are referred to as per their original status)

2. Respondent/original claimant instituted MACP No.97 of 2022 under section 166 of the Motor Vehicles Act for grant of compensation towards injury/permanent disablement suffered by him in the motor-vehicular accident dated 5.3.2021. According to the claimant, accident occurred due to rash and negligent driving of the MSRTC Bus driver, which

dashed against him resulting into permanent disablement. The claimant was aged about 8 years and due to permanent disablement, he lost amenities in life.

3. M.S.R.T.C. contested the claim by filing written statement on the ground that injured claimant was riding bicycle and suddenly came across the bus and suffered minor injuries, which are now cured. Tribunal, after evaluation of the evidence on record, passed an award granting compensation of Rs.5.00 Lakh alongwith interest @ 7.5% p.a to the claimant.

4. Mr. Bagul, learned advocate appearing for the appellant vehemently submit that Tribunal failed to appreciate evidence on record in proper perspective. There was no fault on the part of the S.T. Driver. Since pleadings and proof of negligence is *sine-qua-non*, in absence of such evidence, claim ought to have been dismissed. He would further submit that assessment of the compensation is highly excessive and exorbitant.

5. Per contra, Mr. Nagarkar, learned advocate appearing for the respondent claimant supports the award.

6. I have considered the submissions advanced by the learned advocates appearing for the respective parties.

7. It is apparent that immediately after the accident, crime no.35 of 2021 was registered against bus driver, who was lateron charge-sheeted for charge of rash and negligent driving. The claimant was riding on bicycle. He suffered multiple injuries as a result of the accident. In this

background, it was for the respondent to lead evidence to show that S.T. driver was not at fault. However, no evidence is recorded on behalf of the respondent. It is trite that in case of minor victim, his contributory negligence cannot be assumed. In such case, it is greater responsibility of the vehicle driver to be more cautious. He cannot raise defence attributing negligence against minor rider. Lord Denning in case of **Gough Vs. Thorne reported in 1967 ACC CJ 183** observed as under :-

“A very young child cannot be guilty of contributory negligence. An older child may be; but it depends on the circumstances. A judge only find a child guilty of contributory negligence if he or she is of such an age, as reasonably to be expected to take precautions for his or her own safety; and then he or she is only to be found if blame should be attached to him or her. A child has not the road sense or the experience of his or her elders. He or she is not to be found guilty unless he or she is blameworthy.”

Salmon, L.J. agreeing with Lord Denning observed that an ordinary child of 13 ½ years, would not have done anything more, than what that child did, in relying unquestionably on the lorry driver's signal, though an older person, despite the signal, would have looked behind before crossing.”

In the present case, the respondent/Corporation failed to bring on record any evidence to controvert evidence in the nature of police paper. The Tribunal is, therefore, justified in holding that accident occurred due to sole negligence on the part of the S.T. Driver.

8. So far as quantification of compensation is concerned, Tribunal relied upon judgment of the Hon'ble Supreme Court of India in case of **Master Mallikarjun V/s Divisional Manager, the National Insurance Company Limited And Another reported in (2014) AAC-9** and quantified compensation towards permanent disablement to the tune of Rs.3.00 Lakh. In the present case, victim is minor, aged about 8 years. The impact of permanent disablement suffered by him cannot be visualized at tender age. Keeping in mind the aforesaid aspect, the Hon'ble Supreme Court of India laid down guidelines to grant compensation of Rs.3.00 Lakh in case of permanent disability in the range of 10% to 30%. The Tribunal has rightly relied upon the aforesaid proposition of law. Tribunal found that claimant was required to spent an amount of Rs.48,051/- towards medical expenses. The claimant was admitted in hospital for five days. Government Medical College and Hospital at Nanded issued certificate for 20% permanent disablement. Discharge summary is placed at Exhibit-23. In such circumstances, apart from the compensation towards permanent disablement, compensation towards pain and sufferings, loss of amenities in life, attendant charges, future medical treatment, etc. needs to be awarded. Taking into account the overall conspectus of the matter, award of compensation of Rs.5.00 lakh needs no interference in the appellate jurisdiction. Tribunal has rightly exercised the jurisdiction within parameters of law.

9. In that view of the matter, appeal stands **dismissed**. Pending civil application, if any, also stands

disposed off. The compensation amount deposited by the appellant/MSRTC be released in favour of the claimant. First Appeal stands disposed of.

(S. G. CHAPALGAONKAR, J.)

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