



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

FIRST APPEAL NO.148 OF 2018

Maharashtra State Road Transport
Corporation, Dhule,
District Dhule,
Through its Divisional Controller,
M.S.R.T.C., Dhule, Tq. & Dist. Dhule

**....Appellant
(Orig. Respondent)**

VERSUS

1) Santosh Devidas Khondde,
Age: 36 years, Occ: Nil,
R/o. Fagane, Tq. & Dist. Dhule.

(Orig. Applicant)

2) Ishwar Devidas Pardhi,
Age: 32 years, Occ: Driver,
R/o. Dharangaon, Dist. Jalgaon

(Dismissed vide Court's
order dated 28/03/2018)

**....Respondents
(Orig. Respondent)**

....

Mr. D. S. Bagul, Advocate for the Appellant
Mr. Shriniwas Kulkarni h/for Mr. S. N. Lavekar, Advocate for
Respondent No.1

....

CORAM : NEERAJ P. DHOTE, J.

RESERVED ON : 24.03.2025

PRONOUNCED ON : 03.04.2025

JUDGMENT :-

1. This Appeal is filed under Section 173 of the Motor
Vehicles Act (for short, MV Act) against the Judgment and
Order/Award dated 11.04.2016, partly allowing the Claim Petition

No.636/2012 by which the learned Tribunal directed the Appellant, who was the original Respondent No.2, and the original Respondent No.1 jointly and severally to pay Rs.14,60,000/- including No Fault Liability compensation to the Applicant with interest at the rate of 8% per annum from the date of accident till realization with proportionate cost of the Application.

2. The facts in brief giving rise to the present Appeal are as under:

(a) The Respondent No. 1, who is the original Claimant before the learned Tribunal, filed the Claim Petition contending that on 20.06.2012, around 2:00 p.m., when he was traveling on a motorcycle with his friends from Dhule towards Faganegaon, and reached near Netaji Day School on the Dhule-Parola road, the State Transport bus bearing No. MH-14-BT-1059, owned by the Appellant, i.e., MSRTC, and driven by Respondent No.2 (against whom the Appeal is dismissed by order dated 28.03.2018) came from the wrong side while overtaking two trucks, gave dash to the motorcycle which resulted into accident. Due to the said accident, the Claimant suffered severe injuries in his leg.

(b) The Claimant was admitted to the hospital for medical

treatment, and the accident was reported to the Dhule Taluka Police Station, where Crime No. 158/2012 was registered for the offence punishable under Sections 279, 337, 338 and 427 of the Indian Penal Code (for short, IPC) and under Section 184 of the MV Act against the Respondent No.2. During the medical treatment, the right leg of the Claimant came to be amputated and due to the disability suffered by the Claimant in the said motor vehicular accident, the Claimant, who was in the work of hair cutting and working in a salon, suffered loss of income. The Claimant claimed total compensation of Rs. 20 lakh with interest at the rate of 18% per annum.

(c) The Claim Petition was resisted by the Appellant by filing written statement at Exhibit-19. The contentions of the Claimant and every material averment in the Claim Petition came to be denied.

(d) The learned Tribunal framed following issues at Exhibit-20.

(i) Whether the Applicant proves that he sustained injury/permanent disability due to rash and negligent driving of driver of S.T. Bus No. MH-14/BT-1059 which is owned by opponent No.2?

(ii) Whether the accident is outcome of contributory negligence on the part of drivers of both the vehicles?

(iii) Whether the Applicant proves that the opponents are jointly and severally liable to compensate him?

(iv) If yes, to what extent?

(v) What relief and order?

In support of the Claim Petition, the Claimant examined himself by filing an evidence affidavit at Exhibit-24 and brought on record the Police Papers, Injury Certificates, and B-Form at Exhibits-25, 26, 27, 28 and 29. The Manager from the hospital where the Claimant was treated was examined as Witness No. 2 at Exhibit-31, and the bills towards the medical expenditure were brought on record at Exhibit-32. The doctor of the hospital where the Claimant's leg was amputated was examined as Witness No. 3 at Exhibit-33, and the medical papers, such as the discharge card and bills, were brought on record. No evidence was laid by the Appellant and the other opponent. After hearing both the sides and considering the evidence available on record, the impugned Judgment and Award came to be passed.

3. Heard both sides and perused the record.

4. It is submitted by the learned Advocate for the Appellant that, the learned Tribunal failed to consider the Police Papers, particularly the spot panchanama, which shows that the accident was the result of contributory negligence. There were three (03) persons, including the Claimant, on the motorcycle at the time of the accident.

The Insurance Company of the motorcycle of the Claimant was not impleaded as a party Respondent in the Claim Petition. There was two (02) days' delay in filing the Appeal. The accident was the result of negligence by the Claimant, as the motorcycle gave dash to the bus from the back side. The Doctor who issued the disability certificate was not examined. The Claimant was a Barber, and no income proof was submitted in support of the Claim Petition. The learned Tribunal considered the monthly income of the Claimant at the rate of Rs.4,000/- per month which was on the higher side. There was no evidence to show that the Claimant owned the saloon. The compensation granted towards future prospects and the rate of interest were also on the higher side. In absence of age proof of the Claimant, the age considered by the learned Tribunal was erroneous. The learned Tribunal awarded the compensation much more than what was necessary. The impugned Judgment and Award be quashed and set aside and the Appeal be allowed.

5. It is submitted by the learned Advocate for the Claimant that, proper issues were framed by the learned Tribunal on the basis of the pleadings, and the material available on record was rightly considered. There was sufficient material on record in support of the

compensation awarded by the learned Tribunal. There were Separate medical bills and medicine bills on the record. The learned Tribunal considered all aspects of the matter and rightly calculated the compensation. Therefore, the Appeal be dismissed.

6. There can be no dispute on the point that no strict rules of evidence are applicable to the proceedings in claim Petition for compensation under the MV Act. As regards the contention of the learned Advocate for the Appellant about two (02) days' delay in the registration of the First Information Report in respect of the accident, it is amply clear from Exhibit-25, which is the FIR, that information in respect of motor vehicular accident was received by the concerned Police Station on 20.06.2012 itself, and the necessary entry in the motor accident register and station diary was made. There is no dispute on the point that, the motor vehicular accident took place on 20.06.2012. Therefore, considering the aforesaid aspect as referred in the FIR itself, that the accident was reported to the concerned Police Station on the very day of accident, the delay in registering the FIR becomes inconsequential.

7. As regards the submission of the learned Advocate for the Appellant that the accident was the result of contributory negligence,

as the Motorcycle gave dash to the aforesaid bus from the backside, and since it was a case of contributory negligence, impleadment of the Insurance Company with which the Motorcycle was insured was necessary, it was not established before the learned Tribunal that the accident was the result of contributory negligence. Though in the written statement it was pleaded that the Motorcycle came from opposite side in a rash and negligence manner and gave dash to the bus while overtaking on the wrong side, no evidence was laid to prove the said contention, even by preponderance of probability. Undisputedly, the crime was registered against the driver of the said bus. Exhibit-26, which is the spot panchanama of the spot where the accident took place shows damage at the front on the driver's side of the bus. From the evidence laid before the learned Tribunal, even by preponderance of probability, it is not shown that the said motor vehicular accident was the result of contributory negligence. It is needless to state that the Claimant, who is the Respondent in this Appeal, was an eye-witness to the accident and he examined himself by filing an evidence affidavit and nothing has come in the cross-examination to accept the contention of the Appellant, that the accident was due to contributory negligence. Thus non adding of the

Insurance Company of the Motorcycle was not necessary.

8. Coming to the other aspects of the matter, it is clear, and there is no dispute, that the Claimant was hospitalized for treatment of the injuries suffered during the said motor vehicular accident. The medical papers were brought on record in the evidence of the witnesses who were attached to the said hospital where the Claimant was medically treated, in the capacity of Medical Manager and Resident Medical Officer. The medical evidence established that the Claimant was hospitalized from 20th June to 27th June 2012, and his right leg was amputated. Nothing has come on record to discard the medical evidence brought on record by the Claimant. According to the Claimant, he was a Barber having salon. However, no document to show that, he owned the saloon was brought on record. At the same time, there is nothing to discard the Claimant's case that he was engaged in the work as a Barber. In absence of the income proof of the Claimant, the learned Tribunal considered Rs.4,000/- as the monthly income of the Claimant. Even if it is considered that the Barber shop remains closed for four (04) days in a month, for the remaining 26 days, the said notional income is appropriate, as the Barber's earning per day can be to the extent of Rs.150/-. This shows

that the notional income was considered by the learned Tribunal. It cannot be said that the notional income of Rs.4,000/- per month was exorbitant.

9. The learned Trial Court considered 100% functional disability of the Claimant. The work as a Barber is necessarily to be done by standing. The consequence of amputation of one leg, would be that, the Claimant will not be able to do his work as a Barber. At Exhibit-29, the Form-B issued by the Civil Surgeon, General Hospital, Dhule is brought in evidence. It corroborates the Claimant's case in respect of amputation of right leg though the said certificate indicates disability as 80%, the functional disability of the Applicant is 100% by considering his nature of work as a Barber. In this regard useful reference can be made to the judgment of the Hon'ble Supreme Court of India in ***Raj Kumar vs. Ajay Kumar and Another (2011) 1 SCC 343***.

In the said Judgment, it is observed as under:

“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. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after

assessing the loss of earning capacity in terms of percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). 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 on 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 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. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability. The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. When compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the

head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under that head”

On the basis of evidence on record, consideration of 100% functional disability of the Claimant to carry his work as Barber by the learned Tribunal cannot be faulted.

10. As regards the contention of the learned Advocate for the Appellant in respect of age of the Claimant is concerned, admittedly, no birth certificate was brought on record by the Claimant. In the police papers, the Claimant's age is shown as 33 years, in injury certificate Claimant's age is shown as 35 years. In the Claim Petition, which was filed in the year 2012, the age of Claimant is shown as 32 years. In the evidence affidavit which was filed in the year 2015 the age of Claimant is shown as 34 years which shows that the Claimant was within the age between 30 and 35 years. The learned Tribunal considered the age of the Claimant as 32 years at the time of accident. As per Judgment in ***Sarla Verma and others Vs. Delhi Transport Corporation and another – (2009) 6 SCC 121***, the multiplier for the age between 31 and 35 year is the same and therefore, no interference is required with the consideration of age by the learned Tribunal. As regards the interest is concerned, the

learned Tribunal has granted interest from the date of accident till realisation. The same needs to be modified to the extent that, it should be from the date of filing the Claim Petition pursuant to the provisions of Section 171 of the MV Act. As regards the compensation on the other hand, the following calculations have been done by the learned Tribunal.

Notional Income	+	Rs.00,04,000.00
50% future prospect	+	Rs.00,02,000.00
Monthly income	+	Rs.00,06,000.00
Yearly loss(6000X12)	+	Rs.00,72,000.00
Multiplier 16(72000X16)	+	Rs.11,52,000.00
Medicine bill	+	Rs.00,23,670.00
Medical bill	+	Rs.00,65,000.00
Artificial living	+	Rs.01,00,000.00
Pain and suffering	+	Rs.01,00,000.00
Attendance conveyance	+	Rs.00,25,000.00
Loss of amenities	+	<u>Rs.00,25,000.00</u>
Total payable compensation	=	Rs.14,60,000.00

11. Considering the facts and circumstances and the evidence available on record, the compensation awarded by the learned Tribunal cannot be said to be exorbitant or unjust. It is needless to state that it is the settled position under the law that, just and fair compensation is to be awarded to the Claimant in matters of motor

vehicular accident.

12. In view of the above discussion no interference is called for in the impugned Judgment and Award. Hence, the following order.

::ORDER::

- (i) The Appeal is partly allowed to the extent that, the interest will be from the date of filing the Claim Petition.
- (ii) Rest of the impugned Judgment and Award is upheld.
- (iii) The Record and Proceedings be sent back to the learned Tribunal.

[NEERAJ P DHOTE, J.]

HRJadhav