



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1340 OF 2011

Rohidas Lalsing Pawar,
Age 32 years, Occu: S.T. Bus Driver,
R/o. Dabdhari, Tq. Hadgaon,
Dist. Nanded

...Appellant

Versus

1. Mrs. Ranjeetkaur W/o Surjeetsingh Gill,
Age Major, Occu: Business,
R/o Dashmesh Nagar, Behind Khalsa,
High School, Nanded.
2. The Oriental Insurance Co. Ltd.,
Through its Branch Manager,
Branch Office at Santkrupa Market,
Nanded.
3. Anantrao S/o Shankarrao Khargule,
Age Major, Occu: Business,
R/o Jagruti Colony, Parbhani
4. The New India Assurance Co. Ltd,
Through its Branch Manager,
Office at Lahoti Complex,
Vazirabad, Nanded

...Respondents

Mr. A. P. Deshmukh a/w Mr. Majit Shaikh, Advocate for
the Appellant

Mr. A. G. Kanade, Advocate for Respondent No. 4 (VC)

CORAM : R.M. JOSHI, J.

DATE : OCTOBER 06, 2025

JUDGMENT:

1. This Appeal preferred under Section 173 of
Motor Vehicle Act, 1988 (for short "the Act") takes

exception to the judgment and award dated 10.08.2009 passed in M.A.C.P. No. 268/2008 whereby claimant is seeking enhancement of compensation.

2. Parties are referred to as 'claimant', 'owner and insurer of truck' and 'owner and insurer of car', for the sake of convenience.

3. Claimant was driving Maharashtra State Road Transport Corporation Bus (for short '**ST Bus**') bearing no. MH-20-D-6653 from Hadgaon to Latur. He claims to have been driving the same in moderate speed and following traffic rules. It is his case that at around 10.30 am near village Mahalaj Kamta on Nanded-Ardhapur road, a truck/tipper bearing registration no. MH-26-H-6691 came in high speed, rash and negligent manner and while making an attempt to overtake other vehicle, gave dash to the ST Bus. It is also claimed by him that Indica car bearing registration no. MH-27-H-9788 was also driven negligently and came suddenly back side and gave dash against ST Bus. Claimant contends to have suffered serious bodily injuries in the said accident. In respect of the said accident, first information report came to be lodged by conductor of said ST Bus.

It was the case of the claimant before the Tribunal that he was earning Rs. 10,000/- per month and has sustained permanent disability. He, therefore, sought compensation of Rs. 5,00,000/-.

4. The owner of the truck filed written statement at Exh. 25 admitting ownership of the truck so also its insurance with Oriental Insurance Company. The contentions of the claimant are however denied. Oriental Insurance Company filed written statement at Exh. 18 accepting the Insurance but denied the contentions of the claimant in respect of age, occupation, income and medical expenses. It is however claimed that the driver of the truck was not holding valid and effective license and there is breach of condition of policy. None appeared for the owner of the car before Tribunal. The Insurer/New India Assurance Company filed written statement at Exh. 22 accepting the ownership of Respondent No. 3 over the car and its insurance during relevant period. The contentions of the claimant were however denied. It is also claimed that since the Maharashtra State Road Transport Corporation is not joined as party to the claim

Petition, it suffers from non joinder of necessary parties.

5. Tribunal framed issues at Exh. 26. Claimant examined himself at Exh. 25 and also led evidence of Mr. Sanjay Kadam at Exh. 67 to substantiate his claim before Tribunal. The owners and insurers of the Truck and car failed to lead any evidence in rebuttal. The Tribunal partly allowed the Petition directing compensation of Rs. 2,12,747/- to be paid to the claimant jointly and severally by Respondent Nos. 1 to 4.

6. At the outset, it needs to be noted that the owners and insurers of the Truck and Car have not challenged the impugned judgment and award passed by Tribunal. Thus, the only issue involved in this Appeal is with regard to the enhancement of the compensation granted by the Tribunal.

7. Learned Counsel for the Appellant/Claimant submits that the Tribunal has committed error in not accepting the disability of the claimant to the extent of 50%. It is his submission that the claimant has

established the nature of injuries so also the treatment extended to him by examining Dr. Kadam. He drew attention of the Court to his testimony wherein it is specifically claimed that the claimant would not be in a position to drive the bus in future. It is his submission that once such evidence is led, it was not open for the Tribunal not to accept the disability to the extent of 50%. It is his further submission that the Tribunal has failed to take into consideration the future prospects and loss of future income and to support said submissions, he placed reliance on following judgments: Pappu Deo Yadav v. Naresh Kumar and Others, AIR 2020 SC 4424 & National Insurance Company Limited vs. Pranay Sethi, AIR 2017 SC 5157.

8. Learned Counsel for Respondent No. 4 submits that the Tribunal has not accepted the case of the claimant with regard to 50% disability in view of the fact that the author of the disability certificate was not examined. It is his submission that unless disability is proved, it was not open for the Tribunal to grant any relief in respect of loss of income and future prospects, etc. It is his submission that

initial burden was on the claimant to prove his income and that as observed by the Tribunal, he has failed to substantiate his income and, therefore, Tribunal has rightly taken into consideration notional income to the extent of Rs. 3,000/- pm.

9. As noted above, the dispute in this Appeal is only in respect of enhancement of compensation. Perusal of the record and evidence led before the Tribunal indicates that the findings recorded by the Tribunal with regard to occurrence of the accident, involvement of all three vehicles therein and the negligence on the part of the drivers of all three vehicles including claimant, deserves to be accepted. In this regard, it is pertinent to take note of the fact that the spot panchnama recorded by the police while investigating into the said crime indicates that the accident has occurred in the middle of the road, which shows that both drivers of truck and bus so also car were not following traffic rules. Tribunal, therefore, has rightly held composite negligence of each drivers. It is, therefore, held that the claimant is also responsible for the occurrence of accident and his

contributory negligence is held to the extent of 1/3rd.

10. Claimant examined himself and stated about he being employed with MSRTC. He claims to have been earning Rs. 10,000/- pm. There is no corroboration to said oral statement from documentary evidence placed on record. During the cross-examination, he candidly admitted that his fixed salary including basic + DA and the total amount received by him was Rs. 5,000/- pm. In view of the said admission, there is no reason to accept that he was earning Rs. 10,000/- pm. On the other hand, the said suggestion made in cross-examination indicates that the Respondents also do not dispute the fact that he was drawing at least Rs. 5,000/- pm.

11. This aspect has not been taken into consideration by the Tribunal and the material evidence on record is ignored. Tribunal has held that the claimant has failed to substantiate his case about receiving Rs. 10,000/- pm as salary on the basis of documentary evidence, however, has failed to take into account cross-examination of Respondent indicating that his salary was Rs. 5,000/- pm. Tribunal, therefore,

committed error in holding claimant's income at Rs. 3,000/- pm as notional income. It is also pertinent to note that when admittedly claimant was driving ST Bus, his occupation ought to have been considered as driver and not a casual labour. The said observation made by the Tribunal with regard to accepting notional income of casual labour is contrary to material evidence on record, hence, cannot sustain. It is, therefore, held that claimant was receiving Rs. 5,000/- pm as salary.

12. In so far as claimant of permanent disability is concerned, the claimant apart from examining himself, has led evidence of Dr. Kadam (Exh. 67). Dr. Kadam is the treating doctor of claimant while he was hospitalized after occurrence of the accident and sustainment of injuries therein. He specifically states about being permanently disabled from driving the bus. In the cross-examination nothing is elicited in order to discard the opinion of medical officer. It is not even suggested in the cross-examination that he has no expertise to decide the disability of claimant. Thus, the claimant has substantiated his case of causing permanent disability. Now question arises as to whether

the disability to the extent of 50%, as determined in the permanent disability, should be accepted or not. Admittedly, permanent disability certificate though filed on record, is not proved. Doctor, who has assessed the said disability, was not examined before the Tribunal as the said disability certificate is not proved. In the light of these facts, when the Tribunal has accepted the disability certificate to the extent of 35%, this Court finds no reason to cause interference therein as such view is possible one. It is thus held that in the accident claimant sustained injuries which has resulted into causing permanent disability to him to the extent of 35%.

13. Once it is held that the claimant has suffered permanent disability, for the purpose of computation of amount of compensation, future prospects are also required to take into consideration. By following judgment of Hon'ble Supreme Court in case of Pappu Deo Yadav (supra). The age of the claimant was 32 years at the time of occurrence of accident and as such, 40% income is required to be added towards future prospects. Since the claimant has contributed to the

occurrence of accident, 1/3rd amount from compensation deserves deduction. Hence, amount of compensation payable is determined as follows:

Sr. No.	Heads	Calculations in Rs.
1.	Income Rs. 5,000/- per month + 40% addition = Rs.7,000/- x 12= Rs.84,000/- per year Rs. 84,000/- x 17 = Rs. 14,28,000	
2.	Rs. 14,28,000/- x 35% (disability multiplication) = 4,99,800/-	4,99,800/-
3.	Medical expenses	86,920/-
4.	Mental stress, pain and agony	10,000/-
5.	Medical attendance & conveyance	8,000/-
6.	Hence, the claimant is entitled for (4,99,800 + 86,920 + 10,000 + 8,000) Rs. 6,04,720/- (-) 1/3rd for contributory negligence	4,03,146/-

14. Tribunal has recorded findings that the claimant has not pleaded nor led evidence with regard to the loss of actual income. Perusal of the record indicates that the said findings recorded by the Tribunal is in consonance with the material placed on record, hence, requires no interference.

15. As a result of above, Appeal stands partly allowed. Hence, the order:

O R D E R

- (a) Appeal is partly allowed. Impugned judgment and award dated 10.08.2009 passed in MACP No. 268/2009 is modified. Respondent Nos. 1 to 4 shall jointly and severally pay Rs. 4,03,146/- to the claimant along with

interest at 9% per annum from the date of filing of claim petition till its complete realization.

- (b) Claimant to pay Court fee on enhanced compensation as per rules.
- (c) Rest of judgment and award to remain unchanged.
- (d) Amount deposited (along with interest) by Respondents is permitted to be withdrawn by Claimant.
- (e) No order as to costs.
- (f) In view of disposal of Appeal, pending applications, if any, stands disposed of.
- (g) The difference of compensation amount be deposited within a period of six weeks.

(R. M. JOSHI, J.)

Malani