



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

FIRST APPEAL NO. 302 OF 2015

Laxman Gorakh Kumawat,
Age: 32 years, Occ. Agriculture,
R/o. Bedarwadi (Ganpur)
Tq. Chalisgaon, Dist. Jalgaon.

.....APPELLANT
(Orig. Petitioner)

VERSUS

1. Vitthal Bhata Badgujar
Age: Major, Occ. S. T. Driver,
R/o. Haroom Colony, Behind
Pratap Mill, Dhule.
2. Maharashtra State Road Transport,
Corporation, Depot Manager, Jalna,
Through Depot Manager, Jalgaon.

.....RESPONDENTS
(Orig. Respondents.)

...

Mr. P. N. Kutti, Advocate for Appellant
Ms. Akanksha Sagar Killarikar h/f Ms. Meghana Reddy,
Advocate for Respondent no.1
Mr. A. B. Dhongade, Advocate for Respondent no.2

.....

CORAM : AJIT B. KADETHANKAR, J.

DATED : 08TH OCTOBER, 2025

ORDER :-

. Heard Mr. P. N. Kutti, learned Advocate for the
appellant/claimant, Mr. A. B. Dhongade, learned Advocate for

respondent no.2/M.S.R.T.C and Ms. Akanksha Sagar Killarikar h/f Ms. Meghana Reddy learned Advocate for respondent no.1, who happened to be the driver of the M.S.R.T.C. bus.

2. Admit.

3. At the request of the parties, the matter is heard finally.

4. Mr. P. N. Kutti, learned Advocate for the appellant would submit that while the appellant was riding on a bike no.MH-19-3144 towards Chalisgaon, M.S.R.T.C. bus bearing registration no.MH-20-CH-7469 dashed the said bike, resulting into grievous injuries to the appellant. He would submit that the accident occurred at about 11:00 p.m. of 13.03.2007 near railway over-bridge. Mr. Kutti, learned Advocate would submit that the appellant sustained permanent disability out of the grievous and dangerous injuries and hence, the claim petition was filed under Section 166 of the Motor Vehicles Act, 1988.

5. Mr. A. B. Dhongade, learned Advocate for M.S.R.T.C. as well as Ms. Akanksha Sagar Killarikar h/f Ms. Meghana Reddy, Advocate for Respondent no.1/driver submit that the learned Tribunal assessed entire evidence on record and has passed award which is already satisfied by the M.S.R.T.C.

6. Mr. P. N. Kutti, learned Advocate for the appellant would submit that although the learned Tribunal has noted and agreed that the appellant sustained extreme grievous and dangerous injuries, yet only for want of permanent disability certificate, nothing is granted under the heading of loss of earning capacity. He would submit that in fact considering the benevolent legislation, the learned Tribunal ought to have called upon the claimant to produce the evidence to substantiate the loss of earning capacity. Mr. Kutti, learned Advocate would also submit that the compensation granted by the learned Tribunal is too meager and the learned Tribunal has held claimant's income @ Rs.3000/- per month. In view of this, Mr. P. N. Kutti, learned Advocate would pray to remand back the matter to the learned Tribunal with liberty to the claimant to produce appropriate evidence before the learned Tribunal.

7. Mr. A. B. Dhongade, learned Advocate as well as Ms. Akanksha Sagar Killariker h/f Ms. Meghana Reddy, learned Advocate would oppose this prayer and would submit that the entire assessment is already done by the learned Tribunal and there is no need to reopen the case.

8. In view of this, I frame following points for my consideration:

Sr. No.	Points	Findings
1	Whether case is made out by the appellant to seek proper opportunity to prove his case by leading evidence ?	Yes.
2	What order ?	As per final order.

9. With able assistance of the learned Advocates appearing for the respective parties, I have gone through the record of the case. It is not disputed that the accident has occurred on the given date i.e.13.03.2007 at about 11:00 p.m. near railway over-bridge at Chalisgaon. It is also not in disputed that the claimant sustained extreme grievous and dangerous injuries as observed by the learned Tribunal in paragraph no.8 of the impugned judgment and order. From the record it reveals that as the claimant could not produce the permanent disability certificate in order to prove his loss of earning capacity, the learned Tribunal granted some compensation towards loss of income holding the income of the claimant @ Rs.3000/- per month. By granting some amount towards hospitalization then pains and sufferings, food, transportation, etc., final award amount has been fixed @ Rs.2,02,300/-.

10. Considering the fact that the claim is a part of social beneficial legislation, as also the fact that the claimant has sustained dangerous and grievous injuries, I am of the considered view that the claimant must get an opportunity to prove the disability, if any, he sustained as also to prove the loss of earning capacity pursuant to the permanent disability, if he has sustained.

11. I may not agree with the contention of Mr. P. N. Kutti, learned Advocate for the appellant that it was for the Tribunal to call upon the claimant to produce evidence to substantiate the loss of earning capacity itself. It is obviously the duty of the claimant to prove his case and particularly to justify the amount of claim by producing atleast permanent disability certificate to convince the learned Tribunal that the claimant has lost either fully or partially his capacity to earn. May it be, even for a lapse on the part of claimant, particularly when it is not established by the other side that it was a willful lapse or the lapse to cover any other circumstances, I am of the considered view, the case deserves to be remanded back to the learned Tribunal by permitting the respective parties to lead evidence and prove their respective cases. It also needs to be

observed that, although the learned Tribunal has granted an amount of Rs.15,000/- towards loss of income @ Rs.3000/- per month, it cannot be certainly held to be a considered finding of the learned Tribunal as regards to the income of the claimant.

12. In view of this, I pass following order:

ORDER

- a. Matter is remitted back to the learned Motor Accident Claims Tribunal, Jalgaon to decide afresh the loss of earning capacity of the claimant.
- b. Impugned Judgment and award dated 03.09.2014 bearing M.A.C.P. No.356 of 2008 is quashed and set aside.
- c. The appellant is permitted to lead correct and cogent evidence to prove the loss of earning capacity.
- d. Respondents are also permitted to cross examine and dispute the evidence that would be tendered by the claimant.
- e. Respondents are also at liberty to adduce any evidence in rebuttal, if they so desire.

- f. If the learned Tribunal arrives at conclusion for any enhanced compensation, such compensation would be inclusive of the compensation granted by the learned Tribunal in the earlier round of the claim.
- g. Let the Record and Proceeding be sent back to the learned Tribunal immediately.
- h. Parties agree that they would appear before the learned Tribunal on 10.11.2025.
- i. The learned Tribunal is requested to conclude the trial within six months thereafter.
- j. Parties assure that they would not seek a single adjournment in this matter.
- k. First Appeal stands disposed of.

(AJIT B. KADETHANKAR, J.)