

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.232 OF 2022
WITH
CROSS OBJECTION (ST.) NO.7408 OF 2022
IN
FIRST APPEAL NO.232 OF 2022**

Bombay Electric Supply and Transport
Undertaking, a Public Undertaking of
Municipal Corporation of Greater Mumbai
Having its office at Electric House, Colaba
Mumbai- 400 005

...Appellant

V/s.

Shri Sukhdeo Ramshankar Prasad,
Age : 22 years, residing at 9/U/11, Indian
Airlines Colony, Kalina, Santacruz (West)
Mumbai- 400 029

...Respondent

**WITH
INTERIM APPLICATION NO. 985 OF 2024
IN
FIRST APPEAL NO.232 OF 2022**

Shri. Sukhdeo Ramashankar Prasad
Presently aged 32 years, Presently : Nil,
9/U/11, Indian Airlines Colony,
Kalina, Santacruz (West),
Mumbai 400 029.

.... Applicant

In the matter between :-

Bombay Electric Supply and Transport
Undertaking, a Public Undertaking of
Municipal Corporation of Greater Mumbai
Having its office at Electric House,
Colaba, Mumbai- 400 005

.... Appellant

V/s.

Shri Sukhdeo Ramashankar Prasad,
Presently aged 32 years, Presently : Nil,
9/U/11, Indian Airlines Colony,
Kalina, Santacruz (West),
Mumbai 400 029.

.... Respondent

Mr. Saurabh Pakale a/w Ms. Heena Shaikh i/by M/s. M. V. Kini
& Co. for the Appellant.
Mr. Amol A. Gatne a/w Mr. Uday Mehta i/by Ms. S. U. Mehta
for the Respondent.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 05th MAY, 2025.

PRONOUNCED ON : 12th JUNE, 2025.

JUDGMENT :-

. Present Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 (“**the Act**”) by the Appellant/Original Respondent being aggrieved by the Judgment and Award dated 14/08/2021, in M.A.C.P. No.2525 of 2013 (“**the claim**”), passed by the Motor Accident Claims Tribunal, Mumbai. The aforesaid Cross-objection has been filed by the Respondent/Original Claimant in the said claim.

1.1) The Appeal has been filed on the grounds that there was total negligence on the part of the Claimant and that, the award amount is exorbitant/excessive, whereas the Cross-objection has been filed on the premise that, there was no negligence on the part of the Claimant and that, just compensation is denied by the Tribunal. The

learned Advocate for the Claimant submitted the compilation of documents as per Court's Order dated 14/03/2022, for final hearing in the matter. Hence, and considering the nature of the disability suffered by the Claimant, the Appeal and Cross-objection taken up for final hearing and being decided by this common Judgment.

2) Heard Mr. Pakale, the learned Advocate for the Appellant and Mr. Gatne, learned Advocate for the Respondent. Perused the record and the written Notes of Arguments submitted by the parties.

3) The case of the Claimant was that on 25/10/2013, at about 11:05 a.m., he was proceeding on his motorcycle bearing No.MH-02-BX-2443 ("**M/cycle**") from Geeta Vihar Junction, Kalina bus stop, Mumbai with due care, caution and following the road traffic rules. At that time and place, the BEST bus bearing No. MH-01-AL-5233 ("**bus**") came there from opposite direction, driven at a fast speed, rashly and in a negligent manner. As a result, the bus dashed the M/cycle. The Claimant fell down on the road and sustained serious injuries. Immediately, the Claimant was taken to V.N. Desai Hospital and thereafter, he was shifted to KEM Hospital and then to Guru Nanak Hospital and Research Centre, Mumbai. Despite medical treatment, the injuries caused certain disability to the Claimant. The claimant was working as a driver with Air India thereby he was earning Rs.10,000/- per month. The bus was owned and driven by

the authorized driver of the Appellant. Therefore, the Claimant prayed to award a sum of Rs.1,00,00,000/- as compensation along with interest.

3.1) The Appellant filed the Written Statement (Exh.10) and opposed the claim. The Appellant denied that the accident occurred due to the rash and negligent driving of the bus. It was also denied that the Claimant was working and earning as above; that, the injures caused him 100% disability etc. The Appellant contended that, at the relevant time, the bus was going from Santacruz Station to Kurla Station. When the bus reached near Kurla-Santacruz road, its driver slowed down the bus to negotiate the left turn to proceed towards *Kalina*. After taking the left turn, when the bus proceeded further a little, the Claimant came towards the bus from the opposite direction, riding his M/cycle at an extremely fast speed, rashly, negligently and in a dangerous manner. The driver of the bus, therefore, immediately swerved the bus to the left hand side of the road and applied urgent brakes to avoid the collision. Yet, the M/cycle dashed the bus because the Claimant could not control the M/cycle it being in an extremely fast speed. Thus, according to the Appellant, the Claimant alone was responsible for this accident.

4) Hence, the Tribunal framed the issues (Exh.13). To prove the claim, the Claimant presented the evidence of following witnesses.

Sr. No.	Witness	Exh. No.	Nature of the evidence
AW1	Sukhdeo Prasad	Ex.26	Claimant
AW2	Dr. Satish Puranik	Ex.31	Disability Certificate (Exh.32)
AW3	Dr. Vinayak Joshi	Ex.37	Disability Certificate (Exh.38)
AW4	Rakesh Deokar, – Air India	Ex.50	Occupation of the Claimant.
AW5	Anil Kadam, – Air India	Ex.55	Income of the Claimant
AW6	Vinay Paradkar	Ex.57	Admission and medical expenses
AW7	Steven D'souza	Ex.61	Admission and medical expenses
AW8	Nicholas Antao	Ex.73	Medical Treatment
AW9	Dr. Balwindersingh Sahani	Ex.75	Medical Treatment
AW10	Kamlesh Hariharan Gond	Ex.81	Attendant service
AW11	Dr. Bhavana Doshi	Ex.88	Medical examination
AW12	Dr. Anil Bhatia	Ex.91	Medical Treatment
AW13	Sunil Bhawar	Ex.100	Admission and medical expenses
AW14	Atul Sasode	Ex.105	Admission and medical expenses

5) In rebuttal the Appellant examined DW1 Dattu Jaysingh Jadhav, driver of the bus (Exh.110) and then closed its evidence.

6) The learned Advocate for the Appellant submitted that there was total negligence on the part of the Applicant because despite the road was sufficient wide, the Claimant straight away came from the opposite side riding his M/cycle in a rash and negligent manner and dashed the driver's side of the bus. However, the Tribunal held the DW1 guilty of 75% negligence, which is incorrect.

7) In contrast, Mr. Gatne, the learned Advocate for the Claimant vehemently submitted that when DW1 took the left turn, he did not keep proper look out at the road. As a result, DW1 failed to

notice that the Claimant was coming from opposite side riding the M/cycle. Therefore, the bus dashed the M/cycle. As such there was total negligence on the part of the DW1. As a result, the F.I.R. was registered against the DW1. However, the Tribunal attributed 25% negligence to the Claimant, which is against the evidence on record.

8) In view of the rival submissions, I have carefully perused the evidence. The evidence of the Claimant and DW1 is verbatim to the assertions and the contentions in the Claim Petition and the Written Statement, respectively. It is an admitted fact that, the bus and the M/cycle were proceeding from opposite direction when it met with the accident. However, neither the Claimant nor DW1 informed as to how and exactly where their respective vehicle were positioned on the road, just before the accident.

9) The F.I.R. (Exh.27) was filed by Mr. Prashant Barve, who was pillion with the Claimant. In the F.I.R. Mr. Prashant Barve clearly stated that the bus came from opposite direction and gave dash to the M/cycle. The F.I.R. was filed immediately after the accident therein it has been clearly stated that the bus was driven rashly and negligently at the time of the accident and therefore it caused the accident. DW1 failed to explain as to why the police register the F.I.R. against him. Thus, the F.I.R. supported the evidence of the Claimant.

10) The Spot Panchnama (Exh.28) does not mention exactly

where the bus and the M/cycle were found to the police, *i.e.*, to the left, in the centre or to the right of the road. The Spot Panchnama is also silent about the width of the road. It is not the case that the accident occurred at the turning point. Therefore, it is safe to presume that the road was straight where the accident occurred. The Claimant did not explain as to why he could not avoid the accident particularly when he was driving the M/cycle with due care, caution and following the traffic rules. Even he did not explain as to why he could not stop the M/cycle instantly seeing that the bus was coming in his direction.

11) In the cross-examination DW1 admitted that the width of the road was 30 feet and two vehicles could have easily passed over. He saw the M/cycle for the first time when it was at the distance of around 15 feet. From this evidence in the cross-examination, it is easy to infer that when DW1 could see the Claimant, the Claimant could equally see the bus because it is not the case of either of them that their vision was obstructed by some vehicle or any other object which was in between their vehicles. Nevertheless, the Claimant and DW1 failed to avoid the accident. Therefore, the conclusion is inevitable that DW1 as well as the Claimant, both were not careful while driving their respective vehicles. In other words, they both failed to keep proper look out at the road which omission on their part ultimately resulted in the accident. As such, the finding recorded by the Tribunal

that the accident occurred due to negligence on the part of DW1 and the Claimant and their negligence was in the ratio 75:25, is justifiable, and therefore, cannot be termed as erroneous.

12) The evidence of the Claimant coupled with the evidence of AW8– Dr. Nicholas Antao show that due to impact of accident, the claimant had sustained : (a) Compound fracture of proximal humerus with distal end; (b) Compound fracture dislocation of Patella right knee; (c) Fracture ulna right side; and (d) Fracture of Lower end Femur. This evidence is supported with the Discharge Card (Exh.74). The said oral and documentary evidence did not meet any challenge in the cross-examination. Therefore, I hold the injuries.

13) The evidence of the Claimant coupled with the evidence of AW2 indicate that the Claimant has following difficulties due to the aforesaid injuries. Hence, AW2 assessed the Claimant's permanent partial disability at 74% and issued the Disability Certificate (Exh.32).

- (i) tenderness over the fracture site
- (ii) flexion in right knee up-to 90 degree, further flexion not possible
- (iii) wasting of muscle of right leg with grade IV power in right knee
- (iv) inability in sitting cross leg
- (v) walk with wadding gait
- (vi) inability to climbing the steps
- (vii) difficulty in squatting

- (viii) difficulty in lifting heavy weight
 - (ix) flexion upto 90 degrees in right elbow, further flexion not possible
 - (x) wasting of muscle of right arm grade IV power of right elbow
 - (xi) flexion of right wrist upto 90 degree, further flexion is not possible
 - (xii) wasting of muscle of right forearm with grade IV power in right wrist joint
 - (xiii) pronation and supination of right hand in restricted and painful
 - (xiv) Dorsi flexion of the right hand is not possible
 - (xv) Diminished grasp of right hand
- 14) AW3-Dr. Vinayak Joshi deposed that he examined the Claimant clinically and neurologically and found that the Claimant has both neurological and orthopedic serious disabilities. The neurological disability pertains to the right upper limb monoparesis. The Claimant has flaccid monoparesis of left upper limb. There is zero power in the left upper limb. This amounts to 40% of permanent partial neurological disability, right limb being dominant limb in this case. In this regard AW3 referred the Disability Certificate (Exh.38). Evidence of AW11-Dr. Bhavana Doshi is that she has been practicing as Neuro Electro Physiologist. She examined the Claimant on 12/11/2013 and found that the Claimant has nerve injury. He has active motor axon degeneration and conduction block, affecting the

right C5 to T1 fibres. Accordingly, she issued the Report (Exh.89 collectively). The aforesaid entire oral and documentary evidence did not receive any challenge in the cross-examination. Therefore, I hold the permanent partial disability as above.

15) The evidence of the Claimant is that he was working with Air India as a casual driver on temporary basis thereby he was earning Rs.10,000/- per month. This evidence is corroborated with the evidence of AW4 Rakesh Deokar, Assistant Manager in a Personnel Department of Air India that the Claimant was working as the casual driver on contract basis. Their Evidence is supported with Appointment details (Exh.53), Attendance Statement (Exh.54), and payment Statement (Exh.56) produced by PW5-Anil Kadam, an employee of Air India working in Pay Roll Section, Finance department. Therefore, I hold that the claimant was working as the driver and getting monthly income of Rs.10,000/- which annually comes to Rs.1,20,000/-.

16) AW2 has specifically deposed that due to said disability, the Claimant has suffered the 100% loss of the income capacity. There is nothing in the evidence to take an exception to the said evidence of AW2. Therefore, the Tribunal held that the Claimant has suffered the 100% loss of the income capacity and hence, awarded Rs.21,60,000/- for the said loss (Rs.1,20,000/- x 18). However, the Tribunal did not

award any compensation towards the loss of the future prospects.

17) The Claimant was aged 22 years but he was not in the permanent employment. Therefore, in accordance with the decision in *National Insurance Co. Ltd. Vs. Pranay Sethi and Others*¹ and *Sarla Verma and others Vs. Delhi Transport Corporation and another*², 40% of the proved net annual income should be added towards the future prospects. On such addition, the actual yearly income would be Rs.1,68,000/-. The Applicable multiplier is '18'. Thus, the Claimant is entitled to get Rs.30,24,000/- (Rs.1,68,000/- x 18) towards the 100% loss of the future income/ income capacity.

18) Under the other heads the Tribunal awarded the compensation as under :-

Medical Expenses	: Rs.12,54,016/-
Attendant charges	: Rs.10,80,000/-
Loss of marriage prospects	: Rs. 3,00,000/-
Conveyance	: Rs. 50,000/-
Special diet	: Rs. 50,000/-
Future Medical	: Rs. 5,00,000/-
Loss of amenities of the life	: Rs. 5,00,000/-
Pain and suffering	: Rs. 5,00,000/-

19) Mr. Gatne, the learned Advocate submitted that looking at the injuries sustained by the Claimant and the resultant disability, the Claimant should tolerate the injuries related unbearable pain and

1. 2017 ACJ 2700 (SC)

2. 2009 ACJ 1298 (SC)

suffering throughout his entire life. Since the accident, the Claimant is bed ridden and he should remain in bed permanently, almost in a vegetative state. He, therefore, submitted that the compensation awarded for the pain and suffering is less and considering the said condition, the claimant should get Rs.15,00,000/- under the said head. To accept this contention, Mr. Gatne relied upon the decision in in ***K. S. Muralidhar Vs. R. Subbulakshmi & Anr.***³ therein the injuries sustained by the Appellant-Claimant resulted in 90% permanent disability. The Appellant-Claimant was aged 37 years. Therefore, the Hon'ble Supreme Court noted that since the injury were serious, their effects on his life were long lasting; even say life long. The disability suffered by the Appellant-Claimant was taken at 100%. In view thereof, the Hon'ble Supreme Court awarded Rs.15,00,000/- under the head pain and suffering. To arrive at this conclusion, the Hon'ble Supreme Court in paragraph 13, 13.1, 13.2, 13.3, 13.3.1, 13.3.2, 13.3.3 and 13.3.4 observed as under :-

“13. While acknowledging that ‘*pain and suffering*’, as a concept escapes definition, we may only refer to certain authorities, scholarly as also judicial wherein attempts have been made to set down the contours thereof.

13.1 The entry recording the term ‘*pain and suffering*’ in P. Ramanatha Iyer’s Advanced Law lexicon reads as under:-

3. 2024 SCC Online SC 3385

“Pain and suffering. The term “Pain and suffering’ mean physical discomfort and distress and include mental and emotional trauma for which damages can be recovered in an accident claim.

This expression has become almost a term of art, used without making fine distinction between pain and suffering. Pain and suffering which a person undergoes cannot be measured in terms of money by any mathematical calculation. Hence the Court awards a sum which is in the nature of a conventional award [Mediana, The (1900) AC 113,115]”

13.2 Eric Cassell, an American Physician and Bioethicist, defines ‘*pain*’ not only as a sensation but also ‘*as experience embedded in beliefs about causes and diseases and their consequences*’, and ‘*suffering*’ as ‘*the state of severe distress associated with events that threaten the intactness of person*’.

13.3 In a recent article published in the journal of the International Association for the Study of pain, it has been recorded that there is no consensus on what exactly the concept of pain-related suffering includes, and it is often not precisely operationalised in empirical studies. The authors in their systematic review analysed 111 articles across a variety of disciplines such as bioethics, medical ethics, psycho-oncology, anaesthesiology, philosophy, sociology etc., we may refer to few of them:

13.3.1 Eugene V. Boisaubin, who is currently a Professor at the University of Texas, at Houston, in a 1989 article defined it as “*suffering is experienced by individual and arises from threats to the integrity of the individual as a complex social and psychological entity.*”

13.3.2 Andrew Edgar, who is currently a Reader Emeritus in Philosophy at Cardiff University at UK defined, in a 2007 article suffering as an “*experience of life never getting better, revealing in*

the sufferer only vulnerability, futility, and impotence.”

13.3.3 Arthur W. Frank, Professor Emeritus, Department of Sociology, University of Calgary in his well-known article *“Can We Research Suffering?”*, published in 2001, observed that *“at the core of suffering is the sense that something is irreparably wrong with our lives, and wrong is the negation of what could have been right. Suffering resists definition because it is the reality of what is not.”*

13.3.4 Daryl Pullman who currently serves as University research Professor, Bioethics at the memorial University of Newfoundland, Canada in his 2002 article defined suffering as the *“product of [physical], psychological, economic, or other factors that frustrate an individual in the pursuit of significant life projects.”*

20) In the case in hand the Claimant was hospitalised and undergone the different treatment/operative procedures as under :-

Sr. No.	Relevant witnesses	Hospital name and inpatient period	Medical treatment	Discharge Card etc. (Exh. Nos)
1	1, 2	V. N. Desai Hospital 25/10/2013	First aid.	--
2	1, 2, 3, 8	K.E.M. Hospital 25/10/2013 to 06/11/2013	Medical treatment.	--
3	11	Nanavati Hospital on 12/11/2013	Medical tests and diagnosis for the nerve Injury.	--
4	1, 2, 3	Gurunanak Hospital 06/11/2013 to 05/12/2013 05/12/2013 to 02/01/2014	Surgical procedure, removal of external fixators, dressing under G.A. open reduction and internal fixation and plating of right ulna.	--

5	1, 2, 3, 12, 14	MMF Joshi Hospital 09/01/2014 to 11/01/2014	Exploration of the right brachial plexus and nerve transfer. Repair of nerves of Rt. Arm.	Exh.92 and 93
6	1, 2, 3, 7, 8	Holy Spirit Hospital 23/06/2014 to 26/06/2014	Removal of Illizarov's ring/ external fixator from right lower leg.	Exh.74 (colly.)
7	1, 2, 3, 7, 8	Holy Spirit Hospital 08/07/2014 to 25/07/2014	Debridement with drainage of abscess and arthrodesis of Rt. knee joint.	
8	1, 2, 3, 7, 8	Holy Spirit Hospital 09/09/2014 to 11/09/2014	Oral and IV Medications, Dressing.	
9	1,	Mangal Anand Hospital 08/11/2014 to 10/11/2014	Medical treatment for the right leg.	--
10	6, 9	Gurunanak Hospital 02/12/2015 to 12/12/2015	Chronic Osteomyelitis (infection of bone) Rt. Femur with draining sinus, with destruction of Adjacent knee. Treatment- Debridement with Sequestrectomy with external fixation done and Rt. Distal Humerus implant removal.	Exh.76
11	6, 9	Gurunanak Hospital 26/02/2016 to 29/02/2016	Osteomyelitis of Tibia Rt. Side. Treatment- Operation of debridement and curettage of Rt. Tibia OM done.	Exh.77
12	6, 9	Gurunanak Hospital 06/04/2016 to 11/04/2016	Osteomyelitis of tibia femur Rt. Side. Treatment- Debridement sequestrectomy.	Exh.78
13	6, 9	Gurunanak Hospital 29/06/2016 to 04/07/2016	Sequestrectomy with debridement/ Lavage Distal of Rt. Femur.	Exh.79

14	1	Gurunanak Hospital 17/05/2017 to 22/05/2017	Rt. leg femur with tibia fracture	--
15	1, 12, 13	Dinanath Mangeshkar Hospital 05/07/2017 to 07/07/2017	Diagnosis-Right radial nerve deficit. Tendon Transfers for restoration dorsiflexion of wrist, fingers and thumb.	Exh.94

20.1) The Claimant was aged 22 years. As such, he will have to suffer the accidental injuries related disability, pain and its effects throughout his entire life. There is hardly any improvement in his present condition. Therefore, and considering the evidence as a whole, the Claimant deserves to get Rs.12,00,000/- under the head 'pain and suffering'. The compensation awarded under the other heads is just and reasonable. Thus the Claimant is entitled to receive the compensation as under :-

Total compensation amount	:	Rs.79,58,016/-
Minus the compensation amount towards contributory negligence	:	– Rs.19,89,504/- -----
Compensation amount payable	:	= Rs.59,68,512/- -----

21) The conspectus of the above discussion is that, the Tribunal rightly held that the accident occurred due to contributory negligence of DW1 and the Claimant as held above. The compensation amount awarded by the tribunal is 'just' except under the head 'Pain and Suffering', which is less. Therefore, said amount should be

enhanced as held above. The rate of the interest granted by the Tribunal is reasonable. The aforesaid limited infirmity, therefore, warranted an interference with the impugned Judgment and Award to modify the same, accordingly. As a result, the Appeal is liable to be dismissed and the Cross-objection deserves to be partly allowed.

21.1) Hence, following order is Passed :-

- (a) First Appeal is dismissed with proportionate costs.
- (b) Cross-objection is partly allowed with proportionate costs.
- (c) The impugned Judgment and Award dated 14/08/2021, in M.A.C.P. No.2525 of 2013, passed by the Motor Accident Claims Tribunal, Mumbai is modified.
- (d) The Appellant is directed to pay the compensation of Rs.59,68,512/- (inclusive of no fault liability) together with interest thereon at the rate of 7.5% per annum from the date of the Claim Petition till realisation of the amount.
- (e) The Appellant is directed to comply with this Judgment within a period of four months from today, by depositing the amount in the Tribunal.
- (f) On deposit of the amount the Tribunal shall immediately inform about the deposit to the Claimant.

- (g) The amount deposited shall be paid to the Claimant as directed by the Tribunal, subject to payment of deficit Court fee, if any.
- (h) The Appellant-insurance company will be entitled to adjustment of the amount against the already paid under the impugned Award.
- (i) The Appeal and the Cross-objection are disposed of in aforesaid terms.

21.2) In view of disposal of the First Appeal and the Cross-objection, the Interim Application No.985 of 2024 stands disposed of.

(SHYAM C. CHANDAK, J.)