



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

**FIRST APPEAL NO. 1573 OF 2013
WITH CIVIL APPLICATION NO. 396 OF 2024
IN FA/1573/2013**

. Parsaram s/o Sopanrao Gayke
Age: 51 years, Occu.: Service,
(Conductor), R/o. Partur,
Taluka Partur, District Jalna.Appellant

Versus

1. Samsuddin s/o Amichand
Age: Major, Occu.: Driver,
R/o. Dadar, Tahsil Alwar,
District Alwar (Rajsthan).
2. Branch Manager,
I.C.I.C.I., Lomrad,
General Insurance Company Ltd.,
Branch Office Adalat Road, Near
Baba Petrol Pump, Aurangabad,
Taluka and District Aurangabad.
3. Divisional Manager,
Maharashtra State Transport Company,
Jalna, District Jalna.Respondents

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Advocate for Appellant : Mr.Kiran M. Nagarkar
Advocate for Respondent no.3 : Mr.Anilkumar B. Dhongade
Respondent nos.1 and 2 are served.

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CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 16 April, 2026
PRONOUNCED ON : 18 April, 2026**

JUDGMENT :-

1. This is an appeal by the original claimant, who is dissatisfied by judgment and award passed by learned Chairman, MACT, Jalna dated 11-02-2013 in MACP No.98 of 2009, which was an injury claim filed by appellant.

2. In brief, above claim petition was instituted by appellant against driver of offending Truck and its insurer ICICI Lomrad on the premise that claimant was travelling in Bus bearing No.MH-20 D-7499 belonging to respondent no.3. At Mantha T point, Truck driven by respondent no.1 bearing no.RJ-02 GA-1531 came in high speed and gave dash to the Bus as a result of which the Bus turned turtle and appellant/claimant suffered crush injury to his right hand wrist and fracture injury to collar-bone and was required to be hospitalized and expend for medical expenses. He had suffered permanent disability thereby affecting his service as a Conductor and he was required to obtain voluntary retirement from service (VRS) and therefore, he set up claim petition under various heads to the tune of Rs.10,00,000/-.

Respondent No.1 failed to appear despite service of notice. Respondent no.2 resisted the claim by filing written statement.

On appreciating the evidence adduced by claimant, the learned Tribunal was pleased to partly allow the claim petition i.e. to the tune of Rs.1,86,275/- with interest @ 7.5% per annum.

Dissatisfied by the quantum and non-consideration of claim, original claimant has preferred instant appeal.

3. Learned counsel for appellant/claimant has placed on record written notes of arguments contending that learned Tribunal has considered that appellant has suffered 28% permanent disability but still the said disability and its impact on service and earning of the appellant has not been correctly appreciated by the learned Tribunal. For just compensation, he seeks reliance on the judgment of the Hon'ble Supreme Court in the case of ***Raj Kumar V. Ajay Kumar and Another, (2011) 1 SCC 343.***

4. He further submitted that learned Tribunal has failed to undertake the exercise of proper appreciation, more particularly on the point of assessment of disability and that it further failed to consider the distinction between functional disability and medical disability.

5. It is further contended that, even when claim was set up for Rs.10,00,000/-, mere amount of Rs.1,86,275/- is granted. That, there is failure to consider medical expenses, hospitalization, loss of service during treatment and merely Rs.70,000/- lumpsum amount has been awarded. That, such conclusion drawn by learned Tribunal is erroneous.

6. It is further contended that, it ought to have been considered that because of the permanent disability, claimant was required to quit the job early i.e. prematurely and as such, there was loss of income, but such aspect has not been considered. Thus, according to him, compensation awarded is not just compensation and urges to enhance the compensation by modifying the award. He also provided calculations as expected by the claimant in paragraph 19 of the written notes of arguments and urged to grant the same.

7. In spite of service, respondent no.2 did not appear. Learned counsel for respondent no.3 would submit that, as per order of the learned Tribunal, the claim petition is dismissed against respondent no.3.

8. Heard. Perused the record.

9. Admittedly, present claim is an injury claim. By invoking Section 166 of the Motor Vehicles Act, claim to the tune of Rs.10,00,000/- was set up on the ground that claimant suffered road traffic accident on 14-07-2007 resulting into injury to right hand wrist and collar-bone. Case was set up that, implants were required to be inserted and it had affected his working capacity i.e. as a Conductor and was further required to seek VRS seven years prior to superannuation, as his functional and vocational hand was permanently disabled. There is also no serious challenge to the rash and negligence on the part of Truck driver before the Tribunal and therefore, said points are already answered in affirmative by Tribunal regarding which there is discussion in paragraph nos.9, 10 and 11.

10. It appears that claimant has ascertained that, he incurred 28% permanent disability to the right hand wrist and also suffered fracture injury to collar-bone. CW4 Dr.Prakash Sambhaji Ujgire was examined in support of above contention, but it has come on record in his testimony that there was only crush injury to the right hand wrist and phalanges and there was no evidence about fracture injury

to the collar-bone. This Doctor, who is examined at exh.59, has certified that claimant suffered 28% permanent disability. Disability certificate is at exh.60.

11. On going through the impugned judgment, it appears that said percentage of disability is taken into account and Tribunal awarded compensation of Rs.28,000/-.

Admittedly, claimant was working as Conductor and there is no dispute to that extent. His right hand has suffered above percentage of disability which was said to be his vocational hand. Therefore, indeed his ability to render service for punching tickets and taking note of the sale of tickets, was shown to be affected. It is also claimed that he was constrained to seek VRS prematurely. There is no challenge to such case of claimant and therefore, in the considered opinion of this Court, taking into account the percentage of disability to the vocational hand, learned Tribunal ought to have granted more amount, but it having failed to do so, this Court, taking into account the year of accident and disability, raises compensation from Rs.28,000/- to Rs.50,000/-.

12. Similarly, learned Tribunal seems to have granted Rs.5,000/-

for rent of room occupied for two months to take follow up treatment. This figure does not seem to be incorrect or less and so needs no interference.

Likewise, with regard to amount awarded by learned Tribunal for conveyance to the tune of Rs.10800/-, taking into account the total period of treatment and follow up, it needs to be raised to Rs.15000/-. Learned Tribunal has awarded attendant charges to the tune of Rs.18,000/- but it is on the basis of receipt marked at exh.52 and therefore, what is claimed is already granted.

As regards to loss of earning is considered, learned Tribunal has granted Rs.70,000/-. In the claim petition, the claimant has stated that due to injury, he was not able to attend the duty for a year and thus, there is loss of Rs.70,000/- towards salary. In view of this, this Court is of the opinion that, the learned Tribunal has rightly granted the aforesaid amount towards loss of earning. It is settled position that what is claimed can be granted and what is not claimed cannot be granted.

Under the miscellaneous heads, learned Tribunal has granted Rs.20,000/- towards pains and sufferings, which needs to be enhanced to Rs.25,000/-.

Apart from this, learned Tribunal has granted Rs.25,000/-

towards special diet and as per opinion of this Court, the amount granted under this head is just and proper.

13. In view of this, the calculation of compensation would be as under :

Sr. No.	Particulars (Rs.)	Amount (Rs.)
1	Compensation towards permanent disability	50,000
2	Room Rent (as per Tribunal)	5,000
3	Conveyance allowance	15,000
4	Attendant charges (as per Tribunal)	18,000
5	Loss of earnings (as per Tribunal)	70,000
6	Medical expenses and medical bills - Rs.34,473 (Rounded off to Rs.34,475) (As per Tribunal)	34,475
7	Pains and Sufferings	25,000
8	Special diet (as per Tribunal)	25,000
9	Total Compensation as per this Court	2,42,475
10	Less Amount of compensation granted by the Tribunal	2,11,275
11	Enhanced Compensation	31,200

14. In view of above discussion, the claimant is entitled for enhanced compensation of **Rs.31,200/-**. Accordingly, following order is passed :

ORDER

- I) Impugned judgment and award dated 11-02-2013 passed by the Chairman, MACT, Jalna in MACP No.98 of 2009 stands modified.

- II) The claimant is entitled for enhanced compensation of **Rs.31,200/-** along with interest @ 7.5% per annum from the date of filing of petition till the date of realization of the amount.
- III) Respondent no.2/Insurance Company to pay enhanced compensation amount of **Rs.31,200/-** to claimant within 12 weeks from today along with interest @ 7.5% per annum from the date of filing of claim petition till its realization.
- IV) Rest of the award of the learned Tribunal is maintained.
- V) Respondent no.2/Insurance Company to deposit the amount of enhanced compensation along with interest thereon in this Court.
- VI) On deposit of amount by the Insurance Company, claimant is permitted to withdraw the same along with interest, if any.
- VII) Modified award be prepared accordingly.
- VIII) Claimant to pay Court fees on enhanced compensation as per Rules.
- IX) The Appeal is disposed of in above terms.
- X) Civil Application No.396 of 2024 is disposed of.

(**ABHAY S. WAGHWASE**)
JUDGE