

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1026 OF 2024
WITH
INTERIM APPLICATION NO. 10087 OF 2024
IN
FIRST APPEAL NO. 1026 OF 2024

Maharashtra State Road Transport Corporation ...Appellant
(MSRTC)

Versus

Dattatray Shantaram Dalvi & Ors ...Respondents

Mr Sumedh Gaikwad (appeared online), with DD Rananaware, for
the Appellant.

Ms Ketki Gokhale, i/b Avinash Gokhale, for the Respondents.

CORAM: R. M. JOSHI, J.

DATED: 7TH JANUARY 2026

PC:-

1. By consent of both sides heard finally at the stage of Admission.

2. This Appeal is preferred by MSRDC taking exception to the Judgment and Award dated 4th January 2024 passed in MACP No. 61 of 2018, whereby the the injury claim filed by the Claimants came to be allowed with grant of compensation of Rs. 7,20,155/- along with interest at the rate of 7% per annum from the date of filing of the Petition till realisation of the amount.

3. The facts which led to the filing of this Appeal can be narrated in brief as under. It is the case of the Claimant that on 13th September 2017, he was proceeding as Pillion Rider on motorcycle bearing registration No. MH-05-AY-0667 from Kalyan towards his village. The rider was said to be driving the motorcycle with care and caution. At the spot of the accident, the transport bus bearing registration No. MH-06-S-8561 came from opposite direction and gave dash to the motorcycle. As a result of the said dash, the rider as well as the Claimant-Pillion rider fell down from the motorcycle and sustained grievous injuries. They were admitted in hospital and were required to undergo medical treatment for substantial period of time. He claims to have sustained disability to the extent of 36%. Since he lost two fingers and, therefore, claimed loss of earning capacity.

4. State Transport Corporation filed Written Statement denying the contentions of the Claimants. It is the case of the Corporation that there is no involvement of the offending bus in the occurrence of the accident. Alternatively, it is also claimed that the accident occurred due to the negligence on the part of the rider of the motorcycle. The Claimants led evidence before the Tribunal to prove the factum of the accident. Corporation also examined three witnesses in order to prove its contention in the Written Statement. The Tribunal accepted the case of the Claimants and allowed the Claim Petition. Hence, this Appeal.

5. Learned counsel for the Corporation submits that the Rider of the motorcycle was negligent and, hence, no liability can be

fasten on the Corporation for payment of compensation. On the point of quantum, it is his submission that the Tribunal has erred in not considering the nature of injuries caused to the Claimant and awarded compensation on higher side.

6. Learned counsel for the Claimant submits that the Pillion Rider cannot be said to be negligent in any manner whatsoever in the occurrence for the accident. It is open for the Claimant to seek compensation from each wrong doer jointly or severally or against all or any one of them. Thus, it is her submission that it is immaterial as to whether there was any negligence on the part of the Rider of the motorcycle in occurrence of the accident. In any case, according to her, there is absolutely no evidence to show that the Rider of the motorcycle was negligent therein. On the point of quantum, it is her submission that though the Tribunal has granted the compensation, but instead of making calculations on the basis of settled principles of law, a lump-sum amount of Rs. 3,00,000/- came to be granted. It is her submission that since the Tribunal has accepted the income of the Claimant at the rate of Rs. 12,000/- per month, so also, the disability to the extent of 34%, the compensation entitled by the Claimant would be Rs. 7,95,600/-. To support of her submission, she placed reliance on Judgment of the Hon'ble Supreme Court in the case of ***Pappu Deo Yadav vs Naresh Kumar***.¹

7. The Claimant is required to prove his claim on probability. In order to prove the involvement of the offending bus and the

1 AIR 2020 SC 4424.

negligence of the driver of the offending bus in the accident, the Claimant examined himself on oath. Since the Claimant is witness to the accident, his testimony assumes importance. His oral evidence gets further support from the fact that the charge-sheet has been filed against the driver of the bus. There is nothing on record to indicate that the driver of the bus has challenged the said charge-sheet at any point of time. Perusal of the evidence led by the Corporation indicates that the Investigating Officer has accepted the fact that there was damage caused to the front side of the bus. In any case since Claimant is Pillion Rider, he cannot be said to be responsible for occurrence of accident and negligence of riding of motorcycle or driving a bus is immaterial in this case.

8. The Claimant apart from his own testimony on oath led evidence of the Doctor, who assessed the disability of the Claimant to the extent of 34%. The Claimant in his deposition has claimed about he being compelled to leave the job on account of the injury and resultant disability caused to him. He claims to be performing work as a helper before the accident. Admittedly, there is not only a fracture caused to his fingers but there is two amputation of index and middle finger. This clearly indicates that the earning capacity of the Claimant is affected adversely. In such circumstances, when the Tribunal has accepted the income of the Claimant at the rate of Rs. 12,000/- per month, the compensation ought to have been done considering the age of the Claimant and applying formula provided, the compensation granted by the Tribunal on this count, therefore, deserves modification. It would be as under:

Heads	Amount in Rupees (Rs.)
Loss of earning capacity + future prospects (12,000 x 12 + 25%)	1,80,000/-
Appropriate Multiplier (13)	23,40,000/-
Disability (34%)	7,95,600/-
Medical treatment	1,68,800/-
Medical bills	56,355/-
Pain and sufferings	50,000/-
Future medical expense	85,000/-
Loss of amenities of life	50,000/-
Special diet	10,000/-
Total compensation	12,15,755/-
Less (-): Compensation awarded by tribunal	7,20,155/-
Enhanced compensation	4,95,600/-

9. It is settled position of law that the Claimant can seek enhancement of compensation without filing separate Appeal or Cross-Objection. In view of the same, the claim of enhancement deserves to be allowed.

10. As a result of above discussion, there is no merit in the Appeal.

11. In view of the above, I pass the following order:

ORDER

(a) The Appeal is dismissed.

- (b) Over and above the compensation granted by the Tribunal, the Claimant is entitled to receive the sum of Rs. 4,95,600/- along with interest at the rate of 7% from the date of Claim Petition till realisation of the amount.
- (c) The Claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.
- (d) The claimants shall pay deficit court fees on enhanced amount, if any, as per Rule.
- (e) Record and Proceedings be sent back to the Tribunal.

12. In view of dismissal of the Appeal, pending Applications, if any, stand disposed of.

(R. M. JOSHI, J.)