

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 334 OF 2025
WITH
INTERIM APPLICATION NO. 161 OF 2025
IN
FIRST APPEAL NO. 334 OF 2025
WITH
INTERIM APPLICATION NO. 35 OF 2026
IN
FIRST APPEAL NO. 334 OF 2025

Maharashtra State Road Transport Corporation, ...Appellant
Thane

Versus

Sudhir Sadashiv Zunzarrao & Anr ...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 30th November 2023 passed in MACP

No. 91 of 2018, whereby the the injury claim filed by the Claimants came to be allowed with grant of compensation of Rs. 34,23,238/- 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 19th September 2017, he along with Pillion Rider was proceeding motorcycle bearing registration No. MH-05-AY-0667 from Kalyan towards his village. The Claimant 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 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. Rider claims that he sustained crush injury to his right hand and on amputation of leg above knee. It is claimed that the disability caused is 85.05% and total permanent and functional disability is 100%. He claims to have lost complete 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. 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, therefore, the accident in question has occurred. In this regard, he drew attention of the Court to the witnesses examined by the Corporation, i.e., the Investigating Officer and the Driver and Conductor of the offending bus. It is his submission that from their evidence it can be seen that the Driver of the motorcycle was negligent and, hence, the Corporation is not liable to pay compensation. On the point of quantum, it is claimed by him that the Tribunal has erred in accepting the disability, employment and income of the

deceased, so also the loss of earning capacity and excessive compensation came to be granted.

6. Learned counsel for the Claimant though supported the impugned Judgment and Award, she sought enhancement of the compensation. It is her submission that the Claimant has proved by examining witnesses, about the nature of injuries caused to the Claimant, which has resulted into causing of crush injury to the hand, so also, amputation of leg above knee. It is submitted that though the Tribunal has granted compensation for loss of future income, however, has not considered the future prospects which would be at the rate of 15% owing to the age of the Claimant. It is her further submission that the Claimant has proved before the Tribunal, the cost involved obtaining artificial limb and the evidence on record indicates that the said cost including maintenance would be Rs. 8,60,000/-. It is her submission that the Tribunal ought to have accepted the said evidence and granted compensation to that effect instead of granting lump-sum compensation of Rs. 5,00,000/-. she submits that even without filing cross-objection or Appeal, it is open for the Claimant to seek enhancement of the compensation in the Appeal filed by the

Corporation. 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 negligence of the driver of the 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 offending bus. There is nothing 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. This shows the involvement of the bus in the occurrence of the accident. Once it is held that the bus was involved in the accident, the testimony of the Driver and Conductor, who are interested witnesses, needs to be discarded. In any case, they don't show any negligence on the part of the rider

1 AIR 2020 SC 4424.

of the motorcycle in the accident. It is, therefore, held that the accident in question has occurred solely on account of the negligence on the part of the driver of the bus.

8. The Claimant has examined himself and also led evidence of Dr Netkar, with regard to the injuries caused to him which resulted in permanent disability. The Tribunal has considered the said evidence in detail and recorded the findings with regard to causing of crushing injury to the hand of the injured, so also, amputation of leg. This Court, therefore, finds no reason to discard the findings recorded by the Tribunal with regard to Claimant loss of 100% earning capacity. Though the Tribunal has rightly taken into consideration the income of the Claimant, however, has not granted the future prospects as per the Judgment in the case of *National Insurance Co. Ltd. vs. Pranay Sethi*.² Considering the age of the Claimant, he will be entitled to receive additional amount of 15% towards future prospects.

9. As far as the artificial limb and compensation therefor is concerned, the evidence led by the Claimant demonstrates that the cost involved for the same including maintenance would be

² 2017 ACJ 2700 (SC).

Rs. 8,60,000/-. The Tribunal has recorded finding that there is no contrary evidence led by the Corporation. Despite of the same, the Tribunal has granted lump-sum compensation of Rs. 5,00,000/-. Once it was proved by the Claimant that Rs. 8,60,000/- would be the expenses towards the artificial limb, it was not open for the Tribunal to grant any lump-sum compensation. The Judgment and Award, therefore, deserves modification to that extent.

10. As a result of above discussion, there is no merit in the Appeal. The Claimant, however, would be entitled to receive following additional compensation.

- (i) Additional 15% towards loss of future income, i.e.,
Rs.3,96,000/-;
- (ii) Rs. 3,60,000/- for artificial limb.

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 a sum of

Rs. 7,56,000/- in addition to compensation granted by the Tribunal.

- (c) Rest of the order of Tribunal to remain unchanged.
- (d) The Claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.
- (e) The claimants shall pay deficit court fees on enhanced amount, if any, as per Rule.
- (f) 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.)