



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

FIRST APPEAL NO.70 OF 2024

Mr.Abhijeet Anandd Pednekar }
 Age-41 years }
 Occ: Presently Nil }
 R/at 4/17, Sahyadri Society, Kalwa, Thane } ... **Appellant**

V/s.

Maharashtra State Road Transport Corporation }
 1st Floor, S.T. Office, Traffic Department, }
 Opposite Vandana Theatre, Old Mumbai }
 Agra Road, Thane. } ... **Respondent**

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Ms.Ketaki Gokhale i/b Mr.Avinash M. Gokhale, for the Appellant.
 Mr.Sumedh Gaikwad i/b Mr.D.D. Rananaware, for the Respondent.

CORAM : R.M. JOSHI, J.

DATE : 8th DECEMBER 2025

ORAL JUDGMENT :

. This Appeal filed under Section 173 of the Motor Vehicle Act, 1988 ('M.V. Act.' for short) takes exception to the judgment and award dated 2nd September 2013 passed by Motor Accident Claims Tribunal, Mumbai ('MACT' for short)

in MACP No.587 of 2009 seeking enhancement of the compensation.

2. It is the case of the Claimant that, on 9th August 2007 along with his friend he was standing at the gate of Chatrapati Shivaji Hospital, Kalwa. At that time offending bus bearing No.MH-12-UA-8411 came in high speed in negligent manner and dashed to a vehicle bearing No.MH-04-AE-6813, thereafter, dashed to the Claimant. In the said accident he sustained injuries of fracture to the left fibia and fibula right knee and shoulder. He took treatment as indoor patient from 21st August 2007 to 28th August 2007. He claims that, he was holding qualification of Diploma in Chemical Engineering and was working with Phinix Filter Pvt Ltd., and earning Rs.15,000/- per month. Due to the sustainment of the permanent partial disability and owing to the nature of work, he had to resign from service and thereafter accepted the table job and earning Rs.5,500/- per month. He therefore claims compensation on different heads.

3. MSRTC has not disputed the factum of occurrence of the accident, however, it is claimed that, the driver of the bus was plying the vehicle in moderate speed and as such there is no negligence on his part in causing of the accident. The Claimant examined himself before the Tribunal and also led evidence of Dr.Gaikwad, Dr.Mehta and Sandeep Prabu. He placed reliance on the police papers so also medical papers.

4. The learned Tribunal accepted the claim of the Claimant partially and his salary was accepted to the extent of Rs.6,000/- per month.

5. The learned counsel for the Appellant submits that, the Tribunal has not considered the evidence of the Claimant indicating that, he was doing field work and owing to the injuries which has resulted into permanent disability, he has to leave the job and thereafter he is earning Rs.5,500/- by doing clerical work. It is her contention that, the income for the purpose of computation of compensation ought to have been considered @ Rs.16,000/- per month. According to her, the permanent disability to the extent of 30% has been proved

through testimony of Dr.Gaikwad. The medical expenses are proved through treating doctor. Insofar as the compensation on other grounds such as loss of amenities, pain and suffering and future prospects are not considered. She placed reliance on judgment in case of Supreme Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi***¹,

6. She further argued that, the evidence of Dr.Gaikwad sufficiently demonstrate that, the sum of Rs.40,000/- to Rs.50,000/- would be require for removal of implants. According to her there is no cross-examination of this point and hence said evidence requires acceptance.

7. The learned counsel for the MSRTC opposed the Appeal by contending that the Tribunal has rightly take into consideration evidence on record with regard to the income of the Claimant and since the Claimant claims to have been earning Rs.5,500/-, the Tribunal accepted the said case. It is argued that, the Tribunal has adequately compensated the claimant. In order to decide the compensation to be paid

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towards loss of earning capacity of the Claimant in case of injury claim, the Claimant has to firstly bring evidence on record indicating that, due to the disability, the work which was done earlier is not being able to be done by him. In this regard the Claimant has pleaded as well as proved that, he was holding Diploma in Chemical Engineering and he was working on field. There is no cross-examination on this point. He further states about he being required to resign the said job due to disability and accepted the clerical job for salary of Rs.5,500/-. To support this contention, evidence of the employer is led. Neither in the cross-examination of the Claimant nor Employer, it is suggested that, the Claimant was not holding requisite qualification as claimed by him or was not doing any field work. In such circumstances, the Tribunal ought to have accepted the case of the Claimant that owing to the disability he had to resign from employment and to accept the employment on lesser salary and therefore the income drawn before accident should have been considered.

8. In so far as the disability is concerned the evidence of Dr.Gaikwad is sufficient to prove the same. There is no dispute made with regard to the competence of witness to assess the disability. Dr.Gaikwad also specifically states about the implant being required to be removed and the cost of Rs.40,000/- to Rs.50,000/- involved therein. There is no cross-examination conducted of this witness on this point. This Court therefore, finds substance in the contentions of the counsel for the Appellant that, the Appellant would be entitled for an amount of Rs.50,000/- towards the expenses for removal of implant.

9. Similarly, the Tribunal has not granted compensation by including the future prospects. In view of the judgment of the Hon'ble Supreme Court in case of *Pranay Sethi* owing to the age of the Claimant the future prospects would be to the extent of 50%. Similarly, the claimant would be entitled to receive additional compensation for pain and suffering as it is apparent from the evidence of Dr.Gaikwad that, there would be life time difficulty and pains for the

Claimant in squatting and climbing the stairs. Needless to say that, he would be entitled to be compensated for loss of amenities.

10. The learned counsel for the Appellant has also sought modification of the award for contention that the loss of functional disability of the Claimant ought to have been accepted to the extent of 70%. In order to support the contention she placed reliance on the judgment of the Hon'ble Supreme Court in case of *Mohammed Sabeer V/s Regional Manager, U.P. State Road Transport Corporation*² No doubt the contention can be accepted provided that there is some pleading of course not strict pleading and some evidence on record. Firstly in the Application the Claimant states that he is not able to state about the position of the future loss of income. The claim has been filed on 10th August 2009. Even giving leverage to the Claimant for the pleadings, the evidence recorded of the Claimant in the year 2013 also does not specifically states about the nature of work which he cannot

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do. The Claimant has only proved that owing to the injuries caused to him and disability, he was required to resign from his employment. That cannot be construed as the sufficient material/evidence on record to hold the functional disability to the extent of 70%, as this is not a case of amputation wherein the functional disability would be assessed without any further evidence. Even from the bare perusal of the nature of injuries which has resulted into amputation. This Court would therefore enable to accept the contention of the learned counsel for the Appellant in this regard.

11. As a result of above discussion, Appellant/Claimant is entitled to receive following compensation.

Particulars	Amount
Annual Income 16000 x 12	Rs.1,92,000.00
Add : 50% future Prospects	Rs.2,88,000.00
After Multiplier of 16	Rs.46,08,000.00
Disability (30%)	Rs.13,82,000.00
Medical Expenses	Rs.60,538.00
Pain & Suffering	Rs.1,00,000.00
Loss of Amenities	Rs.50,000.00

Future Medical Expenses	Rs.50,000.00
Special Diet & Conveyance	Rs.20,000.00
Total Compensation	Rs.16,62,938.00
Les : Awarded by Tribunal	Rs.4,61,138.00
Enhanced Compensation	Rs.12,01,800.00

12. In view of the above, Appeal is partly allowed in the following terms.

ORDER

(i) The Appeal is partly allowed. The impugned judgment and award dated 2nd September 2013 passed by Motor Accident Claims Tribunal, Mumbai ("MACT" for short) in MACP No.587 of 2009 is modified.

(ii) The original Claimant is entitled to receive enhanced compensation of Rs.12,01,800/- which is in addition to the compensation granted by Tribunal, @ 7.5% interest per annum from the date of filing Claim Petition till realization of the the amount.

(iii) The Respondent-MSRTC shall deposit the enhanced amount alongwith accrued interest thereon within eight weeks from the receipt of this order.

(iv) The Original Claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.

(v) The Claimant shall pay deficit Court Fees on enhanced amount, if any, as per Rule.

(vi) Record and Proceedings be sent back to the Tribunal.

13. All pending Applications are disposed of.

(R.M. JOSHI, J.)