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**(1986) 11 BOM CK 0004**  
**In the Bombay High Court**

Gaurish Transport and Another

APPELLANT

Vs

Pedro Salvador and Others

RESPONDENT

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**Date of Decision :** 20-11-1986

**Acts Referred:**

Constitution of India, 1950 — Article 133

**Citation :** (1988) 1 ACC 180 : (1988) ACJ 509

**Hon'ble Judges :** S.K. Desai, J;A.D. Tated, J

**Bench :** Division Bench

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## Judgement

S.K. Desai, J.—These Appeals are preferred against the decision of the learned Member of the Motor Accidents Claims Tribunal, Raigad, Ratnagiri, in Accident Claim Case No. 55 of 1980. By the impugned judgment and order, the Tribunal ordered that the Applicant do recover the sum of Rs. 3 00,000/- along with interest at 10 per cent per annum thereon from the date of the Application till the amount is paid to him jointly and severally by the Opponents. However, it directed further that the liability of Opponent No. 4 (to the Application) was limited to Rs. 50,000/-.

2. Two Appeals have been preferred from the judgment of the Tribunal delivered in favour of the Applicant on 23rd January 1984. First Appeal No. 247 of 1985 is preferred by the owners of the truck which was involved in the accident. As the owners of the truck had insured their vehicle only for limited liability Policy whereunder the liability of the insurer is limited to Rs. 50,000/- under the decree of the Tribunal, the owners of the Transport Company would be liable to pay to the Applicant on execution the full balance amount. The other Appeal viz., First Appeal No. 203 of 1985, is preferred by the owners of the luxury bus which was also involved in the accident. However, as they have taken out full insurance and not restricted, it is in fact their insurer who is prosecuting the Appeal.

3. Mr. Kamat appearing on behalf of the owners of the truck has urged four points: (a) That the Tribunal was in error in holding the truck driver negligent and if that plea was upheld, neither the owners of the truck nor their insurer

would be liable in damages. (b) That in any case the victim, i.e. the Applicant, contributed to the accident by his own negligence and some allowance was required to be made for that. Indeed, the plea was that the entire injury was a result of the victim's negligence which would disentitle him to any damages. (c) that calculation of compensation awarded was not proper and was on the high side (d) That the learned Judge was in error in making the owners of the truck jointly and severally liable along with the owners of the luxury bus.

4. Some of the pleas are special to the owners of the truck, whereas some are common to both the owners of the truck as well as the owners of the luxury bus.

5. Mr. Kamat explained the manner in which the accident had occurred. He laid stress on the fact that the truck stopped immediately after the impact, whereas the bus stopped only after about 200 feet or thereabout which would show that either it was being driven at a fast speed or in an extremely careless manner.

6. We have been taken through the judgment and the Tribunal has considered the various factual aspects properly and correctly. There is, however, some substance in the complaint made by both the Appellants that the Tribunal has totally disregarded the fact that the victim contributed to his injury to a certain extent (very limited) by keeping his elbow on the sill of the window in such a manner that a part of the arm was protruding outside. However, this cannot be such "negligence" as would disentitle the Applicant from any compensation but may be a factor required to be considered to reduce the amount of the award against the owners of the vehicles. Comments were also made on the calculation of compensation.

7. Ignoring the question of lack of negligence or contributory negligence for the time being, we shall first concentrate on the quantum of compensation as calculated by the Member of the Tribunal. The Tribunal has accepted the case of the Applicant that medical and other expenses came to Rs. 3,000/-. In a case of this nature, bearing in mind that the right arm of the Applicant was amputated, this figure, if at all, is on the moderate side and, therefore, there will be no warrant for interfering with the computation. In the same vein, bearing in mind the actual pain and suffering, there would not be any warrant for interfering with the figure of Rs 20,000/-awarded by the Tribunal for this head. It is not possible to weigh pain and suffering with any exact scale or balance and all that an Appeal Court can do is to consider whether the determination of compensation can be regarded as perverse. Indeed, it cannot be held in this case that the calculation of compensation under this head is exaggerated or perverse. The Tribunal on some estimation which is required came to the conclusion that it was required, when the Claim Petition took forty two months for disposal, to consider awarding to the Applicant loss of earnings for this period. The case of the Applicant was that he was not able to follow his avocation to the extent he was expecting and all that he earned was a paltry amount of Rs. 100/- per month. It is pointed out that as a matter of fact the Applicant had deposed that he was earning about Rs. 200/- per month. However, he could not have started earning

this amount immediately after the accident and we will, therefore, take his earning for this forty-two months" period as about Rs. 6,000/- which is worked out to about Rs. 2000/-per month for a period of thirty months. The learned Member has calculated that he would have been able to earn but for the accident Rs. 2,000/- per month for this period and, therefore, the loss under this head must be Rs. 84,000/- less Rs. 6,000/-. It is pointed out by Mr. Kudrolli that the earning must be taken at Rs. 2,500/- per month, but we think bearing in mind the lack of precise details given by the Applicant that the estimated loss of earnings at Rs. 2,000/- per month for this period would be proper. Indeed, for the period of his vacation in India, the Applicant may not have earned anything. This gives us the three figures, therefore, of Rs. 3000/-, Rs. 20,000/- and Rs. 78,000/-. We have now to consider the loss of future earnings as a result of the accident. It will be appropriate to consider the loss of earnings for the purposes of this head at the rate of Rs. 2,000/- per month which would come to Rs. 24,000/- per annum and the question then arises as to the multiplier to be adopted. This will depend upon the age of the Applicant at the time of the accident, the presumed age upto which the earnings would have been maintained and a reduction for being paid the amount in a lump-sum in anticipation rather than over the period. Some upward adjustment may be required to be made on the footing that his income may go up either by seniority, experience, acquisition of additional qualification or perhaps by reason of fall in the value of rupee. These are not absolutes or tangibles and some estimation is required. In the instant case, we think the proper multiplier to be adopted to the annual income at the rate of Rs. 2,000/-per month should be 11. This would give us the figure of Rs. 2,64,000/-. This ignoring the aspect of negligence or contributory negligence, the total figure would come to Rs. 3,65,000/-. Now, an important question may arise. Is the full amount to be paid by both the Opponents (the principal Opponents) and is their liability going to be joint and several ? Of course, it is not possible to accept the submission of the Appellants that it was the Applicant's own default that solely caused or contributed to the accident and, therefore, he is not entitled to any amount. In our opinion, again a somewhat ad hoc yardstick, the amount of compensation determined on the assumption that the victim has to a limited extent contributed to the accident or to the injury the aggregate compensation will have to be reduced by 25 per cent, i.e. by one-fourth and this leaves us with the figure of Rs. 2,73,750/-. Here we have to deal with the contention of Mr. Kamat on behalf of the truck owners that the luxury bus as well as the truck could not be regarded as equally in fault and it would appear that there is some substance in this contention bearing in mind the curve at the point of the brushing and the fact that the luxury bus stopped after some considerable distance. In our opinion, it would not be appropriate to apportion the liability equally between the two but in the proportion of 2: 1 the liability apportionable to the driver of the luxury bus being double than for the driver of the truck. In other words, from the entire amount considered as compensation viz., Rs. 3,65,000/- (Rupees three lakhs sixty-five thousand), there will be an initial deduction of 25 per cent being

attributed to the Applicant for his own default and from the balance amount of Rs. 2,73,750/- (Rupees two lakhs seventy-three thousand and seven hundred and fifty) the liability of the owners of the truck will be restricted to Rs. 91,250/- (Rupees ninety-one thousand two hundred and fifty) and that of the owners of the luxury bus to Rs. 1,82,500/- (Rupees one lakh eighty-two thousand and five hundred). The liability of the two drivers will be composite and not joint and several. Since the luxury bus is fully insured, the liability of the luxury bus and the liability of the insurer of that bus will be co-extensive, whereas in case of the owners of the truck, the liability of their insurer will be limited to Rs. 50,000/- (Rupees fifty thousand) interest and costs.

8. We are now left with the final question as to the interest awarded by the Tribunal on the amount which has been awarded from the date of the Application. Interest has been awarded at the rate of 10 per cent per annum and there cannot be any quarrel with that. If at all the rate of interest is on the lower side by 2 per cent, it cannot be regarded as high so as to call for interference.

9. It is undoubtedly true that in respect of the first two items viz., the expenses and the damages for pain and suffering, interest could be awarded from the date of the Application, but logically in respect of loss of earnings and loss of future earnings calculated on the date of the Award, it would be difficult to sustain awarding of interest from the date of the Application. Mr. Kudrolli cited some observations from Supreme Court decisions to the effect that such interest could be awarded, but the basis of the award of interest is not found discussed in those decisions. Indeed, in an appropriate case, interest could be awarded at a lesser amount from the date of the Application and on another amount from the date of the Award. As in our opinion the amount at which interest could be awarded from the date of the Application would only be Rs. 15,000/- (Rupees fifteen thousand), i.e. 75 per cent of Rs. 20,000/- (Rupees twenty thousand), we do not propose to split up the award of interest in this manner. In our opinion, therefore, interest should run on the amounts found due to the Applicant from the date of the Award itself and at the specified rate viz. 10 per cent interest will stop running against opponents 1 and 3 or an amount of Rs. 50,000/- (fifty thousand) from 1st Nov. 1985.

10. Accordingly, the Appeals are allowed to the extent that in both the Appeals the Award passed by the Member of the Motor Accidents Claims Tribunal will stand modified for the reasons earlier indicated as under:

11. The Applicant do recover the sum of Rs. 1,82,500/- (Rupees one lakh eighty-two thousand and five hundred) and further interest (as indicated) from Opponents Nos. 1 and 3 and the Applicant will recover a further amount of Rs. 91,250/- (Rupees ninety-one thousand two hundred and fifty) and further interest (as indicated from) Opponent No 2 of which the liability of Opponent No. 4 (the insurer) will be Rs. 50,000/- (Rupees fifty thousand) and further interest thereon (as indicated.) On these amounts the Applicant will get interest at the rate of 10 per cent par annum (simple) from the date of the Award till payment. As far as

costs are concerned, we quantify the costs payable to the Applicant at Rs. 4,500/- (Rupees four thousand and five hundred), of which costs Opponents Nos. 1 and 3 will pay Rs. 3,000/- (Rupees three thousand) and Opponents Nos. 2 and 4 will pay Rs. 1,500/- (Rupees one thousand and five hundred).

12. Mr. Kudrolli applies for leave to appeal to the Supreme Court. There is no substantial question of law which arises in this matter which is required to be settled by the Supreme Court. The application, therefore, for certificate under Article 133 of the Constitution of India is refused.