SATISH RAMCHANDRA SANGAR
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# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE JURISDICTION

## FIRST APPEAL NO.39 OF 2008

**Mohan Laxman Chavan**, ]
Aged about 54 years, Occupation : Service, ]
Residing at : B1/201, Bramhand Complex, ]
Phase III, C.H.S. Proposed Azad Nagar, ]
Thane – 400 608. ] ...**Appellant**

**Versus**

1. **The Transport Manager**, ]
Thane Municipal Transport, ]
Administrative Building, Wagle Estate, ]
Thane. ]

2. **Maharashtra State Road Transport Corporation** ]
Traffic Department, 1st Floor, Opp. Vandna ]
Talkies, Old Bombay Agra Road, Thane – ]
400 602. ]

3. **The Director of Insurance**, ]
Government of Maharashtra, Griha Nirman ]
Bhavan (MHADA), 264, Kala Nagar, ]
Bandra (East), Mumbai – 400 051. ] ...**Respondents**

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| | |
|---|---|
| Mr.T.J.Mendon:- | Advocate for Appellant. |
| Mr.Vedant Bende i/b. Mr.Mandar Limaye:- | Advocate for Respondent No.1– Thane Municipal Transport. |
| Ms.P.M.Bhansali a/w Mr.Arafat Siddique:- | Advocates for Respondent No.2– MSRTC. |
| Ms.Rashmi S. Tendulkar:- | AGP for Respondent No.3– Director of Insurance. |

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CORAM : S. M. MODAK, J.

RESERVED ON : 7th OCTOBER 2026

PRONOUNCED ON : 22nd OCTOBER 2026

JUDGMENT :-

1. The only issue arisen in this Appeal is:-

*"Whether the Motor Accident Claims Tribunal – Thane ("**Tribunal**") was correct in holding that it was not the driver of TMC and MSRTC Bus who were negligent but it is the Appellant/Claimant only who is responsible for the accident".*

2. The Tribunal as per his Award dated 8th December 2006 passed in M.A.C.P. No.205 of 1999 has dismissed the Claim Petition and hence, this Appeal at the instance of the Appellant.

3. I have heard learned Advocate Shri.Mendon for the Appellant, learned Advocate Shri.Bende for Respondent No.1–Thane Municipal Transport ("**TMT**") and learned Advocate Ms.Bhansali for Respondent No.2–MSRTC. The relevant facts in nutshell are as follows:-

Facts

(a) The Appellant on 4th August 1998 had gone to Thane Janata Sahakari Bank, Ulhasnagar Branch for some work. He finished his work at 6.00 p.m., and boarded a bus owned by the Respondent No.1 – TMT at Gokul Nagar Bus Stand in the vicinity of castle mills, Thane.

(b) There was crowd in the bus and he could not enter the bus. He was compelled to stand on the footboard.



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(c) The conductor gave signal. The driver of TMT bus started the bus and he overtook the standing bus belonging to MSRTC–Respondent No.2. In that exercise, the TMT bus grazed the MSRTC bus.

(d) As a result, the Appellant was thrown out of bus who was standing at the footboard.

(e) Inspite of this incident, the conductor of TMT bus did not give a signal to the driver, as a result, the driver took the bus ahead.

**4.** This is long and short of the incident. The Appellant was first taken to Civil Hospital at Thane and then shifted to Arogya Hospital. He was admitted there for 12 days. The injuries sustained by him are as follows:-

(a) Still plate in right wrist joint.

(b) Left wrist plaster was put in a plaster.

He met Dr.Sandeep Kelshikar and obtained disability certificate dated 28th January 2006. The disability ascertained by him is 30%.

**5.** He filed a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 ("**M.V.Act**"). He claimed compensation of Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand) on all count. The Claim Petition was filed against TMT–Respondent No.1, MSRTC –Respondent No.2 and Respondent No.3–Director of Insurance. Even though main allegation is against the TMC, they have chosen not to



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file a Written Statement. The MSRTC has denied allegation of negligence against them. The Director of Insurance has pleaded about absence of bus number.

**6.** On this background, the claimant examined himself and Vivek Trambak Shelke being a representative of Bharti Bijali employer of the claimant and Dr.Sandip Kelshikar who has issued the disability certificate. As against this, the TMT has examined their Traffic Controller–Yelkantha Patil. It is important to note that the TMT has not filed the Written Statement though they examined a witness. It is cardinal principle that evidence can be given only on the basis of pleadings. There is no pleading, still the Tribunal allowed the TMT to examine the witness. Its evidentiary value will be decided later on. Whereas, MSRTC examined their Traffic Inspector Ales Salu Nigrel.

**7.** It is true that the witness Patil and Nigrel are not the witness about manner of commission of the accident. So, the evidence only of claimant is available. It is important to consider the findings by the Tribunal. They are as follows:-

(a) The claimant has neither in his Petition nor in the evidence has stated about the registration number of TMT bus nor S.T. bus. The number which is appearing in the Police statement at Exhibit–55 is 6616 belonging to TMT.



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(b) On the basis of evidence of Yelkantha Patil, Traffic Controller, they are not having any bus having number 6616. He has produced another list of TMT buses available at Wagale Depot. Even Mr.Patil has also examined that none of their buses have met with an accident on 4th August 1998.

(c) The Traffic Inspector Shri.Nigrel has also deposed that there was no report about accident involving S.T. bus which was driven.

(d) The Tribunal has believed the testimony of both these witnesses and concluded that neither the bus of TMT nor MSRTC was involved in the accident of 4th August 1998.

(e) However, the Tribunal has agreed with the submission of learned Advocate for the claimant that public can identify TMT bus or MSRTC bus only by visual inspection (paragraph No.10).

(f) On the point of negligence, the Tribunal observed that the claimant was standing in the bus at the footboard and he was carrying his belongings in one hand. The Tribunal concluded that the claimant was standing in their dangerous position.

(g) The Tribunal observed that the claimant ought not to have boarded the bus as there was crowd. <u>This observation is erroneous because even though TMT bus was crowded, the claimant has boarded the bus and he was not stopped by the conductor. At least, there is no evidence</u>.

(h) The Tribunal has blamed the claimant for not going inside the bus immediately. The Tribunal has blamed the claimant for keeping his hand projecting outside the bus.



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(i) On this background, the Tribunal has concluded that in fact it was the claimant who was negligent.

(j) The Tribunal considered Police statement of the claimant and he has not mentioned that due to the negligence on the part of the driver of TMT bus or S.T. bus, he has sustained injuries. The Tribunal has blamed the claimant.

**8.** I have read the Police statement at Exhibit–55. The claimant has stated how the accident has taken place, how the TMT bus driver overtook the MSRTC bus which was stationary and how he has fallen down. Even though there is no mention about negligence, the Court can infer on the basis of circumstance. The Claim Petition is not to be decided only on the basis of Police papers. The Police papers is one of the circumstances. But it has to be coupled with the oral evidence.

**9.** The Tribunal has rightly not held the driver of MSRTC bus negligent because it was stationary bus. (paragraph No.13). Learned Advocate Shri.Mendon has challenged this finding. He relied upon the observations in case of ***Bimla Devi and Ors. V/s. Himachal Road Transport Corpn. & Ors.***[1] and the observations in case of ***Kalim Khan and others V/s. Fimidabee and others***[2]. It is on the point of use of motor vehicle. I am not agreeable to the said submission. It is true,

1 II (2009) ACC 444 (SC)
2 2018 ACJ 2025



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vehicle should not be moving. If there is vehicle which is capable of moving it is sufficient. But, in this case, there is no evidence that MSRTC bus was parked at wrong place and in wrong manner. I am confirming the finding given by the Tribunal thereby exonerating the MSRTC.

**10.** The Tribunal has observed that there was no dent on either of the buses. It is true, both the witnesses for MSRTC and TMT have not deposed about receipt of accidental report. It is correct but there may be various reasons for not receiving the accidental report from the concerned person. It may be due to absence of accident or it may also be due to failure on the part of the concerned person to give report.

**11.** It is true, there is no evidence that the driver of either TMT or MSRTC bus is prosecuted. Admittedly, the claimant has not adduced any evidence. As said above, the criminal prosecution is not the sole circumstance for deciding the negligence. The Tribunal has opined that there were only fractures on both the hands of the claimants and if the buses had grazed against each other, there could have been serious injuries and it has not happened.

**12.** The Tribunal opined that the injuries caused to the claimant were due to fall from the moving bus and it was due to his negligence.



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**13.** Mr.Bende has relied upon the following judgments:-

(a) ***Sithara N.S. & Ors. Etc. V/s. Sai Ram General Insurance Company Limited***[3].

(b) ***Vanita & Ors. V/s. M/s Shriram Insurance Company Ltd. and Anr.***[4]

(c) ***Mohammed Aynuddin Alias Miyam V/s. State of A.P.***[5]

They are on the point of how to deal with the cases wherein vehicle registration number is not mentioned in the F.I.R.

**14.** In case of ***Vanita & Ors.*** (supra), the Supreme Court dismissed the Appeal filed by the claimants against the judgment of the High Court. In the said judgment, the High Court has allowed the Appeal of the Insurance Company and dismissed the Claim Petition. It was on account of involvement of the offending vehicle Tata Magic was not proved. Ultimately, the ratio of the judgment is nothing but the facts, its appreciation and the law. There was delay in lodging the F.I.R. for 26 days. The explanation offered for the delay was not accepted. The First-Informant was not the eye–witness to the accident. The vehicle number was not told to him by the deceased or by the persons who brought the deceased to the hospital. The inquest panch has not informed about vehicle number. Even one of the eye–witnesses has not

3 Civil Appeal Nos.14718-14719 of 2025 : 12th December 2025 : Supreme Court of India
4 Civil Appeal No.6794 of 2025 : 4th September 2025 : Supreme Court of India
5 (2000) 7 Supreme Court Cases 72



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provided the vehicle number at any point of time. It is observed:-

> *"Merely stating the description of the vehicle as Tata Magic is not sufficient".*

**15.** In case of ***Mohammed Aynuddin Alias Miyam*** (supra), it was criminal prosecution. The Supreme Court differentiated in between the culpable negligence and other negligence. There was no evidence that the driver suddenly moved the bus before the passenger could get into it or without getting a signal from rear side.

**16.** In case of ***Bimla Devi*** relied upon by Mr.Mendon, it is held:-

> *"Strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied".*

**17.** The Supreme Court interpreted the meaning of use of vehicle in case of ***Kalim Khan*** (supra). There was blasting machine kept on the tractor for digging a well. Due to blasting, a stone flew and fell on the head of the nearby person resulting into death. It was held that tractor was used.

**18.** It is an admitted fact that the registration number of MSRTC bus or TMT bus is not given. But whether it is always possible to see the number and give it and inform about the same. The Tribunal has



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concluded that both the buses referred by the claimant were TMT and MSRTC buses. This Court confirmed this finding. The claimant boarded the bus and the accident happened immediately. He has fallen down. There could not be any question for him to see and note the registration number of any of the buses, because his priority is to save him. There is no record that any bus of MSRTC and TMT has met with an accident on the relevant date at the relevant spot. It may be for several reasons. It is not required for the claimant to prove what was the registration number of the bus. It is sufficient if he describes that it is TMT bus or MSRTC bus. The observations made in the judgments relied upon by learned Advocate Shri.Bende are not applicable as the facts are different. There was occasion to see the registration number and even though it was not before the Police. That is why there was doubt about the involvement of particular bus. When registration number was there and other evidence suffered from infirmities and that is why there was doubt about involvement of the particular vehicle. However, the Tribunal has concluded that the claimant boarded TMT bus, it is sufficient. I already held that the MSRTC bus driver cannot be fastened with liability.

**19.** It is true that the claimant stood on footboard of the bus, he has



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not entered inside. It is true, he was holding some article in his hand. At the same time, it is true that there was crowd in the bus. It is also true that the conductor has not asked the claimant *'not to enter the bus'*. It is possible that the claimant has not fallen down if he was not standing on the the footboard. Certainly, he is responsible to certain extent. At the same time, it is true that the driver of the TMT bus took his bus in such a manner that it has grazed the stationary MSRTC bus. The issue is why he grazed the bus with MSRTC bus. It may be due to fast speed or not paying attention to the parking of MSRTC bus. There is every reason to believe that driver of TMT bus has not taken precaution while overtaking MSRTC bus. The claimant's hand struck S.T.Bus. He took ahead his bus without taking proper precaution. That is the reason why the claimant has fallen down and sustained injuries.

**20.** The Tribunal has overlooked this aspect and has only focused on the fault of the claimant. In fact, this is a case wherein there is fault of claimant, so also, the driver of TMT bus. I consider the liability of claimant to the extent of **25%** and that of TMT bus driver to the extent of **75%**. Not mentioning the TMT bus or the MSRTC bus driver in the Police statement will not non suit the claimant. The contents of Police statement is one of the circumstance. But, if there is oral



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evidence thereby explaining the manner of accident, the Tribunal can certainly consider it. That is how it is considered by this Court.

**21.** About disability there is evidence of Dr.Kelshikar. The accident took place on 4th August 1998. Initially, the claimant was taken to Civil Hospital and then to Arogya Hospital. Anyone from Arogya Hospital is not examined. Dr.Kelshikar has only assessed the disability on 20th January 2006 after a gap of almost 8 years. He had also seen the discharge certificate issued by Arogya Hospital. He has not examined the claimant immediately after the accident. He has assessed the disability to the extent of 30%. However, in his evidence, except deposing that he has got pain and swelling, he has not said how it has affected his functions. In fact, in the cross-examination, he has deposed that he got promotion (paragraph No. 14). On the basis of certificate issued by Arogya Hospital, he has deposed about the injuries sustained by the claimant. They are as follows:-

(a) Compound comminuted fracture of right Humerus and Colles fracture of left Radius.

(b) There was plate.

**22.** As held in ***Raj Kumar V/s. Ajay Kumar***[6], *"there may not be any need to award any compensation under the head of 'loss of*

6 (2011) 1 SCC 343



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*future earnings' if the claimant continues in government service though he may be awarded compensation on the head of 'loss of amenities' as a consequence of loosing his hand"*. In this case, as said above, there is no evidence how the physical disability has affected his earning capacity and evidence suggests that he was promoted. Hence, I am not inclined to grant him any compensation on account of *'loss of income'* due to disability.

Income

**23.** The claimant has examined Vivek Shelke. The claimant was working as an Inspector. In the year 1998, his salary was Rs.11,123/-. The claimant was not on duty on 5th August 1998 upto November–1998. He was on sick–leave. It is true the salary certificate does not denote deductions. At the time of evidence, the claimant is promoted to Senior Inspector. The claimant was paid salary during sick–leave period. There was no occasion for the Tribunal to comment upon the income because the Petition was dismissed.

**24.** As per the certificate, salary without deduction was shown as Rs.11,123.30/-. There has to be deduction towards the professional tax and income tax. Those figures are not available. I consider it as Rs.400/-. So, the salary available comes to Rs.10,723/-. This



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calculation has no meaning because I am not granting any compensation on account of *'loss of income'*. Even though the claimant received salary for three months of sickness, the liability as per the M.V.Act is a statutory liability. It is independent of the salary for sick leave. Because if the sick leave is granted, that sick leave period is excluded from his total sick leave period and in future, he cannot seek sick leave for that period.

**25.** The medical expenses claimed is Rs.23,196/-. It is true that 48 medical bills are produced. The total comes to Rs.16,716/-. The amount of Arogya Hospital bills comes to Rs.16,480/-. These amounts can be granted. Dr.Kelshikar has deposed that there will be expenditure of Rs.15,000/- for removal of the plate and screw. It is also true that some of the patients may not remove the implant fixed. I am granting it. I quantify the compensation as below:-

| | |
|---|---|
| Loss of income Rs.10,723/-X3 Months:- | Rs.32,169/- |
| Future medical expenses:- | Rs.15,000/- |
| Medical bills:- | Rs.16,716/- |
| Arogya Hospital bills:- | Rs.16,480/- |
| Pain and Suffering:- | Rs.50,000/- |
| Attendance Charges:- | Rs.10,000/- |
| Loss of Comfort and Amenities:- | Rs.50,000/- |
| Conveyance Charges:- | Rs.10,000/- |



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| Special diet:- | Rs.10,000/- |
| Received amount:- | Rs.00.00/- |
| **Enhanced amount**:- | **Rs.2,10,365/-** |

**26.** The apportionment of negligence is only for the purpose of calculating the loss of income and it cannot be for the purpose of expenses incurred and to be incurred. The Respondent No.1–The Transport Manager, Thane Municipal Corporation is liable to pay the compensation. The Respondent No.3–The Director of Insurance, Government of Maharashtra being the Insurer of Respondent No.1 is also liable to pay the compensation.

**27.** For the above reasons, the following order is passed:-

-: **O R D E R** :-

(a) **The Appeal is allowed**.

(b) The Respondent Nos.1 and 3 are directed to pay jointly and severally Rs.2,10,365/- to the Appellant within a period of 12 weeks along with interest at the rate of 7.5% per annum from the date of Petition till realization of the amount.

(c) From the above said amount, the amount granted, if any, for no fault liability, be deducted.

(d) Additional Court fee be paid before the Tribunal.

**28.** In the light of the above observations, **the Appeal is disposed of**.

**29.** **Pending Applications, if any, also stand disposed of**.

**[S. M. MODAK, J.]**



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