

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**BENCH AT AURANGABAD**

...

**928 FIRST APPEAL NO. 4323 OF 2008**

**TUKARAM BALIRAM JAGTAP**

**VERSUS**

**BABASAHEB RAJARAM GARAD AND ORS**

...

**Advocate for Appellant : Mr. A. M. Gholap i/by  
Mr.S S Manale**

**Advocate for Respondent No.1 : Mr. Mr. K. A. Kadam,**

**Advocate for Respondent No.3 : Mr. V. R. Mundada**

**Advocate for Respondent No.5 : Mr. P.P. Dama**

...

**CORAM : S. V. GANGAPURWALA, J.**

**DATE : 27th October, 2015**

**PER COURT :**

1. The present appellant had filed application for compensation under section 166 of the Motor Vehicles Act on account of the injury sustained by him in an accident. The tribunal partly allowed the claim petition. The present appeal is filed for enhancement.

2. Mr. Gholap, the learned counsel for the appellant submits that the appellant, at the time of he accident, was practicing lawyer. He had completed 3 years of his practice. Though in the application it was stated that he was earning Rs.3000/- per month, evidence is led to show that he was earning Rs.5000/- per month. The learned counsel submits that though the disability certificate is

of 75%, now the appellant cannot even walk without support nor can even stand without support. Multiple operations were required to be undergone by the appellant. There is complete tear of anus, because of which the appellant is kept on colostomy. The appellant has suffered multiple injuries like fracture of pelvis, rupture of urinary bladder, complete tear of anus etc.

3. The tribunal has considered functional disability to the extent of 100% on the basis of evidence of the Doctor who is examined. The learned counsel submits that the income of the appellant is considered as Rs.3000/- per month as against Rs.5000/- for which evidence was also led. According to the learned counsel, the tribunal has made 1/3rd deduction towards personal expenses which is absolutely erroneous and does not stand to any reason. For compensation in respect of injuries, personal deductions could not have been made. According to learned counsel, for medical expenses also, complete 1,75,000/- has not been awarded for which the bills are produced.

4. The learned counsel for the appellant further submits that paltry amount is awarded towards pain and agony and no amount is awarded towards loss of amenities. According to the learned counsel, for future medical

expenses also, substantial amount is required. The appellant is required to undergo further operation. The said aspect is not considered at all. The learned counsel relies on the judgment of the Apex Court in case of **V. Mekala Vs. M. Malathi and another**, reported in **2014 (3) T.A.C. 5 (SC)**.

5. Mr. Mundada, the learned counsel for the insurance company supports the judgment and submits that there is no evidence to even suggest that the appellant was earning Rs.5000/- per month. The court has rightly considered notional income of Rs.3000/- per month. The amount under various heads have been rightly awarded. The medical bills have been considered and Rs.1,69,500/- has been rightly awarded.

6. Mr. Dama, he learned counsel for respondent No.5 also supports the judgment delivered by the tribunal.

7. I have considered the submissions canvassed by the learned counsel for the respective parties, so also I have gone through the record and proceedings.

8. The factum of accident is not disputed. The Court has also come to the conclusion that it was the

driver of the truck who was driving vehicle in rash and negligent manner, was responsible for the accident. The disability certificate is produced on record which suggest that the appellant has suffered 75% permanent disability. The disability sustained by the appellant have been proved by the evidence of Doctor i.e Dr. Ashok Kukade. He has stated that the appellant has suffered following injuries:

- (i) Multiple fracture of pelvis
- (ii) Rupture of urinary bladder
- (iii) Complete tear of anus
- (iv) Extensive soft tissue injuries on left side body and lower limb.
- (v) Left knee heamarthrosis.

9. The disability certificate shows that there is a destruction or permanent impairing of the powers of member or joint. The Doctor, in his evidence, deposed as under:

*"Claimant cannot discharge his duties like us. I assessed his disability to the extent of 75% permanent disability and issued disability certificate accordingly. The disability certificate now shown to me is the same. It it bears my signature. Its contents are true and correct. It is marked as Exh. 477. Claimant's locomotion are*

*grossly restricted due to multiple fractures to pelvis. Because of rupture of urinary bladder of the claimant, he has difficulty in the process of urination and sexual intercourse. Because of perennial injuries, claimant has dis-figuration of perennial and because of anal injuries, normal passage of feces is not established and he bears a colostomy. I have advised another surgery to the claimant for establishment of natural passage for feces. It is a major surgery and for that, the claimant requires to be admitted in the hospital for two weeks and has to spend Rs.25,000/-for it."*

10. The aforesaid statement of the Doctor would suggest that the appellant has sustained 100% functional disability. Even the tribunal has considered the case of the appellant as of 100% functional disability.

11. In the claim application, the appellant/claimant had stated that his income is Rs.3,000/- per month, though in the evidence it has been suggested Rs.5000/- per month. However, the pleading will also have to be considered in that regard. Accepting that the appellant was earning Rs.3000/- per month i.e. Rs.36,000/-per annum, this being a case of compensation towards permanent disability, deduction towards personal expenses need not be made. The claimant, at the time of accident was 27 years of age, for which multiplier of 17 is

applicable. As such, towards loss of earning Rs.6,12,000/- can be awarded.

12. Medical expenses are to be awarded as per the actual expenses incurred. The tribunal has considered the medical bills on record and awarded Rs.1,69,500/- which is reasonable and proper. For the special diet claimant had claimed Rs.25,000/- which is reasonable and proper, I would award the same. So also for future medical expenses, the claimant is entitled for Rs.25,000/-. The court has not awarded any amount towards loss of amenities and has awarded paltry amount on account of pain, suffering and trauma.

13. The Apex Court, in similarly situated fact in the case of **G.Ravindranath @ R. Choudary Vs. E. Srinivas and another**, reported in **2013 AIR(SCW) 4867**, had awarded Rupees four lakhs for loss of amenities, Rupees three lakhs for pain, suffering and trauma. In the said case, it was on record that the appellant will be required to take further treatment in the institute like NIMS for at least 10 years. Considering the nature of injuries sustained, I would award Rupees two lakhs towards pains and suffering; for loss of amenities, I would award Rs.2,00,000/-(Rupees two lakhs) and towards loss of

expectation of life, I would award Rs. Two lakhs i.e. total Rs.14,31,500/-.

14. I the result, the appeal is allowed. Order of the tribunal is modified.

15. It is held that the appellant is entitled for compensation of Rs.14,31,500/- (Rupees fourteen lakhs thirty one thousand five hundred only). The respondents 1, 2 and 3 shall jointly and severally pay an amount of Rs.14,31,500 to the claimant ( inclusive of the amount of Rs.25,000/- awarded under the no fault liability) with interest @ Rs.7.5% from the date of claim petition till realization of the amount.

16. The amount already paid shall be adjusted as on the date, the said payment is made.

17. The first appeal is accordingly disposed of. No costs.

18. In case claimant has deposited less Court fees, claimant shall deposit the deficit Court fees.

( S. V. GANGAPURWALA, J. )

JPC