

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Civil Appellate Jurisdiction.**

FIRST APPEAL NO. 283 OF 2003.

SK RAUF SK GAFFAR MANIYAR.

VERSUS

THE DIVISIONAL MANAGER, M.S.R.T.C, JALGAON & ORS.

Appearance =>

Ms. S.V. Nyayadhish, Advocate h/for Mr. C.S. Deshmulkh,
Advocate for the Appellant.

Mr. M.K. Goyanka, Advocate for Respondent No.2.

CORAM : S.V. Gangapurwala, J.

DATE : 8th October, 2015.

Per Court :-

Present Appellant has filed Motor Accident Claim Petition No. 448 Of 1997 under Section 166 of the Motor Vehicle Act seeking compensation on account of injuries sustained by him in an accident.

[2] The learned Member, M.A.C.T., Jalgaon vide his Judgment dated 14th November, 2002 partly allowed the said Claim Petition. Present Appeal is preferred by the original claimant for further enhancement in the compensation amount.

[3] The learned counsel for the Appellant has strenuously contended that the appellant was 16 years of age at the time of accident. The School Leaving Certificate is produced on record to

substantiate the age of the appellant. The learned counsel submits that, the medical certificate is also produced on record showing that the appellant has sustained 25% permanent disability. The Appellant has sustained fracture to his Right leg and also injuries to the Left leg and other parts of the body.

[4] According to the learned counsel, even as per THE SECOND SCHEDULE, of Motor Vehicle Act, for a child below 15 years, Rs.15,000/- per annum is considered as notional income. The learned counsel submits that without applying the multiplier factor, only Rs.25,000/- was awarded towards the permanent disability. Receipt of medical expenses to the extent of Rs.16517/- were produced on record but, the Tribunal has awarded only Rs.15700/-. Paltry sum is awarded towards the pains and suffering.

The learned counsel for the Appellant relied upon the decision of Hon'ble Apex Court in case of Syed Sadiq & Ors. V/s. Divisional Manager, United India Insurance Company Limited, reported in 2014(4) Maharashtra Law Journal, 538 to substantiate the submissions that under the head of Non Pecuniary Damages, the appellant is entitled for substantial amount.

[5] Mr. Goyanka, learned counsel for the Respondents submits that, there is no proof that the appellant has sustained any monetary loss and towards permanent disability of 25% compensation awarded is just and proper. There is no evidence to suggest that disability would be permanent. Injuries sustained are curable. There is no loss of income. As such amount has been rightly computed by the tribunal.

I have considered the impugned Judgment and Record & Proceedings.

[6] Record shows that at the time of accident, the appellant was 16 years old. The appellant has come with a case that he was serving in one garage however, except his bare statement, there is no proof of the same, as such, income as suggested by the appellant cannot be considered. Even if the Second Schedule to the Motor Vehicle Act is perused, Rs.15,000/- per annum is considered as notional income of child below 15 years.

[7] In the facts of present case, multiplier can be applied which would be 18 as per the Judgment of Hon'ble Apex Court in case of **Sarla Varma & Ors. V/s. Delhi Transport Corporation and another, reported in 2009(5) Maharashtra Law Journal, 775.**

If I consider 25% disability and the income as Rs.15,000/- per annum, by applying multiplier, loss would be Rs.65500/-. The tribunal after considering the document placed on record has awarded Rs.15,700/- for medical expenses which appears to be correct. Towards diet Rs.5000/- is awarded, which is reasonable and proper. Rs.10,000/- has been awarded towards for pains and suffering and no amount is awarded towards loss of amenities. I would award consolidated amount of Rs.50,000/- for pains and suffering, loss of amenities and other expenses. The claimant as such is entitled for Rs.138200/-. In the result, I pass the following order :-

ORDER

(i) The judgment and order dated 14th November, 2002 passed by the learned Member, M.A.C.T., Jalgaon in M.A.C.P. No.448/1997 is modified.

(ii) Respondent Nos. 1 and 2 are jointly and severally liable to pay amount of Rs.138200/- to the Appellant with interest @ Rs.9% per annum from the date of Petition till the realization of amount.

(iii) Amount already paid shall be adjusted as on the date of said payment, as ordered.

(iv) First Appeal accordingly partly allowed.

(v) No costs.

(S.V. GANPURWALA, J.).