

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2876 OF 2013

Sk. Gaffar s/o Sk. Mahemood ... Appellant
Vs.
Baliram s/o Umaji Kapse and Anr. ... Respondents

Mr. Mohit Deshmukh, h/f. S.G. Chapangaonkar, Advocate for the Appellant.

Mr. V.N. Upadhye, Advocate for respondent no.2.

CORAM : A.V. NIRGUDE, J.
DATE : 20-09-2016.

Per Court :

1. This appeal challenges judgment and award dated 08/07/2003 passed by the learned Chairman, Motor Accident Claims Tribunal, Beed in M.A.C.P No. 331 of 1999. The appellant was the claimant. The facts leading to this litigation in short can be stated as under:-

2. The claimant Sk. Gaffar was a fruit merchant at Georai. On 27/05/1999 while Gaffar was traveling in Jeep from Georai to Beed, the driver of the Jeep could not deal with an obstruction on public road and collision took place between the Jeep and the obstruction which was a turtled truck lying in the middle of the road. Gaffar sustained injuries and was taken to hospital and was treated and underwent prolong treatment. On 16/08/1999 he moved an application seeking compensation. He demanded compensation of Rs. Two Lakhs. The learned Chairman awarded Rs. 97,718/-. The learned advocate appearing for the appellant took me through the entire record.

3. In my view, the claim and drafting of the petition was erroneous. The appellant could have made a higher claim. From the record it appears to me that the learned counsel appearing for the appellant in the lower court was probably not aware of the method of calculation of compensation in such cases. The major part of compensation is always in respect of loss of earning capacity. But in the petition compensation for loss of earning in future for two to three years was sought. This is an incorrect way of making a claim. Loss of earning is calculated on the basis of multiplier which depends on the age of the victim. It also depends on the percentage of permanent disablement and to what extent it effected the earning capacity etc. This method is not utilized, even at the time writing the judgment is not used.

4. Let me therefore first calculate compensation for loss of earning suffered by the appellant. The appellant examined himself as witness, he even examined his father in law and then, he examined the neuro-surgeon who treated him. The doctor has opined that, though the appellant is conscious ambulatory (capable of moving) he is incapable of taking decisions. He has lost capacity to memorize and take judgment. The doctor further mentioned that, the complete cure of these functions may not be possible even in future also. He further mentioned that the patient would be required to take anti-convulsant drugs. This indicate that the appellant due to head injury is suffering from convulsion. From this evidence, it is clear that, due to brain injury the claimant lost most of his physical strength. The appellant thus suffered 100% permanent disablement.

5. It has come on record that, appellant was a fruit seller and his shop was situated outside Bus Stand of Georai town. From these circumstances, one can assume that appellant's monthly income

was not more than Rs.3,000/-. Having regard to his age, multiplier of fifteen is suitable and therefore compensation for loss of earning would come to Rs. 5,40,000/- (Rupees Five Lakh Forty Thousand). In addition to this, the appellant is also entitled to actual medical expenses which are rounded off to Rs.50,000/-.

6. Appellant is also entitled to compensation for special diet to the extent of Rs. 25,000/-. He is further entitled to compensation for cost of transportation, accommodation during his treatment etc. of Rs. 25,000/-. He is further entitled to compensation of Rs. 1,00,000/- for future medical treatment.

7. In addition to this on account of non-pecuniary loss the appellant is entitled to compensation of Rs. 1,00,000/- for pain and suffering and Rs. 1,00,000/- for loss of amenities of life.

8. The total comes to Rs. 9,40,000/- (Rupees Nine Lakh Forty Thousand). This amount shall be paid along with interest at the rate of 7.5% from date the this appeal was restored for the first time.

9. A new award be drawn according to this judgment.

10. Appeal is allowed.

(A.V. NIRGUDE)
JUDGE