

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1485 OF 2004

Baba s/o Kisan Admane
Age 30 years, Occ. Nil,
R/o. Awasgaon, Taluka Kajj,
District Beed

...Appellant

versus

1) Maharashtra State Road Transport
Corporation, through Divisional
Controller, MSRTC, Osmanabad
District Osmanabad

2) Ravindra Jalindar Nalawade
Age 32 years, Occ. Driver
R/o. Washi, Tq. Bhoom,
District Osmanabad (deleted)

...Respondents

.....
Mr. S.G. Chapalgaonkar, advocate for the appellant-claimant
Mr. A.B. Dhongde, advocate for respondent No.1
.....

CORAM : V. K. JADHAV, J.
DATED : 3rd MAY, 2017

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and award dated 2.9.2004, passed by the learned Member, M.A.C.T. Ambajogai, in M.A.C.P. No. 93 of 2002, the original claimant has preferred this appeal in respect of quantum of compensation.

2. Learned counsel for the appellant-claimant has submitted that

the Tribunal has not considered the income of the appellant-claimant and even though it is personal injury claim, deducted 1/3rd of the amount from his income towards his personal and living expenses. The learned Member of the Tribunal has also erroneously applied the multiplier 15 instead of 17. The injuries sustained by the appellant-claimant resulted into amputation of two toes of his left foot and the extent of disability as worked out by the Orthopedician vide certificate at Exh.35, is 40%. The Tribunal has also awarded very meager amount under non pecuniary heads, such as pains and sufferings etc. The Tribunal has also awarded meager amount for attendant and special diet charges etc.

3. Learned counsel for the respondent M.S.R.T.C. submits that the Tribunal has awarded just and reasonable compensation and no interference is required in the impugned judgment and award.

4. On perusal of evidence and the judgment and award passed by the Tribunal, it appears that after the accident, the appellant-claimant was admitted in S.R.T.R. Hospital at Ambajogai for two months as indoor patient and thereafter for two months he remained as outdoor patient for follow up treatment. The appellant-claimant has deposed that due to amputation of his left foot his left leg is weak and he cannot walk without help of crutches. He has to use two

crutches at a time. It is not disputed that the appellant/claimant was working as labour prior to the accident. He cannot do any labour work and even cannot seat and get up. According to him, even with the help of crutches, he can walk with difficulties. Though the Tribunal has considered the said disablement affecting his earning capacity to the extent of 100%, the Tribunal erroneously deducted 1/3rd amount from his income towards his personal and living expenses. Learned Member of the Tribunal has also applied multiplier 15 instead of 17 though it has come on record that the appellant-claimant was 30 years of age at the time of accident.

5. In view of above, re-determination of compensation as worked out by the Tribunal is necessary. Furthermore, the Tribunal has awarded only Rs.15,000/- for pains and sufferings. In the facts of the case, it would be just and proper if the amount of Rs.40,000/- is awarded towards pains and sufferings. The appellant/claimant is also entitled for amount of Rs.10,000/- for attendance charges instead of Rs.3000/-, as awarded by the Tribunal. The claimant is also entitled for amount of Rs.6000/- for loss of actual income. Though, the Tribunal has considered the loss of future income, however, erroneously considered the loss of earning capacity to the extent of percentage of disablement. The said disablement has affected his earning capacity to the extent of 100%. The

appellant/claimant would not be able to do any work when even walking with help of crutches is difficult for him.

6. Thus, the breakup of compensation under various heads, which can be broadly categorized is as under:-

I)	Loss of future income/dependency (Rs.1500x12x17) (As against Rs. 1,80,000/- as awarded by the Tribunal)	Rs.3,06,000.00
II)	Loss of actual income (Tribunal has not awarded any amount)	Rs. 06,000.00
III)	Medical expenses (As awarded by the Tribunal)	Rs. 10,000.00
IV)	Attendant charges (As against Rs.3000/- as awarded by the Tribunal)	Rs. 10,000.00
V)	Pains and sufferings (As against Rs.15000/- as awarded by the Tribunal)	Rs. 40,000.00
VI)	Loss of amenities in future life (As awarded by the Tribunal)	Rs. 5,000.00

		Total Rs.3,77,000.00
		=====

The appellant-claimant is entitled for compensation of Rs.3,77,000/- (Rupees Three lacs seventy seven thousand) as worked out herein-above.

7. In view of the above, the impugned judgment and award requires

modification. Hence, I proceed to pass the following order:-

O R D E R

- I. The first appeal is hereby partly allowed with proportionate costs.
- II. The judgment and award dated 2.9.2004 passed by the learned Member, M.A.C.T. Ambajogai in M.A.C.P. 93 of 2002 is hereby modified in the following manner:-

“The respondent do pay an amount of Rs,3,77,000/-, (Rupees three lacs seventy seven thousand) inclusive of “no fault liability” amount to the appellant-claimant with interest @ 9% p.a. from the date of application till realization of entire amount.”
- III. Rest of the judgment and award stands confirmed.
- IV. The award be drawn up as per the above modification.
- V. The appellant shall deposit deficit court fees within a period of eight weeks from today.
- VI. First appeal is disposed of.
- VII. Needless to say that if any amount is deposited in this Court as per the judgment and award passed by the Tribunal, the same shall be the part of modified award.

(V. K. JADHAV, J.)