

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 FIRST APPEAL NO. 599 OF 2016
WITH CA/2223/2017 IN FA/599/2016

LALASAHEB DASU KHAKRE THR HIS NEXT FRIEND HIS WIFE
SHOBHA LALASAHEB KHAKRE
VERSUS
NITIN SHIVAJI RAUT AND ANOTHER

...
Advocate for Appellant : Deshmukh Mohit R.
Advocate for Respondents : P.C. Mayure For R.1
Choudhari Abhijit G for R.2
...

CORAM : V.K. JADHAV, J.
DATE : 01-03-2017.

P.C. :

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award passed by the M.A.C.T. Beed on 19.01.2015 in M.A.C.P. No. 106 of 2012, the original-claimant has preferred this appeal to the extent of quantum.
3. Brief facts giving rise to the present appeal is as follows.
4. On 25.03.2012, the claimant was proceeding on his Hero Honda motorcycle from Sawargaon Ghat to Beed along with one other person and claimant was riding the said motorcycle. At about 9.30 p.m. on way one another motorcycle coming from opposite direction gave dash to his motorcycle by coming to the

extreme wrong side. In consequence of which, the claimant had sustained injuries on his head and other parts of the body. He was immediately shifted to Civil Hospital, Beed and he was treated there for the head injury. The claimant was in coma and he was also treated by the Neuro-surgeon. The claimant on account of the injuries sustained by him suffered permanent disablement to the extent of 50% involving permanent speech disability and permanent right upper mono paralysis. The claimant has lost his memory to the extent of 100%. The claimant has incurred huge medical expenses. The claimant through his next friend i.e. wife approached the M.A.C.T. Beed for grant of compensation under the various heads. The claimant has claimed the compensation for future loss of income, medical expenses, future medical expenses and other non-pecuniary heads such as pains and sufferings, mental shock etc. Though, the claimant has claimed the compensation of Rs. 34,00,000/-, however, restricted his claim to Rs. 20,00,000/-

The learned Member of M.A.C.T. Beed by its judgment and award dated 09.01.2015 has partly allowed the claim petition and thereby directed the respondents to pay jointly and severally an amount of Rs. 18,79,074/- inclusive of no fault liability amount along with interest @ 8% per annum from the date of petition till realisation of the entire amount. Being aggrieved by the same the claimant has preferred this appeal to the extent of quantum.

5. The learned counsel for the appellant submits that, the wife of the claimant (next friend) in her affidavit of evidence has stated that on account of the head injuries sustained by the claimant he is not able to speak, walk. She has also stated in her affidavit of evidence that, the injured claimant is not able to understand anything. The injured claimant has lost his control over brain and even he is not in a position to recognise any person and he is not able to do anything. She has also stated in her affidavit of evidence that in future also they will have to incur huge medical expenses for his treatment. She has further stated in her affidavit of evidence that her husband injured claimant is almost a dead person and he is not able to do his day to day activities without any help. The witness Dr. Milind Dunake has also deposed in the similar manner. Witness Dr. Dunake has deposed that due to the injury the claimant is unable to speak and unable to do his daily work without the help of others. He cannot think, remember, walk, sleep without help of others. He has further made it clear that the patient would require treatment in future. The learned counsel submits that, except loss of future income and the actual medical expenses incurred by the claimant, the Tribunal, has not awarded any compensation for future medical treatment and attendant charges. The learned counsel submits that, the Tribunal has awarded a very meagre amount for pains and sufferings and has not awarded any

compensation for the special diet, inevitable expenses like purchase of the medical instrument to facilitate the day to day activities of the appellant-claimant and loss of matrimonial life.

6. The learned counsel in order to substantiate his contention places his reliance in the case of **Shaikh Farooq Mohammad Gaouse V/s. The Transport Manager, Thane Municipal Transport** reported in **2013 (2) TN MAC 226 DB (Bom.)**, wherein, the Division Bench of this Court has considered the case where the injured was suffering from paraplegia and awarded the compensation under the various heads as stated above. After considering the pitiable helpless condition of the claimant-injured, the learned counsel submits that, though, the appellant claimant is not suffering from paraplegia in this case, however, on account of the head injury sustained by the claimant and its remote consequences, his condition is almost the same as described and considered by the Division Bench of this Court in the aforesaid cited case.

7. The learned counsel for the respondent-insurer submits that, the learned Member of the Tribunal has considered the loss of future income and also considered the medical expenses incurred by the appellant-claimant in its entirety. In addition to that, the Tribunal has also awarded the just and reasonable compensation under the non-pecuniary heads such as pains and sufferings. The

learned counsel submits that, the appellant-claimant has failed to substantiate his contention that in future he would require the amount for medical expenses and precisely the amount required in future for such medical expenses. The learned counsel for the respondent-insurer submits that, in ground no.7 of the appeal memo it is rather admitted that the attendant is not employed due to certain reasons. The learned counsel submits that, the appellant-claimant has not given the details about the inevitable expenses likely to be incurred in future and the same are also not clarified by witness Dr. Dunake. The learned counsel in alternate submits that, if this Court is inclined to award the compensation for future medical treatment then the interest on such compensation shall be awarded from the date of judgment and award passed by the Tribunal and not from the date of the filing of the claim petition.

8. I have also heard the learned counsel for the respondent-owner.

9. On careful perusal of the evidence, pleadings and the judgment and award passed by the Tribunal, it appears that, wife of the claimant (next friend) has given all the details of the sufferings and the miserable condition of the appellant-claimant. The appellant-claimant is not in a position to speak, walk and to perform his day to day activities. Even he is not in a position to recognise the persons and he has almost lost control over his brain. Witness Dr.

Dunake has also deposed that on 25.03.2012 the appellant-claimant Lalasaheb was admitted in his hospital for treatment. Witness Dr. Dunake is practicing as a Neuro-surgeon at Aurangabad since 2001 and he has his own hospital at Aurangabad by name and styled as Dunake Hospital. According to him, the appellant-claimant had accidental head injury and on C.T. scan head, Haemorrhagic contusion in right frontal and left temporal region, linear fracture in left temporal bone and lateral wall of right orbit with evidence of mass effect shift of middle and to right. The appellant-claimant was treated in emergency ward for the aforesaid complications. He had issued the certificate in Comp. Form B which is marked at exhibit-40 and the same also bears his signature. According to him, though, the appellant-claimant suffers from permanent disablement technically to the extent of 50%, the claimant is unable to do his daily pursuit without the help of others. The claimant is unable to speak and he cannot think, remember, walk, sleep. He cannot think and remember. He cannot walk and sleep without the help of the others. Witness Dr. Dunake has opined that, the patient lost his 100% earning and working capacity. He has further explained that the claimant requires treatment in future and as per his opinion, he is required to incur expenditure on future treatment minimum at Rs. 1,10,000/-. He has issued the estimated bill for his future treatment and the same is marked at exhibit-80, however, he further explained that on 19.04.2013 that the claimant was re-

admitted for Cranioplasty surgery and discharged on 01.05.2013. There is nothing in the cross-examination of the next friend of the claimant as well as witness Dr. Dunake to disbelieve them or to draw any other inference.

10. It is clear that the condition of the appellant-claimant is like a living dead person and he not only require frequent medical treatment in future but also require the attendant for 24 hours. In the appeal memo the appellant-claimant has taken a ground to the effect that due to the financial constraints the attendant could not be employed, however, the same cannot be the reason to deny the compensation to the claimant under that head. Even though witness Dr. Dunake has deposed about the necessity of the future medical treatment and further issued a separate certificate containing the estimate of the future medical treatment likely to be incurred, the learned Member of the M.A.C.T. has not considered the same. It is well settled that even though the loss of future income is considered, in some cases the Court can award the compensation under the head of permanent disablement, loss of future income is considered and awarded. In some cases compensation can be awarded separately under the head of permanent disablement. The appellant-claimant has also filed civil application in this appeal pointing out therein with the help of the documents that the claimant constantly require the treatment for the various complications which could not have been even guessed

by Dr. Dunake.

11. In the case of **Shaikh Farooq Mohammad Gaouse (supra)** relied upon by the learned counsel for the appellant, the Division Bench of this Court after considering the sufferings of the claimant in that case which is similar to the sufferings of the claimant in the instant case has awarded the compensation for medical expenditure in future, expenditure on attendant, substantial amounts for pains and sufferings, special diet, inevitable expenses like cost of water-bed, wheel-chair etc. likely to be incurred in future.

12. In view of the above discussion and in the light of the observations made by the Division Bench of this Court in the above cited case, I am inclined to grant the compensation under the head of future medical treatment to the tune of Rupees Six Lakhs. Considering, the disablement suffered by the claimant and its remote consequences, I am inclined to grant compensation of Rupees Three Lakhs separately under the head of permanent disablement.

13. The learned Member of the Tribunal has awarded a very meagre amount under the head of pains and sufferings, in view of the discussion in the foregoing paras about the sufferings of the appellant-claimant, it would be just and reasonable in this case to award compensation of Rupees Five Lakhs under the heads of pains

and sufferings instead of Rs. 50,000/- as awarded by the Tribunal. So far as, the expenditure on attendant is concerned, in the case cited above the Division Bench of this Court has considered the requirements of the attendant for the claimant throughout the life. In the instant case also the claimant would need the attendant 24x7 for his remaining span of life to help him in his day to day activities. The learned counsel for the respondent-insurer has submitted that, such a compensation can be awarded only on the basis of guess work and just and reasonable compensation can be awarded under that head. In view of the above, in my considered opinion an amount of Rupees Three Lakhs would be just and reasonable under the head of expenditure on attendant, if this amount is invested in F.D.R. in any nationalised bank, the charges of the attendant can be paid by applying the interest accrued on the said amount. The appellant-claimant is also entitled for an amount of Rs. 50,000/- for inevitable expenses such as purchase of special equipments. I have awarded the token amount of Rs. 50,000/- under the said head of inevitable expenses, for the reason that there is no evidence on record to indicate that what sort of equipment is required to facilitate the day to day activities of the claimant and in fact what is his need in future to cope up with the pains and sufferings with the help of such equipments. The claimant is also entitled for an amount of Rupees One Lakh for special diet. So far as, the compensation amount awarded under

the head of attendant charges and future medical treatment the claimant is entitled for the interest to the extent of the said amount at the same rate from the date of the judgment and award passed by the Tribunal and not from the date of the application.

14. In view of the above discussion the break-up of compensation under the various heads in addition to the compensation awarded by the Tribunal can be broadly categorised as under:

1)	Loss of future income	-	Rs. 9,60,000/-
	(as awarded by the tribunal)		
2)	Actual medical expenses incurred	-	Rs. 8,69,084/-
	(as awarded by the tribunal)		
3)	Pains and sufferings	-	Rs. 5,00,000/-
	(as against Rs. 50,000/- awarded by the tribunal)		
4)	Future medical treatment	-	Rs. 6,00,000/-
5)	Permanent disablement	-	Rs. 3,00,000/-
6)	Attendant charges	-	Rs. 3,00,000/-
7)	Inevitable expenses	-	Rs. 50,000/-
8)	Special diet	-	Rs. 1,00,000/-
			Total Rs. 36,79,084/-

15. The appellant-claimant is entitled for total compensation of Rs. 36,79,084/- (Rupees Thirty Six Lakhs Seventy Nine Thousand and Eighty Four Only). Out of that, the claimants are entitled for the interest @ 8% per annum so far as the amount compensation under the head of future medical treatment and attendant charges

to the tune of Rupees Nine Lakhs in total are concerned and the remaining amount shall carry the same rate of interest from the date of application till realisation of the entire amount. Hence I proceed to pass the following order.

ORDER

- i) The appeal is hereby allowed with costs.
- ii) The judgment and award passed by the M.A.C.T. Beed dated 19.01.2015 in M.A.C.P. No. 106 of 2012 is hereby modified in the following manner.
- iii) "The respondents do pay jointly and severally an amount of Rs. 36,79,084/- (Rupees Thirty Six Lakhs Seventy Nine Thousand and Eighty Four Only) inclusive of no fault liability amount.
- iv) Out of the aforesaid amount, an amount of Rupees Nine Lakhs shall carry the interest @ 8% per annum from the date of the judgment and award passed by the Tribunal and the remaining amount shall carry the interest @ 8% p.a. from the date of the application till realisation of the entire amount.
- v) Out of the amount of compensation Rupees Nine Lakhs shall be kept in F.D.R. in the name of claimant along with his next friend (wife) in any nationalised bank and the claimant or his next friend are allowed to withdraw the quarterly interest on the aforesaid amount. The

claimant or his next friend are not allowed to withdraw the said amount without permission of Tribunal.

- vi) Out of the remaining amount, an amount of Rupees Fifteen Lakhs shall be kept in F.D.R. in any nationalized bank in the name of claimant and his next friend for a period of five years and the claimant and his next friend are hereby permitted to withdraw quarterly interest on this amount also if desired. Rest of the amount along with the interest on the entire amount shall be paid to the claimant and his next friend.
- vii) Rest of the judgment and award stands confirmed.
- viii) Award be drawn up as per the above modification.
- ix) If any amount of compensation is paid as per the judgment and award passed by the Tribunal the same shall be adjusted in the modified award as above.
- x) The appellant-claimant shall pay the deficit court fees from the date of this order.
- xi) Appeal is accordingly disposed of.
- xii) Civil application also stands disposed of.

(V.K. JADHAV)
JUDGE