

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

FIRST APPEAL NO.1078 OF 2016

SAINATH KAMAJIRAO DONGRE
VERSUS
THE ANDRA PRADESH STATE ROAD TRANSPORT
CORPORATION, HYDERABAD, THROUGH. IT'S
DIVISIONAL OFFICER, ADILABAD DIST. ADILABAD

...
Advocate for Appellant : Mr K M Nagarkar
Advocate for Respondents : Mr A B Dhongade

...
CORAM : V.K. JADHAV, J.
Dated: March 15, 2017

...
PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award dated 21.11.2011 passed by the Member, Motor accident Claims tribunal, Bhokar in MACP No.8/2010, the original claimant has preferred this appeal to the extent of quantum.
3. Brief facts, giving rise to the present appeal are as follows :-

On 27.6.2001 the appellant claimant met with an accident and sustained severe injuries on his right leg

from paw to thigh, right knee joint, and fractures at three places. He remained under treatment for a considerable period. The injuries sustained by him in the accident resulted into permanent disablement to the extent of 25% as certified by the Orthopedician and further shortening of the leg. The claimant has therefore claimed compensation under the pecuniary as well as non-pecuniary heads. The learned Member of the Tribunal has awarded compensation of Rs.2,57,138/-. Being aggrieved by the same, the claimant has preferred this appeal.

4. The learned counsel for the appellant submits that the tribunal has not awarded the compensation under the following heads.

1	Bhokar to Nanded Jeep travelling charges while admitted in Hospital	Rs.600/-
2	Special Diet like milk, juice, ghee and other vegetable soups @ Rs.120 per day = 7,200/-	Rs.7,200/-
3	Lodging and Boarding charges at Nanded	Rs.14,400/-
4	STD and Local Phone Bill	Rs.768/-
5	Amount required for future medical treatment like operation of leg etc.,	Rs.1,40,000/-
6	Plastic surgery, skin grafting and bone grafting and not folding of leg from knee, damages for pains and sufferings	Rs.2,00,000/-
7	Permanent disablement for life, unable to walk, deformity in life, for cripples of life and	Rs.2,00,000/-

	for shortening of leg as special damages or on account of non pecuniary damages.	
8	Jeep hire charges from Nanded to Bhokar	Rs.600/-
9	Loss of Matrimonial life for current six months	Rs.10,000/-
	TOTAL	Rs.5,74,480/-

5. The learned counsel for the appellant submits that, the tribunal has not considered the aforesaid heads. The learned Member of the Tribunal has also not awarded any compensation for permanent disablement sustained by the appellant-claimant, separately. The learned counsel for the appellant submits that the claimant has lost his chances of promotion in future, however, the same is not considered by the tribunal.

6. Learned counsel for respondent submits that the Tribunal has considered each and every head and awarded just and reasonable compensation. The learned Member of the Tribunal has also awarded the compensation for the medical expenses incurred by the appellant claimant. The learned Member of the Tribunal has awarded just and reasonable compensation under the non pecuniary heads. No interference is required.

7. On perusal of the judgment and award passed by the tribunal, it appears that the tribunal has not awarded transportation charges from Bhokar to Nanded and from Nanded to Bhokar. It is not disputed that after the accident the appellant claimant was shifted to Nanded for his further treatment and remained hospitalized in the hospital at Nanded for a considerable period. The claimant is claimed only Rs.1,200/- on that count and he is certainly entitled for the same. The claimant has also claimed Rs.7,200/- for special diet. The Tribunal has not awarded any compensation under the said head. The appellant claimant is entitled for the same. The appellant claimant has claimed lodging and boarding charges of three persons accompanied him to hospital at Nanded, however, the claimant has failed to substantiate the same by adducing any evidence. However, it is a fact that the claimant remained hospitalized for a considerable period in the hospital at Nanded. The claimant is entitled for an amount of Rs.5,000/- towards attendant charges. The claimant is not entitled for STD and local phone bills.

8. The claimant has claimed certain amount for future medical treatment as like operation of leg, etc. The claimant has examined witness Dr. Vijaykumar Chichani to prove the disablement etc, however, witness Dr.Chichani has nowhere deposed about future medical treatment, however, considering the fact that the appellant-claimant has sustained three fractured injuries and also suffering from shortening of the leg, I deem it appropriate to grant Rs.15,000/- towards future medical treatment. The appellant claimant has claimed near about Rs.2.00 lacs for plastic surgery, skin grafting and bone grafting, however, the claimant has produced on record bill of plastic surgery amounting to Rs.3,500/- and after considering the same, the Tribunal has awarded the same. The claimant has not adduced any evidence for the expenses incurred by him towards skin grafting and bone grafting, etc. In view of this, the claimant is not entitled for any compensation under the said head.

9. So far as permanent disablement sustained by the claimant is concerned, witness Dr. Chichani has

deposed that the claimant has sustained fractured injury around knee joint and also fractured injury on his thigh. According to him, those fractured injuries were compound fractures and movements of the joint has been restricted. He has further explained that left leg has been shortened because of the fractured injuries and walk of the claimant is thereby turned in limping. It is well settled that, even though, the compensation on account of loss of future income is not award-able to the claimant on account of his salaried income, the compensation can be awarded separately for having sustained permanent disablement. Thus, considering the nature of the permanent disablement and its effect the claimant is entitled for an amount of Rs.75,000/- on this count.

10. So far as loss of matrimonial life for six months is concerned, the same cannot be considered.

11. In view of the above discussion, the judgment and award passed by the tribunal requires modification. Thus, the break up of compensation under different

heads award-able to the claimants which can be broadly categorized is as under :-

1	Loss of amenities (Awarded by the Tribunal)	Rs.25,000/-
2	Pains and sufferings each towards pain, suffering and injuries for compound fractures of right femur and right tibia sustained by him.	Rs.1,00,000/-
3	Permanent disablement., shortening of leg and severe restriction in movement. As against Rs.25,000/- awarded by the Tribunal.	Rs.75,000/-
4	Medical expenses as awarded by Tribunal	Rs.58,341/-
5	Leave due to accident as awarded by Tribunal	Rs.48,797/-
6	Transportation Charges	Rs.1,200/-
7	For special diet.	Rs.7,200/-
8	Attendant Charges	Rs.5,000/-
9	Future Medical Treatment	Rs.15,000/-
	TOTAL	Rs.3,35,538/-

12. Thus, the claimant is entitled for the same. Accordingly, the judgment and award is modified. Hence, following order.

O R D E R

- i. First appeal is hereby allowed with proportionate costs.
- ii. The judgment and award passed by the Member, Motor Accident Claims Tribunal, Bhokar dated 21.11.2011 in MACP No.8/2010 is hereby modified in following manner:-

a] The Respondent shall pay the compensation of Rs.3,35,538/-(Rs.Three lacs thirty five thousand five hundred and thirty eight only), inclusive of NFL amount of Rs.25,000/- to the petitioner, towards compensation u/s 166 of the Motor Vehicles Act alongwith an interest @ 6% p.a. from the date of filing of the petition till its realization.

iii. Award be drawn up accordingly.

iv. First Appeal accordingly disposed of.

sd/-

(V.K. JADHAV, J.)

...

aaa/-