

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

FIRST APPEAL NO. 3400 OF 2015

BALAJI BABNRAO KADAM
VERSUS
MSRTC THROUGH DISTRICT CONTROLLER PARBHANI

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Advocate for Appellant : Mr Mayure Pramod C
Advocate for Respondent 1 : Mr U B Shriram h/f D.S.
Bagul

...

WITH
FA/463/2014

MSRTC THROUGH DISTRICT CONTROLLER PARBHANI
VERSUS
SHRI BALAJI S/O BABANRAO KADAM.

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Mr U B Shriram h/f Mr D S Bagul Advocate for
appellant.
Mr. P.C.Mayure Advocate for Respondent

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CORAM : V.K. JADHAV, J.
Dated: February 09, 2017

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award passed by the Ex-officio Member, Motor Accident Claims Tribunal, Parbhani dated 8.8.2013 in MACP No.242/2009, the original claimant has preferred this appeal to the extent of quantum and respondent MSRTC

has also preferred an appeal no.463/2014 to the extent that, the Tribunal has awarded compensation of Rs.83,351/- under the head of costs of artificial leg, though the same is not discussed in the body of the judgment.

3. Brief facts, giving rise to the present appeal are as follows :-

a] The appellant claimant has sustained permanent disablement in a vehicular accident occurred on 14.4.2009 on Aurangabad-Nagar road in front of Khurana Petrol Pump within the limits of village Dhoregaon, Gangapur on account of rash and negligent driving of the S.T Bus driver bearing registration No.MH-20/D-8962. The learned Member of the Tribunal, after recording findings in the affirmative about rash and negligent driving of the driver of the S.T.Bus in causing the said accident, by impugned judgment and award as aforesaid awarded the compensation of Rs.3,36,000/-.

4. The learned counsel for the appellant submits

that, the appellant claimant had sustained disablement to the extent of 65% as certified by the orthopedician. However, the learned Member of the Tribunal has erroneously given weightage to the fact that the appellant claimant has not suffered from any loss in future income and awarded a meager amount of Rs.50,000/- under the head of future prospects. Learned counsel submits that, the Tribunal has not awarded any separate compensation for permanent disablement. Further, the Tribunal has also not considered the marriage prospectus of the appellant claimant and has not awarded any compensation under the said head. Learned Member of the Tribunal has not awarded separately compensation under the non-pecuniary heads such as pains and sufferings, loss of amenities in future life. Learned Member of the Tribunal has also awarded a very meager amount under the head of special diet and attendant charges etc, even though, the appellant claimant had suffered hospitalization for near about 37 days. Learned counsel submits that, though the accident had taken place in the year 2009, without any reason, the learned Member

of the tribunal has awarded interest @ 5% instead of 9% p.a. The appellant claimant had sustained grievous injury to his left leg below knee and he was operated twice. Finally, his left leg below knee was amputated. The appellant claimant would also require certain amount for his future medical treatment, however, the same is also not considered by the Tribunal. Learned counsel submits that, though, Tribunal has awarded hospital charges, to the tune of Rs.1,48,049/-, however failed to award the amount under the medical bill Exh.31 to the tune of Rs.98,573/-. Learned counsel submits that Exh.31 is the medical bill proved through witness PW 4 and the same is for an amount of Rs.41,173/- and remaining amount of Rs.58,400/- though bills are produced on record, the Tribunal has not considered the same.

4. The learned counsel for the appellant in order to substantiate his contentions placed his reliance on the following cases.

1. Dinesh Singh Vs. Bajaj Allianz General Insurance Company Ltd and another reported in [2015(2) Mh.L.J.] 32.

2. Union of India Vs. Oswald Anthony Athayde and others reported in (2005) ACJ 82.
3. New India Assurance Company Limited Vs. Har Lal and others reported in (2009) ACJ page 1162.
4. B.Kothandpani Vs. Tamil Nadu State Transport Corporation Limited reported in 2011 (5) Mh.L.J. 307.
5. Subulaxmi Vs. Managing Director, Tamil Nadu State Transport Corporation and another reported in [2013 (2) Mh.L.J. 20].
6. Yadava Kumar Vs. The Divisional Manager, National Insurance Co. Ltd. and another reported in 2010 (10) SCC page 341.
7. Shrimati Parsanni Vs. Shri Sube Singh and another reported in 2012 (3) TAC 397 (P&H).
8. Shaikh Farooq Mohammad Gaouse Vs. Transport Manager, Thane Municipal Transport Undertaking reported in 2013 (3) All MR 509.
9. Pavan Kumar and another Vs. Harkishan Dass Mohan Lal and others reported in 2014 (1) T.A.C.718 SC.
10. S.Manickam Vs. Metropolitan Transport Corporation reported in 2013 AIR SCW 4337.

5. Learned counsel for respondent MSRTC submits that, the appellant claimant was serving as data Manager in the Government Hospital, Satara on monthly salary of Rs.8,400/- p.m. prior to the accident.

However, after the accident, appellant claimant is drawing Rs.8,800/- p.m. salary. Learned counsel submits that, the appellant claimant is not suffering from any financial loss as such. Learned Member of the Tribunal has thus rightly awarded amount of Rs.50,000/- on account of loss of getting better employment in future if any. Learned Member of the Tribunal has awarded compensation for medical expenses to the tune of Rs.1,48,049/-. Learned counsel for respondent submits that, the Tribunal has considered hospital charges as per bills produced and proved and has not awarded any compensation for the medical bills which are not proved by the appellant claimant. Learned counsel submits that, there is no evidence about future medical treatment and, therefore, the Tribunal has not awarded any compensation under that head. Learned counsel submits that, once the Tribunal has awarded compensation by considering loss of getting better employment, there is no question to grant compensation for a permanent disablement sustained by the appellant claimant. Learned Member of the Tribunal has also awarded compensation under

non-pecuniary heads such as pains and sufferings etc. Learned counsel submits that, otherwise, the Tribunal has awarded just and reasonable compensation except amount of Rs.82,600/- which is costs of artificial leg. Learned counsel for respondent MSRTC submits that, there is no discussion about the said expenses, likely to be incurred by the appellant claimant, in the body of the judgment and it appears that merely considering the quotation placed on record exh.23, the Tribunal has awarded compensation of Rs.82,600/- on that count. Learned counsel submits that, thus said excess amount of Rs.82,600/- is required to be deducted from the compensation as awarded by the learned Member of the Tribunal.

6. On careful perusal of the evidence adduced by the parties and documents placed on record, and judgment and award passed by the Tribunal, it appears that the appellant claimant had sustained injury on his left leg in the aforesaid accident and his left leg below knee was required to be amputated. It is also a part of record that the appellant claimant incurred huge medical expenses

and he had also taken treatment in the hospital at Aurangabad. He was also required to spend on special diet, transportation etc. The appellant claimant was 24 years of age at the time of his accident. On account of amputation of his left leg, he has lost chances of his marriage. The learned counsel for the appellant claimant, on instructions during the course of arguments has accepted that the appellant claimant is married. In view of the same, though learned counsel vehemently submitted that the appellant claimant is entitled for certain amount under the head of marriage prospectus on the ground that he has not got a life partner of his choice because of the amputation of his left leg, I do not think that the appellant claimant would be entitled to claim compensation on this count.

7. So far as compensation to be awarded separately for loss of future prospectus or loss of getting better employment and separately for permanent disability, learned counsel has referred various citations. In the instant case, though the appellant claimant is serving as data manager in a government undertaking on

monthly salary, it is a part of record that he is serving in the said undertaking on contract basis. Though, there is no actual loss in the future earnings, however, the aforesaid, amputation of his left leg would certainly affect his future prospectus of getting a better job or employment in other establishment.

8. In a case of B Kothapandi (supra) relied upon by the learned counsel for the appellant, the Supreme Court has held that compensation towards permanent disablement can be granted in addition to the amount awarded under the head of 'loss of earning capacity.'

9. In a case of S.Manickam Vs. Metropolitan Transport Corporation reported (supra) relied upon by the learned counsel for the appellant, by referring earlier judgment of B.Kothandapani, held that the permanent disability and loss of earning capacity are the different heads of compensation and compensation under head permanent disability cannot be denied because compensation can be granted under the head 'loss of earning capacity'. Same is also a view taken in a

case of Subulaxmi (supra).

10. In the instant case, though the claimant has not suffered any loss in future income, he is entitled for a lump sum amount of compensation under the head of loss of getting better employment. Though, learned Member of the Tribunal has considered the same, awarded a meager amount of Rs.50,000/-. Even after accident the appellant claimant is getting more salary comparatively to the salary prior to the accident. However, on account of amputation of left leg below knee, the appellant claimant has lost his mobility and thus entitled for the lump sum amount of compensation on account of loss of getting better employment. The appellant claimant is thus entitled for the amount of Rs.1,50,000/- on this count. Further, considering the ratio laid down by the Supreme Court, as discussed above, the claimant is entitled for an amount of Rs.1,00,000/- (Rs. One lac) on account of permanent disablement sustained by him particularly due to amputation of his left leg below knee. The learned Member of the Tribunal has awarded very meager

amount of Rs.5,000/- under the head of pains and sufferings. Learned Member has not awarded any compensation for loss of amenities in future separately. The appellant-claimant was a young boy of 24 years when he met with the accident. He had to suffer amputation of his left leg below knee. He had undergone operation at Kamalnayan Bajaj Hospital, Aurangabad and even in future he required to undergo medical treatment. Thus, the claimant is entitled for amount of Rs.1,00,000/- (Rs. One lac) for pains and sufferings and amount of Rs.85,000/- for loss of amenities in future life. The claimant is also entitled for amount of Rs.50,000/- for special diet and attendant as against amount of Rs.5,000/- awarded by the Tribunal under this head. It is a matter of record that the claimant has taken treatment in the hospital and so far bills at exh.31 are concerned, same is duly proved by the appellant claimant through witness no.4. Said medical bill exh.31 is for amount of Rs.40,147/-. The learned Member of the Tribunal, has however, not considered the same. Further, the appellant-claimant has produced computerized bill of cash memo issued by

the medical shop situated within the premises of the hospital and those are for amount of Rs.58,400/-. The learned Member of the Tribunal has also discarded the same. In my opinion, the claimant is entitled for the said amount of Rs.98,573/-(40,173+58,400).

11. So far as claim for costs of artificial leg is concerned, though, quotation is produced on record, the appellant-claimant who is a young person would certainly require artificial leg and also require certain amount under the head of future medical expenses. Though quotation exh.23 is for an amount of Rs.82,600/- the claimant is entitled for amount of Rs.75,000/- on that count. I do not find any substance in the submissions made by the learned counsel for respondent MSRTC that the Tribunal has unnecessarily considered said expenses likely to be incurred by the appellant claimant. Learned Member of the Tribunal for no reason awarded interest @ 5% p.a. instead of 9% p.a. The claimant is entitled for interest @ 9% p.a. from the date of application till realization of the entire amount.

12. In view of the above discussion, the break up of the compensation under different heads which can be broadly categorized is as under :-

1	Hospital charges and medicines awarded by the Tribunal plus Rs.98,573/-awarded by this Court	Rs.1,48,049/- + Rs.0,98,573/-
2	Blood Transfusion and other expenses Rs.10,000/- and 25,200/- as awarded by the Tribunal	Rs.0,35,200/-
3	Future prospectus (against Rs 50,000/-awarded by the Tribunal)	Rs.1,50,000/-
4	Special Diet and attendant charges (Tribunal awarded Rs.5,000/-)	Rs.0,50,000/-
5	Pains and sufferings (as against Rs.15,000/- awarded by the Tribunal)	Rs.1,00,000/-
6	Loss of amenities in future life (Not awarded by the Tribunal)	Rs.0,85,000/-
7	Artificial leg (as against Rs.82,600/- awarded by the Tribunal)	Rs.0,75,000/-
8	Permanent disablement (Not awarded by the Tribunal)	Rs.1,00,000/-
	TOTAL	Rs.8,41,822/-

The appellant-claimant is entitled for compensation of Rs.8,41,822/-(Rs. Eight lacs forty one thousand eight hundred twenty two only) with interest @ 9% p.a. from the date of application till realization of

the entire amount. Thus, the impugned judgment and award passed by the Tribunal requires modification to the extent of quantum as per the compensation worked out here-in-above. Hence, I proceed to pass the following order.

ORDER

- i. First appeal No.3400/2015 (Balaji Babanrao Kadam Vs. Maharashtra State Road Transport Corporation) is hereby partly allowed with costs.
- ii. The judgment and award passed by the Member, Motor Accident Claims Tribunal, Parbhani dated 8.8.2013 in MACP No.242/2009 is hereby modified in the following manner :-

The respondent do pay Rs. 8,41,822/-(Rs. Eight lacs forty one thousand eight hundred twenty two only) inclusive of 'No Fault Liability' to the claimant towards compensation with interest @ 9% p.a. from the date of application till realization of the entire amount.

- iii. Rest of the Judgment and award stands confirmed.

- iv. Award be drawn up as per the above modifications.
- v. Needless to say that, if the amount is paid as per the impugned judgment and award passed by the Tribunal, the same shall be adjusted in the award as per the above modifications.
- vi. First Appeal No.463/2014 MSRTC Vs.Balaji Babanrao Kadam is hereby dismissed. No costs.
- Vii. Both the first appeals are accordingly disposed of.
- Viii. Pending civil application, if any, also stands disposed of.
- ix. The appellant claimant shall pay the deficit court fees, if any, within four weeks from today.

sd/-

(V.K. JADHAV, J.)

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