

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

FIRST APPEAL NO.347 OF 2004

Balwant s/o Supdu Patil
Age : 57 years, Occu : Agriculturist,
R/o Shirur, Taluka & District – Dhule

.. Appellant
(Original Claimant)

Versus

1. Dattatraya s/o Shivram Solunke
Age : 43 years, Occu : Bus Driver,

2. Maharashtra State Road
Transport Corporation

... Respondents
(Original Respondents)

.....
Ms Kalyani Deshmukh, Advocate, h/f. Shri P.R. Patil,
Advocate for the appellant;
Shri Dipesh Pande, Advocate, h/f. Shri D.S. Bagul,
Advocate for Respondent No.2.
.....

CORAM : P.R. BORA, J.

Reserved on : 19.09.2018
Pronounced on: 24.09.2018

JUDGMENT :

1. The appellant has filed the present appeal seeking enhancement in the amount of compensation awarded by the Motor Accident Claims Tribunal at Dhule in Motor Accident Claim Petition No.1148 of 1997 filed by him decided on 26.09.2002. The appellant had filed the aforesaid claim petition claiming compensation for the injuries caused to him in a vehicular accident happened on 04.06.1997 having involvement of S.T. Bus bearing registration

no.MH-20-4907.

2. It is the case of the appellant that, on 04.06.1997 when he was waiting at the S.T. Stand at Chalisgaon for a S.T. Bus for going to village Waghadi, S.T. bus bearing registration no.MH-20-4907 gave him a dash and in the accident so happened, he was severely injured. He received injuries to his left leg. It was his contention that, because of the injuries caused to him in the alleged accident, he was required to undergo a long treatment and was subjected to incur huge medical expenses. It was also his contention that, because of the injuries caused to him in the alleged accident, he incurred the permanent disablement to the extent of 50% and lost his earning capacity to the extent of 100%. The appellant had, therefore, claimed the compensation of Rs.3,00,000/-.

3. The claim petition so filed by the appellant was resisted by the respondent i.e. M.S.R.T.C.

4. In order to substantiate the contentions raised in the claim petition, the appellant himself deposed before the Tribunal and also examined Dr. Kartarsing Sardarsing Pardeshi, Orthopedic Surgeon practicing at Chalisgaon, from whom, he had taken the treatment.

The appellant had also filed on record the relevant police papers pertaining to the accident in question. The learned Tribunal after having assessed the oral and documentary evidence brought on record by the appellant, awarded the compensation of Rs.1,08,600/- to the appellant inclusive of NFL compensation. Dissatisfied with the amount of compensation so awarded by the Tribunal, the appellant has preferred the present appeal seeking enhancement in the said amount.

5. Learned Advocate Ms Kalyani Deshmukh h/f. Learned Advocate Shri P.R. Patil appearing for the appellant assailed the impugned Judgment on various grounds. The learned Counsel submitted that, the Tribunal has failed in properly appreciating the evidence on record and has not awarded just and fair compensation to which appellant was entitled to. The learned Counsel submitted that, though sufficient evidence was placed on record by the appellant in support of claim of Rs.70,000/- towards the medical expenses, the learned Tribunal has awarded only the amount of Rs.51,600/- without assigning any reason for not awarding the amount in toto as was claimed by the appellant.

6. The learned Counsel further submitted that, the meager

amounts of Rs.2,000/- and Rs.5,000/- are awarded by the Tribunal respectively towards pains and sufferings and conveyance charges. The learned Counsel further submitted that, when it was the case of the appellant that, he has lost his earning capacity to 100%, the Tribunal has wrongly assessed the amount of compensation under the said head on the basis of percentage of disability. The learned Counsel pointed out that, the appellant had carried out the amendment with the permission of this Court and has added paragraphs 10-A and 10-B in the memo of appeal providing the particulars of the amounts of compensation, which were liable to be paid to the appellant by the Tribunal. The learned Counsel submitted that, having considered the age and income of the appellant at the time of his meeting with the accident, the Tribunal must have awarded the compensation of Rs.3,51,000/- under the said head.

7. The learned Counsel submitted that, towards pains and sufferings the appellant was entitled for the amount of Rs.1,50,000/- and was also entitled to receive the amount of Rs.1,00,000/- towards loss of amenities in life and all the medical expenses were liable to be granted. The learned Counsel submitted that, considering the evidence on record, the amount of compensation needs to be enhanced to the tune of Rs.6,76,000/-.

8. Learned Advocate Shri Dipesh Pande h/f. Learned Advocate Shri D.S. Bagul appearing for respondent – Corporation supported the impugned Judgment and Award. The learned Counsel submitted that, the Tribunal has appropriately considered the evidence on record and has rightly assessed the amount of compensation. The learned Counsel submitted that, there is no substance in the contention of the appellant that, he lost his total earning capacity because of the injuries caused to him in the alleged accident. The learned Counsel further submitted that, having regard to the age of the appellant above 50 years, the compensation as has been awarded by the Tribunal is just and fair compensation and no case is made out by the appellant for any enhancement in the said amount of compensation. The learned Counsel, therefore, prayed for dismissal of the appeal.

9. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. I have perused the impugned Judgment, the evidence on record and other material placed on record by the parties. Though it is the contention of the appellant that, the Tribunal did not award the appropriate compensation towards medical expenses in spite of the evidence in

that regard was produced on record, the documents on record do not support the said contention. The hospital and medical bills are placed on record along with the list of documents at Exh.29. The total of said bills comes to Rs.51,580.65 paise. The Tribunal has awarded the entire said amount, on the contrary, it has rounded it to Rs.51,600/-. The learned Counsel for the appellant could not bring to my notice any such bill from the record, which has not been considered and awarded by the Tribunal. Therefore, there is no substance in the allegation made by the appellant that, the Tribunal has not awarded medical expenses as claimed by the appellant.

10. I, however, I do find substance in the argument made by the learned Counsel for the appellant that, the Tribunal has awarded meager amount towards pains and sufferings and towards the conveyance charges. The documents on record show that, the appellant underwent a long treatment and was also required to be hospitalized for a sufficient long period. Appellant had also placed on record the permanent disability certificate, wherein it is certified that, the appellant had incurred 50% permanent disability. Admittedly, disability certificate has not been proved by the appellant. However, from the other documents, it has been established that, the appellant had suffered crush injury to his left

thigh and fracture to his femur. Having considered nature of injuries caused to the appellant and the period of treatment undergone by him, I have no doubt in my mind that, the Tribunal has not awarded the just compensation under the head of pains and sufferings. I deem it appropriate to enhance the said amount to Rs.15,000/- considering the fact that, the accident had occurred in the year 1997. Similarly, towards conveyance charges etc., compensation Rs.5,000/- awarded by the Tribunal also needs to be enhanced. I deem it appropriate to enhance the compensation under the said head to Rs.15,000/-.

11. Towards the future loss of income the Tribunal has awarded the compensation of Rs.50,000/-. From the discussion made by the Tribunal, it is revealed that, instead of considering income of the appellant at the relevant time and the loss of income which the appellant was likely to suffer, the Tribunal has awarded a lump sum compensation based on the percentage of disability. Though the appellant had come out with the case that, he lost his 100% earning capacity and has, therefore, claimed in the appeal vide amended para 10-A of the memo of appeal the compensation of Rs.3,51,000/- under the said head, I am not convinced with the submission so made. Firstly the appellant has not proved the permanent disability caused to him. The appellant has admittedly not examined Superintendent

of Bhausahab Hire Medical College, Dhule, who has issued the permanent disability certificate in his favour. I have gone through the contents of the permanent disability certificate. It is discernible that, the permanent disability as has been determined in the said certificate is not the permanent disability of the body as a whole, but appears to be in relation to the left leg, to which, the injuries were caused in the alleged accident. Further, the appellant has not brought on record any cogent and sufficient evidence to prove that, he has totally become incapable of carrying out the work, which he used to do before occurrence of the alleged accident. However, it cannot be denied that, because of the injuries caused and impairment suffered by the appellant, his earning capacity has been adversely affected to some extent. It further cannot be denied that, because of such injury to his left leg, the appellant may not be able to enjoy the amenities of life for the rest of his life. It also cannot be doubted that, the appellant may not be able to carry out his day to day activities with the same vigor in his future life. For carrying out the agriculture operation also, the appellant will have to take assistance of somebody or to employ some additional labourers. Considering the facts as aforesaid, it appears to me that, the amount of Rs.50,000/- as awarded by the Tribunal cannot be said to be a just compensation. The said amount certainly need to be adequately enhanced.

Considering the circumstances prevailing in the year 1997, it appears to me that, the just and adequate compensation under the said head would be Rs.1,00,000/- and thus the amount of Rs.50,000/- awarded by the Tribunal under the said head needs to be enhanced to Rs.1,00,000/-.

12. After having considered the entire material on record, the appellant is, therefore, found entitled for the total compensation of Rs.1,81,600/-. According to me, this would be just and fair compensation payable to the appellant.

13. In the circumstances, the following order is passed.

ORDER

- (i) The appeal is partly allowed.
- (ii) The amount of compensation awarded by the Tribunal of Rs.1,08,600/- inclusive of NFL compensation is enhanced to Rs.1,81,600/-.
- (iii) The appellant is held entitled for the interest at the rate of 9% per annum on the enhanced amount of compensation from the date of filing of the appeal before this Court till its realization.
- (iv) Award be drawn accordingly.

**(P.R. BORA)
JUDGE**