

bdp

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 642 OF 2007

Mr. Randhir Rambrij Sharma
Age about 35 years, Residing at:
Manorama Nagar, Manti Chawl,
Room No.4, Beside Ratnapark Bldg.,
Thane (West), Dist. Thane

... Appellant

Versus

Maharashtra State Road Transport
Corporation, Vahatuk Bhavan, Bellasis Road,
Mumbai Central, Mumbai – 400 008.

... Respondent

.....

Mr. A.M. Gokhale along with Mr. Siddharth Idnani for the Appellant.

Mr. G. S. Hegde along with Mr. C.M. Lokeshappa i/by M/s. G.S. Hegde and
Associates for the Respondent.

.....

CORAM : R.D. DHANUKA, J.

RESERVED ON : 3rd MARCH, 2020

PRONOUNCED ON : 19th MAY, 2020

JUDGMENT :

. By this appeal filed under Section 173 of the Motor Vehicles Act, 1988, the appellant (original claimant) has impugned the judgment and award dated 26th July, 2005 passed by the Motor Accident Claim Tribunal, Mumbai (hereinafter referred to as “M.A.C.T., Mumbai”) in Application No. 1789 of 2000 partly rejecting the claims made by the appellant and only directing the respondent to pay a sum of Rs.4,12,042/- inclusive of ‘No Fault Liability’ of Rs.25,000/- with interest @ 7.5% p.a. from the date of filing of petition till its realization as against the claim of Rs.10,00,000/- with interest made by the appellant. Some of the relevant facts for the purpose of deciding

this First Appeal are as under :-

2] It was the case of the appellant that on 25th April, 2000 at about 9:00 a.m., the appellant after completing his work in his garage was going for some work on his Motor Scooter bearing registration No. MH-04-A-3715. When the appellant reached at Kasheli bridge, the offending vehicle i.e. S.T. Bus bearing registration No.MH-20-D-1460 came in fast speed from behind and gave dash to the scooter being driven by the appellant. The appellant fell down and front wheel of the offending vehicle ran over to his right hand. The appellant sustained serious crush injury and was admitted to Civil Hospital, Thane. His left hand was amputated above elbow. It was the case of the appellant that the said accident took place due to rash and negligent driving of the driver of the offending vehicle.

3] It was the case of the appellant that he was a motor mechanic and his income was Rs.5,000/- p.m. He filed an application *inter-alia* praying for compensation of Rs.10,00,000/- against the respondent. The said claim was resisted by the respondent by filing a written statement. It was the case of the respondent that the driver of the offending vehicle was driving the vehicle at moderate speed with all care and caution on the correct side of the road. Near Kasheli bridge, the appellant was proceeding in the same direction of the bus in high speed and was trying to overtake the said offending vehicle by the left side without giving any signal to the driver of the offending vehicle. It was the case of the respondent that as a result of that the appellant came in contact with the left side of the offending vehicle and fell down. The appellant tried to pass through the narrow gap between the bus and metal road. The respondent pleaded that there was no negligence on the part of the driver of the offending vehicle and thus claim made by the appellant shall be dismissed with cost.

4] The Tribunal framed three issues for determination. The appellant entered the witness box by filing an affidavit in lieu of examination-in-chief and was cross-examined by the respondent. The applicant also examined Dr.Satish Radhakishor Wagh, Orthopedic Surgeon as one of the witness who was also cross-examined by the respondent. The respondent examined the Mr. Vishnu Hinder Patil, bus conductor of the offending vehicle who filed his affidavit in lieu of examination-in-chief and was cross-examined by the appellant's advocate.

5] The Tribunal delivered a judgment and award dated 26th July, 2005 and partly allowed the claim application filed by the appellant and directed the respondent only to pay compensation to the tune of Rs.4,12,042/- including 'No Fault Liability' amount of Rs.25,000/- with interest @ 7.5% p.a. from the date of filing of petition till its realization. The respondent did not challenge the said judgment and award dated 26th July, 2005 nor filed any cross-objection in this First Appeal. The appellant however impugned a part of the said judgment and award on various grounds.

6] Mr. A. M. Gokhale, learned counsel for the appellant invited my attention to various documents annexed to the paper book, evidence led by the parties and also to the findings rendered by the Tribunal. It is submitted that though the appellant had examined the Doctor who had certified the physical disability of the appellant at 95%, the Tribunal has overlooked the said evidence and had considered the physical disability only as 75% and accordingly reduced the claim made by the appellant.

7] It is submitted by the learned counsel that though the appellant had proved by leading oral and documentary evidence that he was working in a Motor Garage and was earning Rs.5,000/- p.m. and had his own scooter, the Tribunal consider monthly income of Rs.3,000/- only. The learned counsel placed reliance on the judgment of Supreme Court in case of **Mahavir**

Sampat Keskar v/s. Suresh Krishnaji Deshpande and others, 2018 ACJ 348 in particular paragraph nos. 8, 18 to 20 and 22 to 25. Learned counsel tendered the calculation across the bar with a copy to the respondent counsel and would submit that the appellant is entitled to recover sum of Rs.21,70,000/- from the respondent.

8] Learned counsel also strongly placed reliance on the judgment of Supreme Court in case of **Mallikarjun v/s. Divisional Manager, National Insurance Co. Ltd. and another, 2013 ACJ 2445**, judgment of Supreme Court in case of **Nagappa v/s. Gurudayal Singh and others, 2003 ACJ 12** and in particular paragraphs 7, 10, 15 and 21 to 23. He submits that in this case, the appellant has lost his both the hands.

9] Learned counsel placed reliance on the judgment of Supreme Court in case of **National Insurance Co. Ltd. v/s. Pranay Sethi and others, 2017 ACJ 2700** and in particular paragraphs 61(iii) to (viii). He also placed reliance on the judgment of Supreme Court in case of **Sarla Verma and others v/s. Delhi Transport Corporation and another, 2009 ACJ 1298** and in particular paragraphs 9, 10, 14, 15 and 21. He relied upon the judgment of Supreme Court in case of **Jagdish v/s. Mohan and others, 2018 ACJ 1011** and in particular paragraphs 1 and 9 to 11. Learned counsel placed reliance on the judgment of Supreme Court in case of **Kajal v/s. Jagdish Chand and Ors.**, delivered on 5th February, 2020 in Civil Appeal No. 735 of 2020 and in particular paragraph 33.

10] Mr. G.S. Hegde, learned counsel for the respondent on the other hand invited my attention to the paragraph 5 of the examination of Dr. Satish Radhakishor Wagh examined by the appellant and would submit that the said witness could have called for fresh report. He had no opportunity to give any treatment to the appellant. He had not taken new xrays before issuing the certificate (Exh.18). He submits that his evidence did not inspire

any confidence and thus could not have been considered by the Tribunal in so far as the certifying the physical disability of the appellant at 95% is concerned.

11] Learned counsel invited my attention to the paragraph 3 of the application for compensation filed by the appellant and would submit that the appellant claimed to be a motor mechanic. In paragraph 8 of the examination-in-chief, the appellant deposed that at the time of his accident, he was working as body builder of trucks. He had his own garage. He however could not produce on record any documentary evidence about his alleged garage in paragraph 3 of the examination. He submits that the Tribunal thus could not have considered the monthly income of the appellant even at the rate of Rs.3,000/- p.m. without any proof of income produced by the appellant.

12] Learned counsel for the respondent submits that the Tribunal has erroneously awarded lump sum compensation of Rs.2,50,000/- to the appellant towards permanent partial disability. In addition to the said amount, the Tribunal has awarded further compensation in the sum of Rs.1,00,000/- towards pain and suffering.

13] Learned counsel for the respondent distinguished the judgments relied upon by the learned counsel for the appellant on the ground that none of those judgments are applicable to the facts of this case. He submits that once judgment and award is rendered by the Tribunal, no claim can be enhanced by this Court in the First Appeal filed by the claimant. Learned counsel distinguished the judgment of Supreme Court in case of **Kajal** (supra) on the ground that in that case the claim was made by a young girl, who was totally bedridden and had become vegetable. He relied upon paragraphs 25, 27 and 33 of the said judgment. He submits that in this case the appellant was major on the date of accident and thus the said judgment

of Supreme Court in case of **Kajal** (supra) would not apply to the facts of this case. He submits that the Dr. Wagh examined by the appellant ought to have considered the changes in the situation on the date of recording his evidence and more particularly whether the health condition of the appellant had improved or not. It is submitted by the learned counsel that whether the appellant continued the business of garage after the said accident or not, is not placed on record by the appellant.

14] In so far as the judgment of Supreme Court in case of **Sarla Verma and others** (supra) and in case of **National Insurance Co. Ltd. v/s. Pranay Sethi and others** (supra) are concerned, it is submitted by the learned counsel that both these cases had dealt with the fatal cases and not the case of accident and thus the principles laid down by the Supreme Court in those judgments would not apply to the facts of this case.

15] In so far as the claim for recovery of medical expenses claimed by the appellant across the bar is concerned, it is submitted by the learned counsel that claim for recovery of medical expenses can be given only once. Additional claims cannot be allowed. The appellant himself had claimed a sum of Rs.7,00,000/- only in the application for compensation filed before the Tribunal, whereas the appellant has now demanded Rs.21,00,000/- without any basis.

16] Learned counsel for the appellant in rejoinder submits that the compensation awarded by the Tribunal is on lower side and contrary to the evidence produced by the appellant. Since, the Tribunal has not awarded the just, fair and reasonable compensation, this Court has ample power to award just, fair and reasonable compensation irrespective of the fact whether such claims were made earlier or not. He relied upon the judgment of this Court in case of **United India Insurance Company Limited v/s. Smt. Kunti Binod Pande and Ors., 2019 SCC OnLine Bom 5606** in support of this

submission. He submit that this Court has ample power to enhance the claim of compensation. The First Appeal filed by the appellant itself is for enhancement of claim for compensation. Learned counsel submits that the appellant shall be also awarded reasonable amount of compensation towards attendant charges. None of his hands are working as on date.

REASONS AND CONCLUSION

17] The appellant has filed this First Appeal *inter-alia* praying for enhancement of the compensation awarded by the Motor Accident Claim Tribunal, Mumbai. By a judgment and award dated 26th July, 2005, the Tribunal has awarded a claim of Rs.4,12,042/- inclusive of no fault liability amount of Rs.25,000/- with interest @ 7.5% p.a. from the date of filing of petition till its realization in favour of the appellant. The appellant seeks to claim various heads of compensation including enhancement of the claim for compensation awarded by the Tribunal under some of the heads.

18] It was the case of the appellant that he was a motor mechanic by profession and had owned his own motor garage. He was earning Rs.5,000/- p.m. from the said business. In his claim application he had made a claim of Rs.10,00,000/- as and by way of special damages on account of physical pain, mental agony, loss of earning, physical disablement shortening of expectation of life due to the injuries sustained by the appellant in the said accident. The appellant also in his claim application apprehended that there would remain the permanent disability in him and he would be disabled to do his work which he could do prior to the said accident. The said claim application was resisted by the respondent by filing a written statement.

19] The applicant filed his affidavit in lieu of examination in chief as one of the witness. In his affidavit of evidence he deposed that he was going to Bhiwandi from Thane as he was called by a transporter for doing the work

of body building of his truck. When he reached at Kasheli small bridge, ST Bus bearing No.MH-20-D-1460 i.e. offending vehicle came from behind and dashed the appellant. He failed down along with motor scooter and the front wheel of the said bus ran over on his right hand and his left hand also sustained serious injury. After the accident, the driver of the offending vehicle took his bus reverse and took out the appellant from the ST Bus. The appellant was thereafter admitted in a Civic hospital at Thane. His right hand was imputed. He thereafter took treatment in the said civic hospital and also was referred to All India Institute of Physical and Medical Rehabilitation, Occupational Therapeutical Department. He was also sent to Nair Hospital for various treatments. In this process he spent substantial amount on transportation and under various other heads. He was cross-examined by the respondent's counsel. In his cross-examination he deposed that he had not produced on record any documentary evidence about his garage. He denied the suggestion that he had not incurred Rs.15,000/- for taxi fare incurred on the OPD treatment. He also denied the suggestion that he had falsely contended that he used to earn Rs.5,000/- p.m. from the motor garage business.

20] The appellant examined Dr. Satish R. Wagh an orthopedic surgeon as PW 2 i.e. one of the witness. The said witness in his affidavit in lieu of examination in chief opined that he had examined the appellant on 3rd August, 2002. The appellant was suffering from crush injury on both the upper limbs, friction injury on the left abdomen, above elbow imputation was done on right side. On 27th April, 2000 a division imputation was done. Debridement and dressings of the wound was done. Skin grafting was done to cover up the row wound on the interior aspect on the first elbow. The appellant was discharged on 13th May, 2000 from the hospital. He was admitted on 23rd July, 2001 in Nair Hospital for further treatment. He disclosed various treatments given to the appellant from the records made available to him. In paragraph 4 of his affidavit in lieu of examination in

chief he deposed that after perusal of medical papers available, the history of the appellant and the clinical examination and after seeing the old xrays, in his opinion the injuries suffered by the appellant was permanent partial disability to the extent of 95%. He accordingly issued a certificate dated 3rd August, 2002 certifying the permanent partial disability of the appellant as 95%.

21] The said witness was cross-examined by the respondent. In his cross-examination the said witness admitted that he had no opportunity to give any treatment to the appellant. The injuries mentioned by him in his certificate were mentioned in the medical case papers which were brought to him by the appellant. He had not taken new xrays before issuing the certificate of permanent partial disability in favour of the appellant. In his cross-examination, he deposed that after considering the major injury of imputation of right side and the injury to the left upper limb, he had assessed that partial disability was at 95%. He had assessed the said partial disability on the basis of standard books. He also deposed that in case of imputation of both hands above elbow the disability is 100%. The said witness denied the suggestion that the appellant would be in a position to do lighter work in spite of those injuries suffered by him. The said witness admitted that he had come to the conclusion that the appellant will not be in a position to work as a motor mechanic any more.

22] The respondent had examined a bus conductor namely Mr. Vishnu H. Patil. He was given a duty as conductor of the offending vehicle on 25th April, 2000. In his examination in chief he deposed that he was attending the passengers and was not sitting on his conductor seat but was moving for giving tickets. He was facing the rear side of the offending vehicle. Because the passengers shouted, the bus was stopped. The bus conductor got down from the bus. The said witness in his examination in chief deposed that the accident had occurred due to the fact that the scooter driver was over taking

from the left side of the offending vehicle though there was no sufficient space.

23] In his cross-examination, the said bus conductor however admitted that there were numbers of passengers in the said offending vehicle. He was punching the tickets standing between the seats i.e. middle portion. His job was to give the tickets and not to watch the road. It was the duty of the driver to watch the road. The width of the road might be 25 ft. After he got down from the bus, he noticed that the injured was lying to the front of the ST Bus. He admitted that the bus was proceeding at speed. He could not say that the scooter was proceeding from the left side of the road and the offending vehicle gave dash to the scooter and that is why the appellant was lying in the front portion of the offending vehicle on road. He did not hear the noise of impact. As passengers shouted he came to know about the accident. The respondent admittedly did not examine the driver of the offending vehicle.

24] A perusal of the impugned judgment and award passed by the Tribunal clearly indicates that the Tribunal after considering the pleadings, oral and documentary evidence gave a finding that the appellant had proved that on 25th April, 2000 at about 9 a.m., due to rash and negligent driver by the driver of the offending vehicle, the appellant had sustained permanent partial disability. It is held by the Tribunal that the left side portion of the offending vehicle came in contact with the scooter and thus the accident occurred. The Tribunal also took cognizance of the fact that the driver of the offending vehicle would have been the best witness to state that the scooter driver tried to overtake the offending vehicle by the left side of the road and came in contact of the offending vehicle and ultimately met with an accident. The Tribunal also relied upon the FIR lodged by the concerned Police Station which recorded that it was the offending vehicle which gave dash from behind. The Tribunal also considered the spot panchanama which

showed that the right side portion of the scooter came in contract with side by ST Bus.

25] The Tribunal accordingly held that the accident took place due to negligence of the driver of the offending vehicle and accordingly answered the issue whether the appellant had proved that due to rash and negligent driving by the driver of the offending vehicle, the appellant had sustained permanent partial disability. It is not in dispute that various findings of fact on issue no.1 that the driver of the offending vehicle was negligent in driving the offending vehicle and was responsible for the said accident of the appellant is not challenged by the respondent. The respondent has not impugned any part of the judgment and award including the quantification of claim awarded by the Tribunal. In so far as the respondent is concerned, various findings of fact thus rendered by the Tribunal against the respondent and in favour of the appellant have attend finality.

26] I am thus not inclined to accept the submissions made by the Mr. Hegde, learned counsel for the respondent that the appellant was solely responsible for the said accident or was negligent in driving the motor scooter in any manner whatsoever and on that ground the Tribunal ought not to have granted any compensation in favour of the appellant. The respondent has not even filed any cross objection in this appeal.

27] A perusal of the affidavit in lieu of examination in chief filed by the appellant clearly indicates that the appellant had specifically deposed about the accident and the nature of injuries suffered by him. He also deposed the treatments taken by him from time to time from various hospitals required to be taken due to the said accident and having incurred various amounts under various heads. In paragraphs 8 of his affidavit in lieu of examination in chief, the appellant deposed that he was working as body builder of trucks at the time of the accident. He had his own garage. He was earning Rs.5,000/-

p.m. Due to accident, he had been handicapped and could not do any business and lost his entire income for the rest of his life. The said witness also deposed that he was operated on his left hand. Skin grafting was also required to be done. The front wheel of the offending vehicle ran over his right hand. His left hand also sustained serious injury. His right hand was imputed. The witness CW 2 also proved the case of the appellant.

28] There was no cross-examination of the appellant, insofar as imputation of right hand of the appellant and various injuries suffered by the appellant deposed in his evidence is concerned. The Tribunal recorded a finding that right hand of the appellant was amputated above the elbow. There was crush injury to the left hand of the appellant near the elbow portion. There was also scar of injuries on the left of the back of the appellant.

29] Though the Doctor examined by the appellant as a witness opined that the appellant had suffered permanent partial disability to the extent of 95%, the Tribunal in the impugned judgment and award has considered the permanent partial disability at 75% without any basis. The admitted injuries suffered by the appellant and the imputation of right hand of the appellant and various treatments taken by the appellant from time to time from various hospitals were not disputed by the respondent in the cross-examination of the appellant as well as the second witness examined by the appellant. In my view, the Tribunal thus could not have assessed the permanent partial disability of the appellant as 75% and ought to have accepted the said certificate issued by CW 2 certifying that the appellant had suffered permanent partial disability to the extent of 95%.

30] The appellant had established before the Tribunal that he was a motor mechanic. Various findings rendered by the Tribunal on this issue have not been admittedly challenged by the respondent. The respondent thus cannot be allowed to urge before this Court that the appellant had failed to prove

that he was motor mechanic across the bar at this stage.

31] The question now that arises for consideration of this Court is whether the compensation awarded by the Tribunal in favour of the appellant are adequate and proper or not in the facts and circumstances of this case.

32] A perusal of the claim application filed by the appellant indicates that the appellant had claimed a sum of Rs.10,00,000/- as and by way of compensation from the respondent under various heads. The Tribunal however has awarded only a sum of Rs.4,12,042/- inclusive of no fault liability amount of Rs.25,000/- awarded under Section 140 of Motor Vehicles Act with interest @ 7.5% p.a. from the date of filing of petition till its realization.

33] In so far as the submission of Mr. Hegde, learned counsel for the respondent that the appellant cannot be allowed to seek enhancement of compensation not awarded by the Tribunal or additional compensation is concerned, in my view there is no substance in this submission of learned counsel for the respondent. In so far as the compensation claimed by the appellant before the Tribunal and are partly rejected by the Tribunal are concerned, the appellant having been aggrieved by that part of the judgment and award has rightly filed First Appeal in this Court. In so far as the submission of Mr. Hegde, learned counsel for the respondent that the applicant cannot seek enhancement of the claim amount then what was made before this Tribunal is concerned, Supreme Court in case of **Nagappa v/s. Gurudayal Singh** (supra) after considering the provisions of Motor Vehicles Act has held that there is no restriction that compensation could be awarded only upto the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal or Court considers that claimant is entitled to get more compensation than claimed, the Tribunal

may pass such award. Only embargo is that it should be just compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. Similar view has also been taken by this Court in case of ***United India Insurance Co. Ltd. vs. Smt.Kunti Binod Pandey & Ors., (2019) SCCOnLine Bom 5606*** and in case of ***Mahavir Sampat Keskar*** (supra). In my view, the principles laid down by the Supreme Court in case of Nagappa (supra) and laid down by this Court in case of ***Mahavir Sampat Keskar*** (supra) would apply to the facts of this case. I am respectfully bound by the principles laid down in those two judgments. There is thus no merit in this submission made by Mr. Hegde, learned counsel for the respondent that the appellant cannot seek compensation of the claim more than the original claim made before the Tribunal.

34] I shall now consider whether the claims awarded by the Tribunal are adequate compensation or the appellant has made out a case for enhancement as claimed by the appellant in this First Appeal or not. On the date of accident, the appellant was 36 years old. It was the case of the appellant, in the claim application that he was a motor mechanic and owned a motor garage. He was earning Rs.5,000/- p.m. In his examination-in-chief also he deposed that he was earning Rs.5,000/- p.m. from the said garage business. There was not much dispute about the said amount claimed by the appellant by the respondent. However, a perusal of the impugned judgment and award indicates that the Tribunal has though held that there was no dispute that the appellant was having its own scooter, after considering the age, the Tribunal awarded a sum of Rs.36,000/- towards early income by considering the monthly daily income of Rs.100/- and Rs.3,000/- p.m. In my view, the monthly income of the appellant considered as Rs.100/- per day is not adequate and is unreasonable. In my view, the Tribunal ought to have considered Rs.5,000/- per month as monthly income of the appellant being earned from the said garage business at the time of accident.

35] In case of ***Mahavir Sampat Keskar*** (supra) this Court in a similar circumstances had considered monthly income of the claimant at Rs.5,000/- for the purpose of considering for computation of loss of compensation. The principles laid down by this Court in case of ***Mahavir Sampat Keskar*** (supra) would apply to the facts of this case. In my view, the appellant has thus made out a case for considering the yearly income of the appellant at the time of accident at Rs.60,000/- p.a. The appellant was 36 years old at the time of his accident. The Tribunal has not considered any amount towards future prospects though the appellant had been carrying on the said business of motor garage and had suffered 95% permanent partial disability. Considering the age of the appellant, the Tribunal ought to have considered 40% of Rs.5,000/- p.m. i.e. Rs.2,000/- p.m. towards future prospects.

36] The Tribunal thus in my view ought to have considered the yearly compensation amount at Rs.84,000/- multiplied by 15 considering the age of the appellant. The Tribunal thus ought to have awarded a sum of Rs.12,60,000/- to the appellant as compensation and not Rs.36,000/-. The Tribunal even did not multiply the yearly income in accordance with the provisions of Motor Vehicles Act and the law laid down by Supreme Court in catena of decisions. Supreme Court in case of ***Jagdish v/s. Mohan and Ors.*** (supra) has followed the principles laid down by the Supreme Court in case of ***Pranay Sethi*** and has held that in case of a self employed person, an addition of 40% of the established income should be made where the age of the victim at the time of accident was below 40 years as future prospect. The principles of law laid down by the Supreme Court in the said judgment would apply to the facts of this case. I am respectfully bound by the said judgment. The compensation thus awarded by the Tribunal only to the extent of Rs.36,000/- deserves to be enhanced to Rs.12,60,000/-.

37] A perusal of the impugned judgment and award indicates that though the appellant had incurred substantial amount towards transportation charges

by visiting various hospitals for the purpose of taking treatment and had claimed more than Rs.25,000/- by giving the break-up of such amount in the affidavit in lieu of examination in chief which was not seriously disputed in the cross-examination by the respondent, the Tribunal has allowed the compensation of Rs.10,000/- only towards conveyance. In my view, the amount of compensation awarded by the Tribunal at Rs.10,000/- towards conveyance is thus on lower side and is required to be enhanced to Rs.20,000/-. That part of the judgment and award thus deserves to be modified by this Court.

38] In so far as the claim for special diet is concerned, in my view in the facts and circumstances of this case, the Tribunal was justified in awarding compensation of Rs.10,000/- towards special diet. I am not inclined to enhance the said part of claim for compensation in favour of the appellant. The prayer for enhancement of the claim for Rs.10,000/- special diet to Rs.1,00,000/- along with the claim of conveyance is thus rejected. This Court has already enhanced the claim for conveyance from Rs.10,000/- to Rs.20,000/- in the earlier paragraph of this judgment.

39] In so far as claim for compensation towards pain and suffering is concerned, the Tribunal has awarded the claim towards permanent partial disability as Rs.2,50,000/- and Rs.1,00,000/- awarded towards pain and suffering. This part of the judgment and award is accordingly modified and enhanced to Rs.6,00,000/-.

40] In so far as claim for loss of amenities in the sum of Rs.1,00,000/- made by the appellant is concerned, in my view such claim for loss of amenities has been accepted by the Supreme Court and this Court in several judgments. In case of **Jagdish v/s. Mohan and Ors.** (supra) also after considering the earlier judgment in case of **National Insurance Company Limited v/s. Pranay Sethi**, in case of **R.D. Hatangadi v/s. Pest Control**

(India) Private Limited, 1995 ACJ 366 (SC) and various other judgments Supreme Court has allowed the claim for loss of amenities in the sum of Rs.1,00,000/-. I am thus inclined to accept the said claim of Rs.1,00,000/- made by the appellant towards loss of amenities by this judgment.

41] In so far as claim for attendant charges in the sum of Rs.50,000/- is concerned, the claim for attendant charges in the sum of Rs.50,000/- in my view is reasonable in the facts and circumstances of this case and more particularly in view of the fact that the appellant was required to visit various hospitals for the purpose of taking treatment. The claim for Rs.50,000/- towards attendant charges thus deserves to be allowed. I am thus inclined to allow the said claim for Rs.50,000/-.

42] In so far as the submission of Mr. Hegde, learned counsel for the respondent that the evidence of Dr. Satish Wagh examined by the appellant could not have been considered by the Tribunal on the ground that the said witness had not examined the appellant or had not given any treatment to him is concerned, in my view, the Tribunal has considered not only the evidence of the Doctor but had also considered the evidence of the appellant. The extent of injuries suffered by the appellant was also proved in his evidence independently. The respondent had not disputed the fact that the right hand of the appellant was required to be imputed. There were various other injuries suffered by the appellant physically which resulted in the permanent partial disability of the appellant to the extent of 95%. The appellant could not do any other work which he was doing prior to the date of accident.

43] In so far as the submission of the learned counsel for the respondent that this Court cannot rely upon the judgment of Supreme Court in case of **Pranay Sethi and Sarla Verma** (supra) on the ground that in those judgments the Supreme Court had considered the claim arising out of fatal

accidents is concerned, in my view there is no merit in this submission of the learned counsel. Both these judgments have been followed by the Supreme Court in case of **Jagdish v/s. Mohan and Ors.** (supra) in case of a claim arising out of accident and injury based on such accident. There is no merit in this submission.

44] In case of **Kajal** (supra) Supreme Court has held that it is impossible to equate human suffering and personal deprivation with money. The Court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. On one hand, the compensation should not be assessed very conservatively but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The Court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages.

45] It is also held by the Supreme Court that the assessment of damages in personal injury cases raises great difficulty. It is not easy to convert the physical and mental loss into monetary terms, there has to be a measure of calculated guess work and conjecture. An assessment, as best as can, in the circumstances should be made. Supreme Court accordingly after considering the facts and circumstances of that matter where an injury was suffered by a young girl awarded substantial amount of compensation and enhanced the compensation awarded by the Tribunal substantially. The principles laid down by the Supreme Court in the said judgment in case of **Kajal** (supra) applies to the facts of this case. In my view, Mr. Hegde, learned counsel for the respondent could not distinguish any of the judgment relied upon by the learned counsel for the appellant.

46] For the reasons recorded aforesaid, I am of the view that appellant has made a case for enhancement of the claim set out in the earlier paragraphs of this judgment.

47] I therefore pass the following order :-

- a. Respondent is directed to pay a sum of Rs.20,30,000/- to the appellant with interest @ 7.5% p.a. inclusive of 'no fault liability' of Rs.25,000/- from the date of filing of petition till its realization within 8 weeks from today, after deducting the amount already withdrawn, if any by the appellant out of the amount deposited by the respondent with the MACT, Mumbai in MACP No.1789 of 2000.
- b. If there is any short fall in the amount of deposit made by the respondent, such amount of short fall shall be deposited by the respondent within two weeks from the date of computation of such short fall amount by the MACT, Mumbai. The appellant would be entitled to withdraw such amount of short fall also upon such deposit by the respondent.
- c. If there is any surplus amount deposited by the respondent, after payment of the decretal amount awarded by the MACT, Mumbai and modified by this order, such surplus amount shall be returned to the respondent by the MACT, Mumbai.
- d. If any additional amount of Court fees is required to be paid by the appellant, such amount of additional Court fees shall be paid by the appellant within two weeks from the date of computation of the short fall by the MACT, Mumbai.

- e. Judgment and award dated 25th July, 2005 passed by the MACT, Mumbai in MACP No. 1789 of 2000 is modified by this judgment.
- f. First Appeal No. 642 of 2007 is partly allowed.
- g. There shall be no order as to costs.

48] This judgment will be digitally signed by the Private Secretary of this Court. Sheristadar of this Court is permitted to forward the appellant and the respondent copy of this order by e-mail. All concerned to act on digitally signed copy of this order.

(R.D. DHANUKA, J.)

Prachi P.
Nandiwadekar

Digitally
signed by
Prachi P.
Nandiwadekar
Date:
2020.05.19
17:51:44
+0530