

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 85 OF 2014**

M/s. KADAMBA TRANSPORT
CORPORATION LTD.

A Company having their Registered Office
at Paraiso de Goa , Porvorim, Goa ,
represented herein by their Managing
Director MR. DERRICK — PEREIRA
NETO, major, married, service ,
having address at Porvorim, Goa.

2. SHRI. BAKRISHNA R. BHOSLE,
major, driver, s/o Ramakant Bhosle,
r/o House No. 400/2 , Pomburpa , Bardez ,
Goa.

... Appellants.

Versus

1. SHRI NANDESH R. GAONKAR ,
major, S/o Rama Gaonkar , r/o House No.
100/A , Subdolem, Barcem, Post Paddi,
Quepem, Goa.

...Respondent.

**Mr. Ajit R. Kantik, with Mr. R. Kantik, Advocates for
the Appellants.**

Mr. Shailesh Redkar, Advocate for the Respondent.

CORAM : M. S. SONAK, J.

Reserved on : 24th September 2021

Pronounced on : 30th September 2021

JUDGMENT :

1. Heard Mr. A.R. Kantak, who appears along with Mr. R. Kantak for the appellants and Mr. S. Redkar for the respondent.

2. This appeal is directed against the judgment and award dated 27/6/2014, made by the Motor Accident Claims Tribunal at Margao (Tribunal), awarding compensation of ₹ 8,20,285/- to the claimant, together with interest at the rate of 9 % per annum from the date of application, till the date of award and further interest at the same rate, till payment.

3. Mr. Kantak, the learned Counsel for the appellants submitted that the compensation awarded in the present case is exorbitant since there was no evidence on record about the income of the victim. He submitted that the victim himself did not step into the witness box and, therefore an adverse inference should have been drawn in the matter. He submitted that there was no evidence to conclude that the victim would have earned a

monthly income of ₹ 5,000/- and the finding to this effect is based on no evidence whatsoever. He submits that in this case, the maximum income that could have been taken into account could be ₹ 3,000/- per month. He submits that since this was a case of notional income, there was no question of making any addition towards future prospects and the decision in the case of *National Insurance Company Limited vs. Pranay Sethi and others*¹ is quite clear on this point. He submits that there is overlapping and the compensation of ₹2,00,000/- towards continued hospitalization is exorbitant and contrary to law. He, therefore, submits that the impugned award warrants interference.

4. Mr. Redkar the learned Counsel for the claimants defends the impugned award based on the reasoning reflected therein. He, however, submits that to the determined monthly income of ₹ 5,000/-, at least 40% of additions should have been made towards future prospects. He submits that since this has not been done, there is an error in the determination made. He relies on *Pranay Sethi* (supra) and *Kajal vs. Jagdish Chand and ors.*² in support of his contentions.

1. (2017) 16 SCC 680

2. Civil Appeal No.735 of 2020 (arising out of SLP (C) No.15505 of 2019)

5. The rival contentions now fall for my determination.

6. In this case, there is no challenge either to the factum of the accident or the negligence on account of which the accident was caused. In any case, the Tribunal has assessed the evidence on record in great detail and quite correctly concluded that the accident was caused on account of rashness and negligence on the part of the driver of the bus that resulted in the victim suffering from such serious injuries, possibly the effect of which the victim will have to suffer throughout his life.

7. The victim's mother has deposed in this matter as AW.4. She has explained the reason why the victim could not himself step into the witness box. Even, otherwise, from the medical evidence both, oral as well as documentary, it is quite evident that the victim was not in a position to step into the witness box and depose on account of physical, as well as the mental injuries suffered by him.

8. In this case, there is overwhelming medical evidence about the injuries suffered by the victim due to the accident. These

injuries included serious head injury, sharp cut on the forehead and extradural haematoma on the frontal region, contusions, subarachnoid haemorrhage, and fracture of the frontal bone. There is evidence about the gruesome and prolonged treatment which the victim had to take to come out of a coma and other severe complications that he suffered due to the accident. The doctors have deposed to all this and there is no case whatsoever made out to disturb the findings recorded by the Tribunal on this aspect.

9. The evidence on record supports the finding that the victim was suffering from a post-head injury personality disorder and permanent disability on that count was 40% as per the Indian Disability Evaluation and Assessment Scale. Again, this aspect was deposed to by the doctors and no amount of cross-examination could demolish the evidence of these doctors. Therefore, this is a case where no adverse inference is liable to be drawn merely because the victim did not step into the witness box. This is a case where the Tribunal has quite correctly concluded that injuries resulting from the accident were the cause for 40% of disability suffered by the victim.

10. In this case, the Tribunal has noted that the victim was 20 years old at the time of his accident and was traveling by the Kadamba bus to attend computer classes. There is evidence that the victim used to help his parents in agricultural operations. Based on all this, the Tribunal has held that the monthly income of the victim could be safely taken at ₹ 5,000/-. Based on this, the Tribunal has determined the compensation at ₹ 4,32,000/- towards the permanent disability incurred by the victim.

11. According to me, such determination is mostly correct. But, in this case, the Tribunal should have enhanced the determined monthly income of ₹ 5,000/- by another 40% towards the future prospects. Mr. Kantak's contention that the ruling in *Pranay Sethi* (supra) which speaks about 40% enhancement towards the future prospects applying only to a case where the income is established and not to a case of notional income, cannot be accepted. Such a distinction has not been made in *Pranay Sethi* (supra). In any case, in *Kajal* (supra), such a contention stands impliedly rejected.

12. In the said case, the victim was 12 years young girl and the High Court held that her yearly income could be taken at ₹ 15,000/-. The Hon'ble Supreme Court held that this will not be a proper way of assessing the future loss of income. The Hon'ble Supreme Court held that this young girl, after studying, would have worked and would have earned much more than ₹ 15,000/- per annum. In that case, the material was placed on record to show that the minimum wages payable to a skilled workman would come to ₹ 4,846/- per month. The Hon'ble Supreme Court held that this would be the minimum amount which the girl would have earned on becoming a major. To this, the Hon'ble Supreme Court added 40% for future prospects. This means that the contention that there should be no additions towards future prospects when notional income is to be considered, was impliedly rejected.

13. In this case, the Tribunal should have added 40% to the determined income of ₹ 5,000/- per month. Based on this, the compensation towards disability would come to ₹ 6,04,800/-. The Tribunal has awarded appropriate amounts towards hospitalization, attendant charges, pain and suffering, and

traveling charges. Cumulatively, therefore, the compensation, in this case, should have been justly determined at ₹ 9,29,800/- (rupees nine lakhs twenty-nine thousand and eight hundred).

14. In a matter of this nature, the Courts must determine just compensation. Therefore, this is a fit case where the appeal filed by the appellants, warrants dismissal. But, at the same time, the compensation amount is required to be determined at ₹ 9,29,800/- (rupees nine lakhs twenty-nine thousand and eight hundred), instead of ₹ 8,20,285/- already determined. There is no case made out to interfere with the award of interest at the rate of 9% per annum.

15. The appellants are, accordingly, directed to pay the differential amount to the victim within 3 (three) months from today. Since the compensation amount as determined by the Tribunal has already been deposited in this Court, the victim is at liberty to withdraw the same along with the interest that may have accrued thereon.

16. This appeal is disposed of in the aforesaid terms. There shall be no order as to costs.

M. S. SONAK, J.