

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 785 OF 2004

Dada Prakash Shinde,
Age : 16 years, Occu. Education,
Through his guardian father
Prakash Kondiba Shinde,
R/o. Mahijalgaon, Tq. Karjat,
Dist. Ahmednagar.

Appellant
[Orig. Claimant]

Versus

1. Balwan Singh s/o Chandgi Ram
Age : Major, Occu. Truck Owner,
R/o. E-119, Yadav Nagar,
Samay Pur, Delhi.
2. The New India Assurance Co. Ltd.,
Through Manager, Ahmednagar Branch,
Ahmednagar.

... Respondents

...
Mrs. Madhaveswari S. Mhase – Advocate for appellant
Mr. M. M. Ambhore – Advocate for respondent no. 2

....
CORAM : S. G. CHAPALGAONKAR, J.

...
ARGUMENTS CONCLUDED ON: 07th June, 2023
JUDGMENT PRONOUNCED ON: 30th June, 2023

JUDGMENT : -

1. The aggrieved claimant in M.A.C.P. No. 348 of 1997 before M.A.C.T. Ahmednagar impugns the judgment and award dated 25.11.2003, in this appeal filed under Section 173 of the

Motor Vehicles Act, 1988.

2. The contention of the appellant (original claimant) is that, on 09.06.1996, the he was crossing Solapur-Nagar road. At that time, a truck bearing No. DL-1G/B-1166 gave dash to him causing multiple injuries. He was hospitalized for the period of 75 days; however, part of his foot and left hand from shoulder was required to be amputated. Resultantly he suffered permanent disablement. At the time of accident, he was prosecuting education in primary school i.e. 2nd std. Now, he would lead challenging life. The future prospects and life expectancy have been adversely affected. Hence the claimant had lodged a claim for compensation of Rs. 5.00 lakhs under Section 166 of the Motor Vehicles Act against the respondent nos. 1 to 3 i.e. owner, driver and insurer.

3. The Tribunal on consideration of the evidence on record allowed claim for compensation of Rs. 3,05,000/- vide its judgment and award dated 25.11.2003. The claimant felt aggrieved by the assessment / computation of the compensation amount being grossly inadequate, hence this appeal.

4. Ms. Madhaveshwari Mhase, learned advocate appearing for the claimant would submit that the claimant was aged about 9 years at the time of his accident. At such a tender age, he suffered amputation of left hand and left foot leaving him to lead a miserable life. The anguish and mental agony that has been suffered is apart from the other losses. Relying upon the judgment of the Supreme Court dated. 05.02.2020 delivered in the matter of **Kajal Vs. Jagdish Chand & Ors.** (Civil Appeal No. 735 of 202000), she would submit that the Tribunal failed to assess 'just' compensation looking to the facts of the case. She would submit that the multiplier method is widely accepted and recognized for fixing the compensation amount. Even in cases of death or injury to the child, same method has to be adopted, however, the Tribunal ignoring well-established method prescribed, made assessment on lump-sum basis. She would further submit that considering the nature of disability suffered by the claimant, the compensation towards non-pecuniary heads as awarded by Tribunal cannot be justified. The paltry sum has been awarded towards permanent disability, loss of amenities in

life, loss of marriage prospects etc. She would further submit that, compensation granted towards future medical treatment, attendant charges and transportation is meager. She would therefore, urge that to re-determine the compensation in the light of the principles of law as has been laid down by the Supreme Court of India in catena of judgments, specifically, in the case of Kajal vs. Jagdish Chand & Ors (supra).

5. Mr. M. M. Ambhore, learned advocate appearing for respondent no. 2 vehemently opposes the submissions advanced on behalf of the appellant. He would submit that the accident in question took place in the year 1996. The Tribunal has considered the price index for the particular period and assessed the compensation. He would further submit that in case of death or injury to child uncertainty of life assumes important consideration. Even future prospects of the child cannot be visualized because of tender age. The Tribunal has assessed the compensation based on standard method. He would further point out that the Tribunal has granted compensation towards all the major heads that arises for consideration in claim of injured child. Relying upon the judgment in the case of **Rajendra Singh**

and others vs. National Insurance Company reported in (2020) 7 SCC 256. He would submit that the loss of future prospects cannot be considered in cases of death or injury to child. As such, he supports the assessment of compensation made by the Tribunal and consequently justify the award passed by Tribunal.

6. Having considered the arguments advanced by the learned advocates appearing for the respective parties, it can be gathered that the contentious issue regarding quantification of compensation has been posed for consideration before this court. In the cases involving death or injury to the child of tender age, it is difficult task to determine the compensation. Generally, in the injury cases, the assessment of compensation is based on estimation of future loss of earning owing to injuries and consequential disablement. The expenses towards medical treatment, transportation, special diet, attendance charges can be awarded as per actual. The non-pecuniary heads like loss or diminution to the pleasures of life, permanent disability is to be considered on notional basis. Perhaps, in case of injured child of tender age, it is difficult to assess the loss that would occur to the child during the journey of his life. The degree of deprivation of

various amenities in life, enjoyment throughout long life will have to be measured by guesswork. The Supreme Court of India in the matter of **R. D. Hattangadi vs. Pest Control (India) Pvt. Ltd.** reported in (1995) 1 SCC 551, has laid down the various heads under which compensation is to be awarded in personal injury cases.

7. The Supreme Court of India in the matter of **Kajal** (supra) laid certain guiding factors in paragraph no. 6, which reads thus:

“6. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. 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 the 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 is what is termed as just compensation. The 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.”

8. Considering the aforesaid guidelines, it would be necessary to find out whether the assessment of compensation made by the Tribunal in the impugned judgement is just and proper or it requires modification.

9. In the present case, the injured claimant was aged about 9 years at the time of incident. It is not in dispute that the claimant has suffered amputation of his hand from his shoulder so also left foot, fingers and paw. The disability is certified to be 100% under certificate of disability placed before the Tribunal. In that view of the matter, considering the fact that the accident in question took place in the year 1996, it would be necessary to fix the compensation based on price index of relevant period. As observed by Supreme court in case of **Sandeep Khanuja v. Atul Dande Reported in (2017) 3 SCC 351** particularly, in para 11 and 12 of the judgement, for the purpose of assessment of loss of earning, it is well settled that the multiplier method has to be resorted to even for injury cases.

10. The claimant was school going boy. Certainly, he had no earning, however, by considering minimum wages that would

have been available at the relevant period, the income of the claimant can be estimated to Rs. 2,000/- per month i.e. 24,000/- per annum. The addition of future prospects, even in injury cases is now well recognized. Therefore, the 40% of the income will have to be added towards future prospects. Thus, annual loss of earning to claimant can be worked out to Rs. 33,600/- (Rs. 24000/- + Rs. 9600/-). The Schedule under Section 163 A of the Motor Vehicles Act can also be considered as guiding factor for deciding the appropriate multiplier. Because of uncertainty of life, it prescribes the multiplier of 15 in cases of the minors up to the age of 15 years. Applying such multiplier, **the loss of the future earning for claimant can be estimated to Rs. 5,04,000/-.**

11. The Tribunal has awarded Rs. 40,000/- **towards the loss of amenities in life, pain and suffering.** Considering the nature of the injury suffered by the claimant i.e. loss of one hand and one foot, it would be appropriate to award the compensation of **Rs. 2.00 lakhs** under these heads. The Supreme Court of India recognized the **permanent disability** as independent head for grant of compensation, apart from the

monetary losses. The Tribunal has fixed the compensation of Rs. 70,000/- against this head. However, in the facts of the case when tender aged boy has lost his one hand and foot, the compensation under this head could not be less than **Rs. 2.00 lakhs**. The Tribunal considered the loss of **marriage prospects** and granted Rs. 10,000/- by way of compensation. Even the compensation under this head needs to be enhanced to **Rs. 50,000/-**. The learned Tribunal has granted Rs. 10,000/- towards **follow up treatment, attendant and transport charges**, however, even for this head, the compensation of **Rs. 50,000/-** needs to be granted. The medical expenses are awarded as per actual bills produced by the claimant to the tune of Rs. 5,000/-, hence, that is required to be maintained without change.

12. The gamut of aforesaid discussion would lead to modification of the award passed by the Tribunal as demonstrated in following chart.

Sr. No.	Heads	Amount
1.	Loss of future earnings.	Rs. 5,04,000/-
2.	Loss of amenities in life, shock, pain and suffering.	Rs. 2,00,000/-
3.	Permanent disability.	Rs. 2,00,000/-
4.	Loss of marriage prospects.	Rs. 50,000/-

5.	Future Medical treatment, attendant and transport charges.	Rs. 50,000/-
6.	Actual Medical bills	Rs. 5000/-
	Total : -	Rs. 10,09,000/-

13. In result this court proceed to pass following order.

ORDER

- A. The appeal is allowed.
- B. The judgement and award passed by M.A.C.T. Ahmednagar in M.A.C.P. No. 348 of 1997 is hereby modified
- C. The opponent no. 1 and 3 do pay jointly and severally total amount of Rs. 10,09,000/- (inclusive of NFL amount of Rs. 25,000/-) to the appellant / original claimant together with interest @ 6% p.a from the date of application till realization of the amount.
- D. The compensation amount as paid/disbursed under the award of Tribunal be appropriated.
- E. On deposit of the compensation amount, same be disbursed to the claimant subject to payment of deficit court fees.

F. Award be drawn up accordingly.

[S. G. CHAPALGAONKAR]
JUDGE

SG Punde