IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4334 OF 2015
IN
FIRST APPEAL NO. 17 OF 2017

Ganesh Sukumar Patil (Thr. His Natural Guardian Father Mr. Sukumar Devappa Patil)	…Applicant / Appellant (Org. Claimant)
Versus	
The General Manager The Maharashtra State Road Transport Corporation, Mumbai And Ors.	…Respondents (Org. Opp. Nos. 1 to 3)

….

Mr.T.J. Mendon a/w Mr.S.G. Thorat, Advocates for Applicant/Appellant.

Mr. G.S. Hegde, Advocate for Respondents.

….

CORAM : K. R. SHRIRAM &
RAJESH S PATIL, JJ.

DATED : 7th FEBRUARY 2023

P.C.:

Interim Application is filed for following reliefs.

> *"a) The judgment dated 17.01.2014 passed by this Hon'ble Court in F.A. No. 655 of 2013 any to the extent of from para 15 to para 20 may be recalled and re-assessed in the interest of justice;*
>
> *aa) The compensation payable to the Applicant be readjudicating by awarding Just and reasonable compensation as per liberty granted under cl.(II) of para 28 of the judgment in F.A.655 of 2013 dated 17.01.2014 passed by this Hon'ble Court in the interest of justice & equity;*
>
> *b) The delay if any in making this application may kindly be condoned in the interest of justice;*

> c) *Any other order of this Hon'ble Court deem fit and proper in the circumstances of the matter may be prayed in favour of the Applicant."*

2 The Appellant, on or about 27th July 2010, was 14 years old and met with a very unfortunate accident and sustained serious head injury. Since than, he has been confined to bed and deprived of many important faculties. The Appellant through his father, the natural guardian, filed a claim under Section 166 of the Motor Vehicle Act, 1988 (MVA) seeking compensation of Rs.2,32,34,000/-. The Motor Accident Claims Tribunal (MACT) held that the accident occurred due to rash and negligent driving on the part of the driver of the bus of Respondent No.1 Maharashtra State Road Transport Corporation (MSRTC). The MACT proceeded to grant total compensation of Rs.25,04,000/- with interest thereon at the rate of 7.5 percent per annum from the date of filing of the claim.

3 This award of compensation by MACT was impugned by MSRTC by filing First Appeal No.655 of 2013. This Appeal came to be heard and disposed by a judgment pronounced on 17th January 2014. The operative part of the Judgment in paragraph no.28 reads as under:

> "I) *Appeal is dismissed. The appellant shall pay costs quantified at Rs. 50,000/- to the first respondent's father within a period of three months from today;*

II) The first respondent's father shall furnish all necessary particulars of his bank account by filing an affidavit in this Court within a period of four weeks from today. The appellant shall directly transfer the said amount of Rs. 50,000/- to the bank account of the first respondent's father within a period of four weeks from the date of furnishing such details;

III) Out of the compensation amount, a sum of Rs. 12,00,000/- (inclusive of the amount already permitted to be withdrawn) shall be permitted to be withdrawn by the first respondent's father. Out of the remaining compensation amount, remaining amount shall be invested by the Tribunal equally in the names of the first respondent's father and mother;

IV) The investment shall be made with any nationalized bank for appropriate duration at a time which will fetch maximum rate of monthly or quarterly interest. The Fixed Deposits shall be renewed from time to time for a period of 15 years from today. The first respondent's father and mother shall be entitled to withdraw monthly / quarterly interest payable on the Fixed Deposits. The Bank shall be directed to credit the interest directly to the bank accounts of the parents;

V) Considering the peculiar facts, in the event of any major change in circumstances, we permit the parents of the first respondent to apply for modification of the directions by making necessary application to this court;

VI) Civil Application No. 2118 of 2013 does not survive and the same is disposed of."

4 Paragraphs 15 to 20 of the Judgment which is material for this Appeal read as under:

"15. Now coming to the findings recorded by the Tribunal on the quantum, the Tribunal has granted compensation, the details of which are as under :

i) The first respondent is held entitled to the loss of income at the rate of Rs.3000/- per month which is the notional income. The yearly income comes to Rs. 36,000/- and by applying multiplier of 15, the amounts comes to Rs. 5,40,000/-.

ii) The first respondent is also entitled to get compensation under the *head of loss of income for 52 weeks as per schedule II of M.V.Act which comes to Rs.39,000/-.*

iii) Attendant charges at the rate of Rs. 2000/- per month come to Rs.24,000/- and after applying multiplier 15, the said amount comes to Rs.3,60,000/-.

iv) The first respondent is also entitled to an amount for future physiotherapy charges and mental pain and suffering at the rate of Rs.3000/- per month which come to Rs. 36,000/- and after applying multiplier of 15, the said amount comes to Rs. 5,40,000/-.

v) The first respondent is also entitled to get a sum of Rs. 3,00,000/- towards pain and sufferings as well as the loss of enjoyment of life.

vi) The first respondent is also entitled to get Rs. 20,000/- towards travelling expenditure.

Vii) The first respondent is also held entitled to a sum of Rs. 5000/- towards charges and expenditure incurred on special diet.

Vii) Expenses on medicines in future have been granted in the sum of Rs. 3,00,000/-.

viii) The expenses on medical treatment including cost medicines already incurred have been quantified at Rs. 4,00,000/-.

Thus, the total compensation of Rs. 25,04,000/- has been granted to the first respondent with interest @7.5% per annum.

16. It is true that out of compensation amount, approximately a sum of Rs. 12,00,000/- is payable on the account of expenditure in future. There may be some justification in the criticism made by the learned counsel for the the appellant on account of interest granted on the amount expenses likely to be incurred in future.

17. <u>Under section 166 of the said Act, the duty of the Tribunal is to grant just compensation. Though the learned counsel for the first respondent stated that he does not intend to prefer any appeal or cross objection, we must ascertain as to what is the just compensation payable on the basis of the evidence on record</u>.

18. Under the Structured formula incorporated by virtue of section 163-A of the said Act, Schedule II Provides that the notional income of a non earning person will have to be taken at Rs. 15,000/-, i.e., 1250/- per month. Schedule II was brought on the statute book in the year 1994. We are dealing with the accident of the year 2010. During the period of 16 years, there has been a large inflation and the value of Rupee has considerably diminished. In this view of the matter, the Tribunal was right in taking the notional monthly income at Rs. 3000/-. As the case is *of 100% loss of earning capacity, maximum multiplier of 18 ought to have been applied as the age of the first respondent was only 13 years on the date of the accident. Therefore, loss of income will be Rs. 6,48,000/-.*

19. Looking to the health condition of the first respondent, no one can dispute that an attendant who has some experience of nursing will have to be continuously employed. Moreover, services of a Physiotherapist will be necessary. We are concerned with the future expenditure required to be incurred for engaging attendant having some knowledge of nursing and physiotherapy. Even by a conservative estimate, the expenditure on remuneration of attendant and Physiotherapist can be taken at Rs. 5000/- per month and by applying multiplier of 18, the said amount will be Rs. 10,80,000/-. The Tribunal has granted expenditure of Rs. 4,00,000/- towards medical expenses. The said amount of Rs. 4,00,000/- is based on more than 300 documents/bills/receipts placed on record which have been collectively marked as exhibits. The Tribunal constituted under the said Act is not bound by the strict rules of evidence. It is not the case made out by the appellant that the documents produced by the first respondent are fabricated. It is not expected of the first respondent's father to examine large number of witnesses to prove contents of each and every document/bill/receipt. Therefore, the Tribunal was right in granting a sum of Rs. 4,00,000/- on account of medical expenses. The Tribunal has granted only a sum of Rs. 3,00,000/- on account of expenses on the medical treatment and cost of medicines in future. The said amount is on the lower side. As far as the compensation granted on account of mental pain and suffering is concerned, in the cases of accident victims who are suffering from Paraplegia, the Apex Court and this Court has granted compensation on account of pain and sufferings to the extent of Rs. 4,00,000/-. In the present case, the victim whose present age must be 14 years continues to be unconscious. The unfortunate parents have the misfortune of seeing their son unconscious on every day. No prediction can be made regarding prospects, if any, of improvement in his health. Therefore, this is the case where the amount granted under head of the mental pain and sufferings can be reasonably taken at Rs. 5,00,000/-. The Tribunal has granted total amount of Rs. 25,000/- on account of transport charge and special diet. Even the said amount is based on a conservative estimate. <u>Thus, if just compensation is to be granted, it will be at least a sum of Rs. 29,53,000/-</u>.

20. It is true that at least on substantial part of the expenditure to be incurred in future, interest cannot be been granted. <u>However, in the present case, the compensation of Rs. 25,04,000/- is on the lower side and the same ought to have been at least Rs. 29,53,000/-. Though, there is neither any cross appeal or cross objection,</u> the excess amount to which the first respondent was entitled can be always adjusted towards excess interest grated by the Tribunal on the expenditure in future and

> *therefore, no interference can be made with the quantum of compensation and interest granted under the impugned award."*
>
> *(Emphasis supplied)*

5 We should note that the Appeal in which the Interim Application is taken out is impugning the same order of MACT that MSRTC had impugned. Appellant is claiming higher compensation than what was awarded. Appellant is aware that the findings of this Court in paragraphs 15 to 20 of the Judgment dated 17th January 2014 effectively closes Appellant's case to seek higher compensation. Unfortunately, we are not in a position to help the Appellant because: (a) in paragraph 17, the Hon"ble Division Bench of this Court has recorded the statement of Appellant's counsel that he does not intend to prefer any Appeal or cross objection; (b) In paragraph 20, the Court observes, "……. Though, there is neither any cross Appeal or cross objection,……..”; (c) The Court has also observed in the said Judgment that under Section 166 of the MVA, the duty of the MACT is to grant just compensation and this Court sitting in Appeal must ascertain as to what is the just compensation payable on the basis of the evidence on record. This has been recorded notwithstanding the statement made by counsel for appellant that he did not wish to prefer

any Appeal or cross objection. Therefore, Court on its own went ahead to ascertain even without there being an Appeal or cross objection by the appellant herein as to whether MACT has granted just compensation. Thereafter the Court considered the structure formula incorporated by virtue of Section 163–A of MVA, the Schedule–II thereto and after considering the health condition of Appellant and the expenditure to be incurred on the treatment of Appellant came to a conclusion that the just compensation should be atleast Rs.29,53,000/-. In paragraph 20, the Court held:

> *"20. It is true that at least on substantial part of the expenditure to be incurred in future, interest cannot be been granted. However, in the present case, the compensation of Rs. 25,04,000/- is on the lower side and the same ought to have been at least Rs. 29,53,000/-. Though, there is neither any cross appeal or cross objection, the excess amount to which the first respondent was entitled can be always adjusted towards excess interest grated by the Tribunal on the expenditure in future and therefore, no interference can be made with the quantum of compensation and interest granted under the impugned award."*

6 The Court dismissed the Appeal filed by MSRTC with costs quantified at Rs.50,000/- and in paragraph 26 gave directions as to how the amount has to be permitted to be withdrawn and how much is to be invested. Paragraph 26 reads as under:

> *"26. Under the impugned Judgment and Award, only a sum of Rs. 10,00,000/- is required to be invested. The present age of the first respondent is 14 years and there is bound to be a recurring*

> *expenditure on various counts. A total sum of Rs. 12,00,000/- will have to be permitted to be withdrawn by the first respondent's father. We propose to direct the Tribunal to invest the remaining amount equally in the names of the first respondent's father and mother with any nationalized bank for a period of 15 years with a direction to the Tribunal to allow monthly / quarterly interest to be withdrawn by the father and mother of the first respondent."*

This Court has therefore considered the impugned judgment of MACT and has concluded that just compensation would be Rs.29,53,000/-. In our view therefore we cannot reopen the issue.

7 We must also note that when this Appeal came to be admitted *vide* order dated 28th January 2019, the Court kept open the contentions of Respondent Nos.1 and 2 about tenability of this Appeal. In view of this liberty granted to Respondent Nos.1 and 2, Mr.Hegde submitted that in view of what is recorded in the Judgment pronounced on 17th March 2014, this Appeal is not maintainable. We agree with Mr.Hegde, though with a heavy heart.

8 In the circumstances, we dismiss the Interim Application and consequently the Appeal as well.

9 No orders as to costs.

(RAJESH S. PATIL, J.) **(K. R. SHRIRAM, J.)**