

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
FIRST APPEAL NO.1343 OF 2011**

**WITH**

**CROSS OBJECTION STAMP NO.27558 OF 2011**

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SHANKAR  
KADAM

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| Brihan Mumbai Mahanagar Palika through<br>(BEST Undertaking), Electric House, Colaba,<br>Mumbai-400 005.                                                      | ...  | Appellant  |
| versus                                                                                                                                                        |      |            |
| Kaushik Vadilal Shah,<br>Aged 38 years,<br>Residing at 111/119, Nathuram Podar Baug,<br>2 <sup>nd</sup> floor, Flat No.5, Thakurdwar Road,<br>Mumbai – 40002. | .... | Respondent |

Ms. Karishma Jhaveri i/b. Navdeep Vora & Associates, Advocate for the Appellant.

Ms. Ketki Gokhale i/b. Mr. A.M. Gokhale, Advocate for the Respondent.

**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 1<sup>st</sup> APRIL, 2024.**

**Oral Judgment:**

1. This appeal is preferred by the appellant – Corporation against the judgment and order passed by Motor Accident Claims Tribunal, Mumbai (for short “the Tribunal”). The claimant has filed cross-objection for enhancement of compensation. As the appeal and cross-objection are against the same judgment and order, I am deciding it by this common judgment.

2. It is contention of learned counsel for the Corporation that the claimant has suffered 65% disability due to accidental injuries but the Tribunal has considered 100% function disability, which is on higher side. Learned counsel further submitted that in the evidence of Doctor, it has come on record that the condition of the claimant has improved, hence, the Tribunal should not have considered 100% functional disability of the claimant. Learned counsel further submitted that after the accident, the claimant has been continued as partner in the partnership firm, so there is no loss to his income but the Tribunal has awarded future prospects, which is erroneous. Learned counsel further submitted that the age of the claimant at the time of accident was 38, so the proper multiplier is 15 but Tribunal has applied multiplier of 16, which is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the claimant that due to accidental injuries, the claimant has suffered injuries to his brain, his right side is paralysed, his vision of left eye has gone, the claimant is confined to wheelchair, he is unable to do his activities. The claimant was earning Rs.1,00,000/- per annum but the Tribunal has considered his monthly income at Rs.3500/-, which is on lower side. Learned counsel further submitted that the Tribunal has awarded compensation on lower side under other heads. Hence, requested to allow the cross-objection and dismiss the appeal filed by the Corporation.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. To prove the disability, the claimant has examined Doctor – Ranjit Nagpal. He has stated that the claimant was under his treatment in Jaslok Hospital from 14<sup>th</sup> April 1997 to 8<sup>th</sup> June 1997. At the time of admission, the claimant was unconscious with severe brain injury. He had also fracture of right 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> ribs and fracture of right ankle. At the time of discharge, the claimant started communicating in writing and could not speak. He has further stated that, during admission, the claimant was operated for two clots in the skull, (1) subdural clot and (2) clot within brain, craniotomy was done. In the first operation, the bone flap was removed from skull and kept in abdomen. In the second operation, bone flap was removed from abdomen and kept in place. He further stated that the claimant's right side was paralysed because of brain injuries and claimant's speech has been affected because of brain injuries. He has issued disability certificate to the claimant to the tune of 65%. The disability is comprising of right side paralysis, left eye blindness and mental deterioration. The disability could increase or decrease. This witness advised physiotherapy to the claimant. In cross-examination, this witness has admitted that he is not aware about the present physical condition of the claimant. He further admitted that the condition of the claimant has improved compared to the condition in the

year 1997.

5.1. The claimant has examined AW3- Dr. Ashok Joshi at Exhibit-9. He has stated that the claimant was his patient and he had given him magnetic therapy and he was charging Rs.50/- per day. The certificate is at Exhibit-10. Nothing elicited in his cross-examination to disbelieve his evidence.

5.2. While awarding compensation, the Tribunal has awarded compensation on the basis of 100% functional disability, I do not find infirmity in it. In my view, the claimant has suffered brain injuries, he was unconscious for couple of days, his right side body is completely paralyzed, there were clots in his brain, he was operated twice, he has lost vision of his left eye and there is mental deterioration. It shows that though the Doctor has given 65% permanent physical disability certificate but the functional disability of the claimant is 100%, hence, I am considering 100% functional disability.

5.3. To prove the income, the claimant – Kaushik Shah has examined himself. He has stated that, at the time of the accident, he was 38 year old and he was partner in M/s. Vadilal Mulchand shah and was drawing a monthly income of Rs.30,000/-. After the accident, due to physical incapacity to get business, he has engaged two employees who are paid Rs.7,000/- per month. In cross-examination, he has admitted that he does not remember the year of establishment of his firm. While

dealing with the issue of income of the claimant, considering the evidence on record, the Tribunal has considered Rs.3500/- as monthly income of the claimant. In my view, it is on lower side, it should be Rs.5000/- per month as the claimant was partner in partnership firm and income tax returns are produced on record, which shows the annual income of claimant was more than Rs.1,00,000/- but these are not exhibited. It appears from record that summons was issued to the Income Tax Officer for giving evidence but after receiving summons, no one appeared from the Income Tax Office, hence, the income tax returns could not be accepted. Considering the evidence available on record, I am considering Rs.5,000/- as monthly income of the claimant.

5.3 The Tribunal has awarded Rs.8000/- for conveyance. It has come on record that Jaslok Hospital is situated in South Mumbai, whereas claimant is residing at Thakurdwar Road, Mumbai, I am considering conveyance at Rs.20,000/-.

5.4. The Tribunal has awarded Rs.5000/- for attendant charges and nursing, I am considering it at Rs.30,000/- as, for the period of six months, the claimant was under continuous treatment.

5.5 The Tribunal has awarded Rs.28,800/- for physiotherapy and magnetic therapy expenses. It has come in the evident of AW3-Dr. Ashok Joshi that the claimant required continuous physical therapy, hence, I am considering Rs.68,200/- as compensation for physiotherapy

and magnetic therapy.

5.6. The Tribunal has awarded Rs.50,000/- for pain and sufferings. Considering the injuries of the claimant, I am considering it at Rs.75,000/-.

5.7. The Tribunal has awarded Rs.1,00,000/- for loss of amenities in life , I am considering it at Rs.1,50,000/-.

5.8. The Tribunal has not awarded compensation for loss of expectancy of life, I am considering it at Rs.50,000/-.

5.9. The claimant has suffered 100% functional disability. As per view of Hon'ble Apex Court in **National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)**, the claimant is entitled for 40% future prospects. The Tribunal has awarded interest @ 7% per annum on compensation amount, it should be 7.5 %, hence, I am considering interest @ 7.5% per annum on compensation amount.

5.10. It is contention of learned counsel for the respondent-Corporation that the age of the claimant at the time of accident was 38, so the proper multiplier is 15 but Tribunal has applied multiplier of 16, hence, I am considering the multiplier of 15.

5.11. Considering the above calculations, the claimant is entitled for following compensation :

| Particulars                           | Rs. | Amount    |
|---------------------------------------|-----|-----------|
| Annual Income (Rs.5000/- x 12 months) | Rs. | 60,000.00 |

|                                             |     |              |
|---------------------------------------------|-----|--------------|
| 40% future prospects                        | Rs. | 24,000.00    |
| Total                                       | Rs. | 84,000.00    |
| (Rs.84000/- x 15 multiplier)                | Rs. | 12,60,000.00 |
| Medical Expenses                            | Rs. | 4,12,137.00  |
| Physiotherapy and magnetic therapy expenses | Rs. | 68,200.00    |
| Conveyance                                  | Rs. | 20,000.00    |
| Special Diet                                | Rs. | 10,000.00    |
| Attendant and nurse charges                 | Rs. | 30,000.00    |
| Pain and suffering                          | Rs. | 75,000.00    |
| Loss of amenities of life                   | Rs. | 1,50,000.00  |
| Loss of expectancy of life                  | Rs. | 50,000.00    |
| <b>Total Compensation.</b>                  | Rs. | 20,75,337.00 |

The Tribunal has awarded Rs.12,69,137/-, if this amount is deducted from the amount of Rs.20,75,337/- considered by this Court, it comes to Rs.8,06,200/-. The claimant is entitled for this amount.

6. In view of above, I pass the following order :

### **ORDER**

1. First Appeal No.1343 of 2011 is dismissed. No order as to cost.
2. Cross Objection (St.) No.27558 of 2011 is allowed.
3. The claimant is entitled for enhanced compensation of Rs.8,06,200/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
4. The appellant-Corporation shall deposit the enhanced amount along with accrued interest thereon within eight

weeks from the receipt of this order.

5. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
  6. The claimant is entitled @ 7.5% interest per annum on compensation amount of Rs.12,69,137/- from the date of filing claim petition, till realisation of the amount.
  7. The claimant shall pay court fees on enhanced amount as per Rule.
  8. The statutory amount in First Appeal No.1343 of 2011 be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
7. Pending applications, if any, stand disposed of.

**(SHIVKUMAR DIGE, J.)**