IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1814 OF 2010

Kumari Trupti Umakant Kavale,)
Aged about 16 years, Occ. Nil,)
Through her father,)
Umakant Kavale, adult, Occ. Service,)
Residing at Dwarka, Taluka Nashik,)
District Nashik.) ....Appellant

Versus

1. Ramdas V. Shetty,)
Adult, Residing at M-101,)
Plot No.62, Jamuna Building)
Sher-E-Punjab, Andheri (E),)
Mumbai-400 059.)

2. Purushttam Kisanras Dapake,)
Adult, Occ. Driver,)
Residing at Shivaji Nagar,)
Taluka Kannad, District Aurangabad.)

3. The New India Assurance Co. Ltd.,)
Regional Office, Maharudra Building,)
Near Nashik Merchant Bank,)
Satpur, Nashik, District Nashik.) ....Respondents

Mr. Ajinkya Jaibhave a/w. Ms. Nidhi Karkhanis for the Appellant.

Ms. Poonam Mittal for the Respondents.

CORAM : JITENDRA JAIN, J.
DATED : 10th JULY 2026

JUDGMENT :

1. This is an appeal filed by the father of a minor daughter who lost her life after suffering fatal injuries from the year 2003 being the date of the accident till the year 2019 when she ultimately lost her life and during this

period of almost 16 years, she was in a coma. It is also unfortunate that while the child was in coma, her mother also passed away in the year 2016 and the father was left alone to take care of the child. This is very sad and unfortunate incident especially for parents whose only child met with an accident resulted into coma and after struggle of 16 years expired.

2. The present appeal is filed seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Nashik ('Tribunal') amounting to Rs.7,04,000/- along with interest. Pending the appeal before this Court, the daughter who met with an accident and was in coma, died in the year 2019.

3. On 5 March 2003, the daughter was on her way back home after attending her tuition class on a bicycle. When she reached on a busy road Mumbai Nakka in Nashik, a Maruti Omni van, insured with the insurance company dashed her leading to serious head injury. This injury resulted in a brain hemorrhage. She also suffered various other bodily injuries. The parents knocked the doors of various hospitals from Nashik to Mumbai in the hope that they would be able to revive their daughter from coma. However, inspite of trying their best to provide the top-most medical facilities, it was unfortunate that the parents and the medical experts were not able to revive the daughter, who continued to remain in coma till her death. The daughter continued to remain in the hospital till 24 June 2003 and after losing all the hopes, she was moved back to home under the care of her parents and the attendants.

4. The Tribunal awarded Rs.7,04,000/- under following heads :-

Particulars		Amount
1.	Hospital Bills on presumption basis	Rs. 2,04,000/-

2.	Medicine on the basis of rough bills	Rs. 15,000/-
3.	Transport expenses for Mumbai	Rs. 15,000/-
4.	For the pain ans suffering caused	Rs. 50,000/-
5.	Future sufferings and medication	Rs. 1,50,000/-
6.	Future Income	Rs. 2,00,000/-
7.	Leave pay	Rs. 50,000/-
8.	Special Diet	Rs. 20,000/-
	Total	Rs. 7,04,000/-

Issue :

"Whether the Tribunal was justified in awarding Rs.7,04,000/- to the claimant on account of accident and subsequent death of the daughter of the claimant."

5. I have heard learned counsel for the claimant and learned counsel for respondent no.3-insurance company.

6. Learned counsel for the claimant states that the daughter was in coma for almost 16 years. Various original copies and photocopies of the medical bills were filed with the Tribunal and were exhibited but same have not been appreciated correctly by the Tribunal. Learned counsel further submits that the parents have lost their only daughter who was 12 years old and therefore, the amount awarded towards pain and suffering is too meagre. He further submitted that after her discharge from the hospital, she continued to be in coma and she was bed-ridden till her last breath. This required various day-to-day expenses to be incurred towards urine bags, catheters, feeding tubes, syringes, adult diapers, physiotherapy, doctor's visits, attendants and general medicines, etc. and these expenses have to be factored in awarding compensation. Learned counsel further submitted that around Rs.1500/- per day was incurred on these items from the day she was discharged from the hospital till her death i.e., from 25

June 2003 to 5 February 2019. This amount itself works out to Rs.85,51,500/- which the Tribunal should have awarded. He, therefore, submitted that this is a fit case for enhancement of the compensation awarded by the Tribunal.

7. Ms. Mittal, learned counsel for the Insurance Company has vehemently opposed the submissions made by the learned counsel for the claimant. She submitted that no evidence has been led regarding transportation expenses and the expenses incurred from the day she was discharged from the hospital till her death. In any case, she submits that the father in his evidence before the Tribunal has admitted that the daily expenses were Rs.800 to Rs.900/- per day. Therefore, the claim made of Rs.1500/- per day is exorbitant. She further relied on the following decisions in support of her submissions that doctor was not examined to ascertain disability :-

I. Sudhir Bhulya v National Ins. Co. Ltd.[1]

II. Rajesh Kumar Kaushik v Tej Narayan Singh & Ors.[2]

III. Rajesh Kumar v Yudhvir Singh & Anr.[3]

IV. Oriental Insurance Co Ltd v Sh Praveen & Ors.[4]

IV. Raj Kumar v Ajay Kumar & Anr.[5]

VI. Girdhar Brigmohan Manu v Vimal Lalchand Mutha & Ors[6]

8. She, therefore, submitted that the appeal be dismissed and strongly defended the Tribunal's order.

9. I have heard learned counsel for the appellant and the insurance company. I have also perused voluminous records and proceedings received from the Trial Court/Tribunal.

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1 2005 (1) TN MAC 414 (Cal.)
2 2007 SCC OnLine Chh 203
3 2008 7 SCC 305
4 2011 SCC OnLine HP 743
5 2011 1 SCC 343
6 2019 SCC OnLine Bom 1145

10. I propose to deal with the submissions of the parties as per the heads of the claim.

11. The father has claimed Rs.95,000/- being leave for four months during which the daughter was in the hospital and he had to take leave and attend to her. In the cross-examination, he has relied upon a certificate issued by the engineer to prove that he has availed earned leaves. The Tribunal, after considering the evidence and all other factors, has awarded Rs.50,000/-. In my view, looking at the facts of the present case and the Tribunal having considered all the evidence on this issue, which does not appear to be a perverse, grant of Rs. 50,000/- on this head does not warrant inteference.

12. With respect to transportation to various hospitals in Nashik and Mumbai, the Tribunal has awarded Rs. 15,000/-. There is no dispute that for almost close to 4 months, the daughter was in hospital in Nashik as well as in Mumbai. The parents had to take regular trips to the hospital from their residence. The distance between Mumbai and Nashik is around 180 km. to 200 km. Even when in Mumbai, the parents had to incur local conveyance expenses from their place of stay to the hospital. The daughter was in vegetative condition. Looking at all these factors, in my view, Rs.15,000/- is too less for transportation for a period of four months from Nashik to Mumbai and within Nashik and Mumbai. Therefore, I propose to enhance the compensation awarded by the Tribunal by another Rs.15,000/- so that the total amount towards transportation will be Rs. 30,000/-.

13. With respect to extranourishment, the claimant has claimed Rs.44,800/- being Rs.400/- per day for 112 days when the daughter was in the hospital. The Tribunal has awarded Rs. 20,000/- on this count. In my view, when the daughter was in hospital, these expenses must have been covered by medical bills of the hospital and therefore, the amount claimed

of Rs.44,800/- cannot be entertained. The Tribunal has still awarded Rs.20,000/-. However, the insurance company is not in appeal and therefore, I do not propose to interfere with the findings of the Tribunal on this count.

14. The claimant has claimed Rs.3,26,514/- towards medical expenses. The Tribunal, after considering the bills of the hospitals and the bills of the chemists, has granted Rs.2,19,000/-. It cannot be disputed that over and above Rs. 2,19,000/-, the father must have incurred some expenses which were not considered by the Tribunal on the ground that the medical bills were not original. When a person is faced with the situation of his young daughter being in coma, chances of not maintaining each and every original medical bill cannot be ruled out. Therefore, to factor this and in the interest of justice, I propose to enhance the amount of Rs. 2,19,000/- granted by the Tribunal to Rs. 2,50,000 i.e., Rs. 31,000/- extra.

15. The claimant has claimed Rs.4,00,000/- for pain and suffering of the daughter and themselves. The Tribunal has awarded only Rs. 50,000/-. In my view, the pain of losing a young and only daughter aged 12 years old cannot be calculated in monetary terms by any stretch of imagination. Such pain for the parents is insurmountable. She was in coma for 16 years and every sight will cause great pain to the parents. Therefore, Rs. 50,000/- awarded by the Tribunal is too meagre and same requires to be enhanced by another Rs. 50,000/-, thereby aggregating to Rs.1,00,000/-. I do not wish to say anything more on this issue because the facts of the present case are very unfortunate and sad, which cannot be compensated in monetary terms.

16. The daughter ultimately expired in the year 2019 after suffering for 16 years. As per the decision of ***National Insurance Co. Ltd vs Pranay Sethi***

& Ors.[7], Rs.18,000/- is awarded towards funeral expenses and further Rs.18,000/- is awarded towards loss of estate and Rs. 48,000/- towards loss of consortium. The decision of the Hon'ble Supreme Court in the case of ***Pranay Sethi (supra)*** was not available when the tribunal decided the matter and therefore, the Court grants Rs. 84,000/- under these three heads. Similarly, an amount of Rs. 50,000/- is awarded towards loss of amenities following the above decision of the Hon'ble Supreme Court.

17. The last head which requires consideration is daily expenses incurred by the parents after the discharge from the hospital of the daughter, who was in a coma till her last breath.

18. With regard to future medical expenses, the Tribunal has awarded Rs.1,50,000/-. In this case, it is not disputed and it is evident from the cross-examination of the father that the daughter from the day of the accident till her last breath was bed-ridden as she was in coma. Upto 24 June 2003, she was admitted in hospital. Post 25 June 2003 till 5 February 2019, she was at home in a vegetative condition. When a person is in a vegetative condition and at home, one cannot lose sight that various expenses are required to be incurred on the patient. These expenses would be in the nature of urine bags, catheters, feeding tubes, syringes, adult diapers, general medicines, salary of nurses, special diets, doctor's visits, etc. It cannot be said that these expenses were never incurred. At the same time, to expect the claimant to keep a detailed account of each and every expenditure supported by the original bills and to prove the same in accordance with strict proof of evidence law is also not acceptable moreso when we are dealing with social welfare legislation and in particular facts of the present case.

19. I have perused each and every page of the records and proceedings

7 (2017) 16 SCC 680

received from the Tribunal including the registers maintained by the father wherein date-wise record has been maintained for expenses on nurses, etc. I have also examined original copies of the bills issued by chemists which give various items of purchase namely, medicines, urine bags, syringes, diapers and price per unit etc. After considering these bills as illustrative, I have made an attempt to calculate per day expenditure which the parents may have incurred on the daughter at home when she was in coma.

20. In my view and after considering the records and proceedings, around Rs.600/- per day would be reasonable amount which must have been spent by the parents on day-to-day treatment of their daughter who was in coma. Detailed break-up of Rs.600/- per day cannot be given but on an approximate basis and based on the records and proceedings, I have estimated Rs.300/- towards nursing charges, Rs. 50/- towards urine bags, Rs. 15/- towards syringes, Rs.60/- towards diapers, Rs.24/- towards feeding tube and balance towards general medicines and doctor's visits. In such type of matters, neither exact mathematical precision can be expected by the Court from the parties nor the Court can arrive at exact mathematical precision but looking at the present facts and based on my perusal of the records and proceedings, Rs. 600/- per day is estimated towards day-to-day expenses of the daughter till her last breath which contains original bills from which I have ascertained expenses for each of the above.

21. The daughter was discharged from the hospital on 24 June 2003 and died on 5 February 2019. The period of almost 16 years works out to 5701 days. Therefore for this period at the rate of Rs. 600/- per day, compensation works out to Rs. 34,20,600/- which is rounded off to Rs.35 lakhs.

22. Though the claimant has claimed Rs.1,500/- per day, in the cross-examination of the father, the father has admitted Rs.800/- to Rs.900/- per

day towards day-to-day expenses. However, I have arrived at Rs. 600/- per day after perusing the records and proceedings as stated above.

23. The Tribunal, on one hand, has observed that the claimant has not led the evidence of any doctor to prove permanent disability but at the same time, the Tribunal, after considering the nature of injury, has come to a conclusion and given a finding that the injury has led to permanent disability. Therefore, the finding of permanent disability has been arrived at by the Tribunal independently and without any evidence by the doctor. Therefore, the issue as to whether there was any certificate of a medical board to prove disability does not arise. In any case, I have perused the records and proceedings and in these records, I have found two certificates i.e. one issued by the medical board of the government hospital and another by another doctor showing disability of 100% and 90% respectively. However, there is some confusion on whether these medical certificates were exhibited or not. In any case, this is inconsequential because there is no dispute that the daughter was in coma from the day of the accident till her death and when a person is in coma, it is unimaginable to think any percentage of disability because such a person is only in a vegetative condition, which demonstrates full disability.

24. It is important to note that Tribunal's order was of the year 2007 and the daughter died in the year 2019. Therefore from 2007 to 2019, the Tribunal could not have awarded future medical expenses. However, this Court, after considering the death post the tribunal's order and on the basis of above reasoning, has awarded the compensation of Rs.35 lakhs.

25. The father is also entitled to claim separate compensation for the death of the daughter pursuant to the decision of the Hon'ble Supreme Court in the case of ***New India Assurance Co. Ltd. Vs. Satender & Ors.***[8]

8 (2006) 13 SCC 60

based on notional income and the application of multiplier after reducing amount towards personal expenses. The reason why I have not awarded separately because the said amount if awarded can be considered towards the errors in estimate made by me while computing daily medical expenses for 5701 days since same are on estimate basis. The error in arriving at Rs.600/- per day can be set off against the non-granting of compensation towards death. If compensation on account of death is calculated, it would be in the range of Rs.4 lakhs to Rs.5 lakhs. However, since the enhancement is itself on estimated basis, error, if any, in estimate made by me will be taken care by non-granting compensation on account of death.

26. In view of above, the claimant is entitled to enhanced compensation of Rs.37.30 lakhs. It is made clear that Rs. 37.30 lakhs is over and above Rs.7,04,000/- awarded by the Tribunal.

27. Insofar as interest is concerned, the Tribunal has awarded interest at the rate of 7.5% p.a. on Rs.7,04,000/- which is not disturbed. However, on the enhanced amount of Rs.37.30 lakhs, interest from the date of application till realisation would be at the rate of 6% p.a. since the claimant has not led any evidence before the Tribunal on the rate of interest and further over a period of time, the rate of interest have gone down substantially. The insurance company has not challenged the original rate of interest of 7.5% p.a. and therefore, on Rs.7,04,000/-, this Court has not disturbed this finding.

28. The learned counsel for the claimant states that they have already withdrawn the amount awarded by the Tribunal. Therefore, the insurance company is directed to deposit Rs. 37.30 lakh alongwith interest at the rate of 6% p.a. from the date of filing of the application till realisation within a period of 12 weeks from today with the concerned Tribunal. The claimant would thereafter, be entitled to take appropriate steps in accordance with

law for withdrawal of the said amount.

29. Appeal is disposed of in above terms.

[JITENDRA JAIN, J.]