

Muthaiah Sekhar

Vs

Nesamony Tpt. Corporation Ltd. and Another

Civil Appeals No. 13391 of 1996 with No. 13385 of 1996

(K. Venkataswami, A. P. Mishra JJ)

01.09.1998.

JUDGMENT

K. VENKATASWAMI, J.

Civil Appeal No. 13391 of 1986

1. Aggrieved by the dismissal of his appeal at the admission stage, the appellant who sustained serious injuries in a motor accident that took place on 10-8-1984 has preferred this appeal.
2. The appellant along with his mother, brother and sister-in-law was travelling in a taxi from Nagarcoil to Trivandrum on 10-8-1984. A bus belonging to the respondent-Corporation coming from the opposite direction dashed against the taxi while trying to overtake a bullock-cart, resulting in the death of the driver and the appellant's mother. The other occupants including the appellant sustained injuries. The appellant moved the Motor Accident Claims Tribunal, Trivandrum, claiming a sum of Rs. 5,06,091 as compensation. At the time of the accident, he was aged about 25 years and after practising as a lawyer for some time, applied for and secured a seat in the Madras University for pursuing his ML course. He sustained in all seven injuries including dislocation of the right hip, head injury and injury to the left eye and ear. Initially, he was admitted to the Medical College Hospital, Trivandrum, for treatment and after being discharged therefrom, he was admitted again to the Madras General Hospital for further treatment. It was the claim of the appellant that he was to be treated for the left carotid cavernous fistula; a condition which required the treatment of balloon embolisation. According to the appellant, the said treatment was not available in India and his brother, who was a practising doctor at New York, United States, asked the appellant to go over there for treatment. Accordingly, he went to the United States and had his treatment there. The Head of the Neurosurgery Department of Trivandrum Medical College Hospital gave a Disability Certificate assessing loss of 60% vision in the left eye and 50% hearing in the left ear. He also opined that dislocation of the right hip was permanent. Bringing all these factors in his claim petition, he made a claim of Rs. 5,06,091.
3. The Tribunal was of the view that the claim towards the travelling expenses to New York and medical expenses in the hospital at New York cannot be allowed as there was no record to show that the facilities were not available in India for such treatment. The Tribunal after referring to the Disability Certificate given by the Head of the Neurosurgery Department and other factors, awarded the compensation in a sum of Rs. 1,76,000.
4. Aggrieved by the meagre amount of compensation awarded by the Tribunal, the appellant preferred an appeal to the Kerala High Court in MFA No. 712 of 1990. Unfortunately, the

appellant's appeal came up for admission along with the appeals filed by the other injured occupants of the taxi and the legal representatives of the deceased person. A Division Bench of the Kerala High Court summarily dismissed all the appeals at the admission stage. Hence, this appeal by special leave.

5. Learned Senior Counsel appearing for the appellant, placing reliance on the Disability Certificate issued by the Head of the Neurosurgery Department and the letter written by a doctor in New York to the U.S. Consulate at Madras to enable the appellant to get the necessary visa for his treatment at the United States and the oral evidence given by the doctor who gave the Disability Certificate, submitted that the findings of the Division Bench cannot be supported. According to the learned Senior Counsel, the appellant has discharged the burden to prove his case that the treatment he had in New York was not available in India at that time and there is no iota of evidence on the side of the respondents to demolish the claim of the appellant in this regard. In any event, according to the learned Senior Counsel, it was not for the respondent to suggest what type of treatment the injured has to undergo. It was further contended that neither the Tribunal nor the High Court had any material to disbelieve the evidence produced by the appellant. In the absence of any positive evidence from the side of the respondent-Corporation, it was the contention of the learned Senior Counsel for the appellant that the High Court should have allowed the compensation as claimed by the appellant.

6. Contending to the contrary, learned counsel for the respondent-Corporation, submitted that the High Court has correctly appreciated the evidence and the High Court has factually found that the award of Rs. 1,76,000 was on the higher side. He also invited our attention to the oral evidence of the doctor who gave the Disability Certificate.

7. After going through the award of the Tribunal and the judgment of the High Court, we are of the view that the appellant was not given the just compensation on the facts of the case, to which he was entitled to. The Disability Certificate was not totally accepted by the High Court only on the ground that the doctor who gave the Certificate has no authority to give such a Disability Certificate in respect of vision in the left eye and loss of hearing in the left ear. We have perused the evidence of the doctor who gave the Disability Certificate and he has asserted in his evidence as follows :

"Before I issued this Certificate, Ext. A-22 I saw the report of the a neurologist of the MCH. The respective departments will send their reports. I referred the patient to an Ophthalmic Hospital and ENT specialist, MCH, Trivandrum. ENT must have seen it. Audiometry was done to him. I did not examine his vision. Ophthalmologist examined his vision. He had a lot of problems. Mainly diplopia. Regarding the nature of diplopia, only the ophthalmic surgeon can explain. Audiometry was done and a report was given by the ENT Department. When I treat a patient, I alone will issue a Disability Certificate. Other departments will issue reports about the treatment made by them. I have not seen any Disability Certificate issued by the other departments. As head of the treating unit, the neurologist can issue Disability Certificate. There is 60% loss of hearing in one ear. With respect to vision also I have seen the report. You are not competent to issue a Disability Certificate regarding eye and ear (Q). Not correct (Ans.). Orthopaedic surgeons are competent to issue Disability Certificate in respect of every system of the body on the basis of the MC brid scale. His left hip is affected. He had a damage to the optical nerve of the left side. I mean the 2nd cranial nerve. That was not mentioned in the Certificate. When there is a total loss, each of the reasons need not be mentioned. I say you have not mentioned the reasons for

assessing 50% disability (Q). I have stated in the Certificate the reasons. I say without getting reports from the other departments you have issued the Certificate (Q). No (Ans.)."

8. On a fair reading of the evidence, we are of the view that the High Court was not justified in doubting the correctness of the Disability Certificate. Further, it is on the record that the treatment by balloon embolisation of the fistula was not available in India. The Assistant Professor, Clinical Neurosurgery, New York University School of Medicine, in his letter addressed to the U.S. Consulate, Madras, has stated thus :

"Mr. Muthaiah Sekhar is a 27-year-old Asian Indian male who was involved in a major automobile accident in India in August 1984. His mother was killed in this accident and Mr. Muthaiah Sekhar himself sustained multiple injuries. He presented to the Government General Hospital in Madras with head injury, decreased vision and bulging of left eye. Examination revealed markedly decreased visual acuity, pulsating proptosis and a bruise in the left eye. A cerebral angiogram clearly showed the presence of a carotico-cavernous fistula.

The modern treatment for this condition is intra-arterial balloon embolization of the fistula, sparing the carotid artery. This procedure is not available in India. The only procedure they could offer him in Madras was a carotid ligation, which apart from not being curative, is dangerous and can cause disastrous complications such as a stroke.

I have reviewed all his medical records and angiograms from Madras and I strongly feel that he should come to the United States to have the balloon embolisation. I can make all the arrangements for this procedure to be done at the New York University Medical Centre. The patient's brother, Dr. Muthaiah Sukumaran, is a practising physician in New York and is willing to bear all expenses.

I would like to request that a visa be issued to him as soon as possible before the patient develops an irreversible complication such as blindness, stroke, cerebral haemorrhage or even death."

9. This was not given the due importance both by the Tribunal and by the High Court in rejecting the claim of the appellant for travelling to New York and expenses incurred for his treatment at New York. As rightly pointed out by the learned Senior Counsel for the appellant, no attempt was made by the respondent-Corporation to produce, evidence oral or documentary, to the effect that the facility was available in India. Even otherwise, the view taken by the High Court that the appellant never informed the respondent about his going to New York for treatment and he cannot burden the Corporation with the expenses for treatment in a foreign country, is not correct. Nothing prevented the injured person from taking the best available medical facilities to recover from the disabilities caused by the tortfeasor. We have already noticed that the appellant was 25 years' old and was a student of the ML course at the time of the accident and he could not complete the ML course because of the accident and permanent disability he had sustained in the accident. The Tribunal has found that he would have earned at least Rs. 1000 a month as a practitioner in law at the beginning stage.

10. We can usefully refer at this stage to a recent judgment of this Court in *Shashendra Lahri v.*

UNICEF ((1997) 11 SCC 446). In that case, a 17-year-old boy and a student of B. Com. suffered multiple injuries in a motor accident which occurred on 6-1-1977. He suffered permanent disability of shortening of his right leg by three inches. It was also noticed that the injured thereafter continued his education and has a good academic career. The Tribunal in that case awarded a sum of Rs. 33,000 only as against the claim of Rs. 6,00,000. On appeal, the High Court enhanced the amount to Rs. 58,000. This Court, on further appeal, was of the view that having regard to the age of the appellant at the time of the accident and the prospects in view of his good academic career, the adverse effect of his permanent disability as a result of the motor accident on his future prospects, is much more than that assessed by the High Court. On that basis, this Court awarded a further sum of Rs. 4 lakhs in addition to that awarded by the High Court.

11. Applying the above principle to the facts of this case, we find no difficulty in awarding a sum of Rs. 3 lakhs in addition to that awarded by the Tribunal confirmed by the High Court. This enhanced amount of compensation will bear interest at the rate of 12% p.a. from the date of the claim petition till the date of payment.

12. The appeal is accordingly allowed. No costs.

Civil Appeal No. 13385 of 1996

13. This appeal is preferred against the order in the review petition in MFA No. 712 of 1990. In view of the disposal of the appeal against MFA No. 712 of 1990, this appeal will also stand disposed of accordingly with no order as to costs.