

SUPREME COURT OF INDIA

Sanjay Batham

Vs.

Munnalal Parihar & Ors.

C.A.No. 9013 of 2011

(G.S.Singhvi and Asok Kumar Ganguly,JJ.,)

01.11.2011

JUDGMENT

SLP.(Civil)No. 8983 of 2010

G.S.Singhvi,J.,

1. Leave granted

2. Feeling dissatisfied with the enhancement granted by the Madhya Pradesh High Court in the amount of compensation awarded to him by 8th Motor Accident Claims Tribunal, Gwalior (for short, `the Tribunal'), the appellant has filed this appeal.

3. The appellant, who sustained grievous injuries on the head, right shoulder, back bone and other parts of the body in an accident which occurred on 9.5.1996, filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short, `the Act') for award of compensation of Rs. 4,20,000/- with interest. The claim of the appellant was founded on the following assertions:

“(i) That the accident occurred when the scooter on which he was travelling along with his friend Sunil was hit by truck No. MKH-7787 near Sikaria Workshop at AB Road, Gwalior.

(ii) That the accident was caused due to rash and negligent driving of the truck by respondent No. 1-Munnalal Parihar.

(iii) That he was rushed to Madhav Dispensary from where he was shifted to J.A.H. Hospital. He was operated for fracture on his head, broken piece of the bone was removed and 22 stitches were given on his head.

(iv) That due to injury on the head, left part of his body was paralyzed and he was not able to do the work which he was doing prior to accident.

(v) That the prospects of his marriage had been considerably reduced and he will not be able to lead normal life. “

4. The owner and the driver of the truck did not contest the claim petition. In the reply filed on behalf of respondent No. 3-the National Insurance Co. Ltd., all possible objections were raised and it was pleaded that the accident was not caused due to rash and negligent driving of the truck and, in any case, the insurer was not liable to pay compensation because the driver of the truck did not have a valid driving licence.

5. After considering the pleadings and evidence of the parties, the Tribunal held that the accident was caused due to rash and negligent driving of the truck by respondent No. 1. The Tribunal then considered the evidence of Dr. N. D. Vayas, Head of Neurosurgery Department of J.A.H. Hospital and the disability certificate Ex. P-20, which revealed that the appellant had suffered 45% temporary disability in his left hand and proceeded to award compensation under the following heads:

“	1.	Loss of earning	Rs. 5,000/-
	2.	Medical expenses	Rs.10,000/-
	3.	Pain and suffering	Rs.5,000/-
	4	Special diet	Rs.5,000/-

The Tribunal also awarded interest at the rate of 9% per annum from the date of filing the claim petition till realisation.”

6. On an appeal filed by the appellant, the learned Single Judge of the High Court re-appreciated the evidence produced by the parties and determined the amount of compensation by taking the appellant's income to be Rs. 1500/- per month. He assessed the disability of appellant to be 50% and held that loss of earning would be Rs. 750/- per month. The learned Single Judge applied the multiplier of 16 and concluded that the appellant was entitled to a sum of Rs. 1,44,000/- in lieu of the loss of earning. The learned Single Judge also awarded Rs. 50,000/- for treatment and Rs. 56,000/- for pain and suffering and loss of marriage prospects. However, the rate of interest was reduced from 9% to 7% per annum.

7. We have heard learned counsel for the parties and carefully perused the record. In last two decades, this Court has decided large number of cases involving claim of compensation by

the victims of accidents and/or their families. It will be useful to notice some of the judgments in which general principles have been laid down for the guidance of the Tribunals and the Courts.

8. In *R. D. Hattangadi v. Pest Control (India) Private Limited*¹ this Court while dealing with a case involving claim of compensation under the Motor Vehicles Act, 1939, referred to the judgment of the Court of Appeal in *Ward v. James*² Halsbury's Laws of England, 4th Edition, Volume 12 (page 446) and observed:

"Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life." In the same case, the Court further observed:

"In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

9. In *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka*³ the three-Judge Bench was dealing with a case arising out of the complaint filed under the Consumer Protection Act, 1986. While enhancing the compensation awarded by the National Consumer Disputes Redressal Commission from Rs.15 lakhs to Rs.1 crore, the Bench made the following observations which can appropriately be applied for deciding the petitions filed under Section 166 of the Act:

"At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even

more so on his family and attendants and the stress saps their energy and destroys their equanimity."

(emphasis supplied)

10. In *Reshma Kumari v. Madan Mohan*⁴ this Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below:

"The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so. In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in *Oriental Insurance Co. Ltd. v. Jas huben* held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration. One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor."

(emphasis supplied)

11. In *Arvind Kumar Mishra v. New India Assurance Company Limited*⁵ the Court considered the plea for enhancement of compensation made by the appellant, who was a student of final year of engineering and had suffered 70% disability in a motor accident. After noticing factual matrix of the case, the Court observed:

"We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered."

(emphasis supplied)

12. Recently, a two Judge Bench of this Court again considered the matter in detail in *Raj Kumar vs. Ajay Kumar*⁶ and held :

"The provision of the Motor Vehicles Act, 1988 ("the Act", for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See *C.K. Subramania Iyer v. T. Kunhikuttan Nair*⁷ *R.D. Hattangadi v. Pest Control (India) (P) Ltd*⁸. and *Baker v. Willoughby*⁹ The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads

(ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under Item (i) and under Item (ii) (a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses--Item (iii)--depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages--Items (iv), (v) and (vi)--involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability--Item (ii)(a). We are concerned with that assessment in this case. Assessment of future loss of earnings due to permanent disability Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of

Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation."

13. In the light of the above, we shall now consider whether the compensation awarded by the High Court is just and reasonable or the appellant is entitled to higher compensation.

14. It is not in dispute that at the time of accident, the appellant was earning Rs.50/- per day by doing the work as an unskilled labourer with Raj Gas Agency. It is also not in dispute that as a result of accident, the appellant suffered injuries on different parts of body including the

head and after operation left portion of his body, i.e. left hand and left leg got paralyzed and as a result of that he will not be in a position to do the work which he was doing before the accident. In his deposition, Dr. N.D. Vayas, Head of Neurosurgery Department, J.A.H. Hospital, who treated the appellant before and after the operation, stated that left portion of the appellant's body was paralyzed but after treatment there was slight improvement in his condition. Dr. Vayas then gave out that the appellant will require further treatment for paralysis. The learned Single Judge, who had the occasion to see the appellant in the Court, found that he was not in a position to move his left hand and left leg. He assessed the disability to be 50% and enhanced the compensation awarded by the Tribunal. However, he committed an error by applying the multiplier of 16 ignoring that at the time of accident, the appellant's age was only 20 years. In *Sarla Verma v. Delhi Transport Corporation* (2009) 6 SCC 121, this Court has considered several issues including the application of correct multiplier and held :

"We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

In view of the above noted judgment, we hold that multiplier of 18 deserves to be applied for the purpose of determining the compensation payable to the appellant in lieu of the loss of earning. Thus, under this head the appellant will be entitled to a sum of Rs.1,62,000/- .

15. Although, the appellant had suffered temporary disablement, the evidence of the doctor shows that he will require treatment in future. The Tribunal and the High Court have not awarded any compensation for future treatment, which would necessarily include doctor's fee, cost of medicine, transportation, diet, etc. Keeping in view the high cost of living, we feel that ends of justice will be served by awarding a lump sum amount of Rs. 2 lacs for future treatment.

16. The award made by the High Court for pain, suffering and trauma and in lieu of loss of the prospects of marriage is wholly inadequate. The appellant, who suffered paralysis on left part of the body will neither be able to work as a labourer nor he will be able to lead a normal life. His marriage prospects are also bleak. A normal girl will, in all probability, not like to marry a disabled person. Therefore, it is apposite to award reasonable and just compensation to the appellant for pain, suffering and trauma caused due to the accident and loss of amenities and enjoyment of life which, in our view, should be Rs.2 lacs.

17. It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs. 4,20,000/- only, but as held in *Nagappa vs. Gurudayal Singh*⁹

in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident.

18. In the result, the appeal is allowed. The impugned judgment is modified and it is declared that the appellant shall be entitled to total compensation of Rs.5,62,000/-. He shall also be entitled to interest @ 9% per annum from the date of filing the claim petition till realization. Respondent No.3 is directed to pay the enhanced amount of compensation to the appellant with interest @ 9% within a period of three months from today in the form of a Demand Draft prepared in his name.

Judgment Referred.

¹(1995) 1 SCC 0551

²(1965) 1 All ER 0563

³(2009) 6 SCC 0001

⁴(2009) 13 SCC 0422

⁵(2010) 10 SCC 0254

⁶(2011) 1 SCC 0343

⁷(1969) 3 SCC 0064

⁸(1995) 1 SCC 0551

⁹(2003) 2 SCC 0274