

M. Mani

v.

Divisional Manager, New Delhi Assurance Co. Ltd. & Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE SUDHANSU JYOTI
MUKHOPADHAYA

C. A. No. 33 of 2012 (Arising out of SLP(C) No. 7380 of 2011 | 02-01-2012

1. Leave granted.

2. Feeling dissatisfied with the meager enhancement granted by the Division Bench of the Karnataka High Court in the amount of compensation determined by Motor Accident Claims Tribunal-V, Bangalore (for short, 'the Tribunal') in MVC No. 3764/2003, the appellant has filed this appeal.

3. In an accident, which occurred on 2.3.2002, the appellant suffered following grievous injuries -

"1. Type III A open fracture both bones left leg upper one third;

2. Fracture ulna right upper one third; and

3. Fracture 6th and 7th ribs on right side."

4. He was initially treated at Koshys Hospital and was then shifted to Bowring and Lady Curzon Hospital, Bangalore. Dr. S.Ramachandra, who was then working as Orthopaedic Surgeon in that Hospital opined that the appellant had suffered permanent disability of about 50% of left lower limb, 40% of right upper limb and 39% of the whole body and that he cannot do manual labour, agriculture farming or any other work which involves sitting or standing and he has to undergo two more operations to correct angulation and malunion deformity of the bones of left leg.

5. The appellant filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') and

claimed compensation of Rs.6,00,000/- with interest @ 18% per annum by alleging that the accident was caused due to rash and negligent driving of Motor Cycle bearing No.KA-05-Y-2244 belonging to respondent No.1 and that as a result of the injuries, he was not in a position to do the work of Coolie which he was doing prior to the accident.

6. Respondent No.1 did not contest the claim petition. In the written statement filed on behalf of respondent No.2 - Insurance Company, all the averments contained in the claim petition were controverted and it was pleaded that the Motor Cycle was not involved in the accident.

7. On the pleadings of the parties, the Tribunal framed the following substantive issues -

"1. Whether the petitioner proves that on 02.03.2003, at about 9.40 a.m., near Sri Vinayaka Traders at the junction of Kalkere and T.C. Palya Main Road, he met with an accident and sustained grievous injuries, was due to rash and negligent act on the part of the rider of Motor Cycle bearing No.KA-05-Y-2244 as alleged?

2. Whether the petitioner is entitled for compensation? If so, how much and from whom?"

8. After analysing the pleadings of the parties and evidence produced by them, the Tribunal held that the appellant had suffered injuries in the accident, which was caused due to rash and negligent driving of the Motor Cycle. The Tribunal then referred to the evidence of Dr. S.Ramachandra (PW-2) and awarded compensation of Rs.2,14,330/- with interest @ 6% from the date of the petition.

9. The appeal preferred by the appellant was disposed of by the Division Bench of the High Court by granting a meager enhancement of Rs.48,110/-.

10. We have heard learned counsel for the parties and perused the record. In our view, the impugned judgment and the award passed by the Tribunal are liable to be modified because while assessing the compensation, the Tribunal and the High Court did not keep in view the principles laid down by this Court in *R.D. Hattangadi v. Pest Control (India) (P) Ltd.*, (1995) 1 SCC 551, *Arvind Kumar Mishra v. New India Assurance Co. Ltd.*, (2010) 10 SCC 254, which have been reiterated in *Raj Kumar v. Ajay Kumar*, (2011) 1 SCC 343, *Sanjay Batham v. Munnalal Parihar and others*, (2011) 10 SCC 665 and *Govind Yadav v. New India Insurance Company Limited*, (2011) 10 SCC 683. In *R.D. Hattangadi's* case, this Court referred to the judgment of the Court of Appeal in *Ward v. James* (1996) 1 QB 273, *Halsbury's Laws of England*, 4th Edn., Vol. 12 (p.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 the 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 as 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."

11. In Raj Kumar's case, this Court identified the heads under which compensation is required to be awarded to the victim of motor accident. Paragraphs 6, 7 and 8 of that judgment are extracted below:

"6. 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.

7. 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.

8. 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."

12. While assessing compensation under the head of pain and sufferings, the Tribunal referred to certificate issued by Koshys Hospital (Exhibit P.6) and Discharge-cum-identity Card (Exhibit P.7) issued by Bowring Hospital, the affidavit of Dr. S. Ramachandra wherein he gave details of the injuries and permanent disability suffered by the appellant and awarded compensation of Rs.45,000/-. For the loss of amenities, the Tribunal awarded Rs.25,000/-. A sum of Rs.15,000/- was awarded in lieu of the medical expenses, cost of attendant and cost of extra nourished food and conveyance. The Tribunal also awarded compensation of Rs.13,500/- towards the loss of income during treatment period and Rs.1,15,830/- for the loss of future income.

13. The High Court did not assess the compensation under different heads and granted a lump sum increase of Rs.48,110/-.

14. In our opinion, the manner in which the High Court decided the appeal cannot but be termed as wholly unsatisfactory. While deciding the appeal filed under Section 173(1) of the Act, the High Court should have considered the evidence produced by the appellant regarding his injuries and consequential disability and decided whether the Tribunal was justified in awarding Rs.1,15,830/- only for the loss of future income and whether the appellant was entitled to additional amount for future medical treatment.

15. In his affidavit, the appellant made the following statement:

"Even after taking best treatment, I am not normal as before. I cannot walk without support. I use crutches to walk. Now, I am dependent on others for my daily activities. I cannot bear any weight on my right hand also there is restriction and nourishment of my right hand or have my food, I cannot bend properly. I have severe pain in my left leg and also in right hand. I cannot eat properly. I cannot bend properly. If I sit for 10 minutes my left leg gets swelling. If I walk for short distance also with support of my crutches also I put artificial left leg still it will be swelling. I cannot use Indian Toilet. Due to the accidental injuries, I have lost my vision of my right eye and there is a constant pain in the eye I cannot breath normally as others. It is very difficult to breath.

Before the accident, I was working as coolie and earning Rs.5000/- per month. Now, I am unable to work as I am not able to walk without support. I am fully dependant on others and my life has become dark and miserable."

16. The appellant also filed affidavit of Dr. S.Ramachandra, who described the injuries suffered by the appellant and the post-operation difficulties faced by him. This is clearly

borne out from paragraphs 5 and 6 of Dr. S.Ramachandra's affidavit, which are extracted below:

"On clinical examination, I found the following disabilities:

(1) Swelling, Tenderness present in the left knee joint, upper half of left leg is deformed with medical angulation. Swelling and Tenderness also present in lower half of left leg, ankle and foot.

(2) Shortening of left leg by about 4 cms. Present.

(3) Wasting of thigh muscles by about 5 cms and calf muscles of left lower limb by about 4 cms. Present.

(4) Limping present.

(5) Swelling and tenderness present around right elbow joint.

(6) Range of movement at right elbow joint. Active flexion-20 degrees (0-90 degrees). Active extension 90 degrees-20 degrees Pronation and supination restricted and painful extensor lag of about 20 degrees present.

(7) Range of movements of left knee joint.

Active flexion 0 to 80 degrees, Active extension 80 degree to 0 degree.

Left ankle joint.

Dorsiflexion 0 degree-10 degrees, plantar flexion 0 degree 15 degrees. Radiological examination reveals the following:

(1) Old malunited fracture of upper one third of both bones of left leg notes deformed and angulated.

(2) Old fracture of upper end of ulna with ankylosis of ulno humeral joint. Fracture non union of olecranon process of ulna noted.

With the above clinical and radiological findings and by my experience and according to guidelines set by ALMICO's manual and by various medical test book dealing with orthopaedics, I am of the opinion that the petitioner suffers permanent residual physical disability of about 50% of Left Lower Limb and 40% of Right Upper limb which is about (25%, 14%) 39% of the whole body. Patient being a Coolie in view of these disabilities cannot do manual labour, agriculture farming or any other work which involves sitting or standing involving left lower limb and the right upper limb. He has to undergo 2 more operations.

(1) To correct angulation and malunion deformity of bones of left leg.

(2) To correct non union of olecranon of right ulna. He needs medical supervision, physiotherapy."

17. If the Tribunal and the High Court had bothered to carefully examine the evidence produced by the appellant, then it may have been possible for them to award just and adequate compensation to the appellant under the following heads:

(i) loss of future earnings on account of permanent disability,

(ii) future medical expenses and loss of expectation of life.

18. We may have set aside the impugned judgment and remitted the case to the Tribunal for fresh determination of the compensation in the light of the principles laid down by this Court but, as the matter is more than 8 years old, we do not consider it proper to adopt that course and feel that ends of justice would be served by awarding lump sum compensation to the appellant under the aforementioned heads. It can only be a matter of sheer imagination as to how much pain and agony the appellant must have suffered as a result of the injuries caused in the accident and consequential permanent disability. He has been totally disabled from doing the work of Coolie which he was doing prior to the accident. He has serious problem in sitting or standing. His leg has been shortened by 4 cms. and two more operations will be required to correct the angulation and malunion deformity of the bones of both the legs. He will also require constant medical supervision and physiotherapy. In the days of high cost of living and medical treatment, it is difficult to make a guess of the expenses likely to be

incurred in two surgeries. Therefore, we feel that it will be just and proper to award total compensation of Rs.6,00,000/- to the appellant.

19. In the result, the appeal is allowed. The impugned judgment is set aside and it is declared that the appellant shall be entitled to total compensation of Rs.6,00,000/- with interest @ 6% per annum from the date of filing the claim petition till the date of payment.

20. If respondent No.2 has already paid compensation to the appellant in terms of the award of the Tribunal and the judgment of the High Court, then the balance amount including interest be paid to him within a period of three months from the date of receipt/production of a copy of this order.