

N.Suresh

v.

Yusuf Shariff

(Supreme Court Of India)

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

Civil Appeal No. 2942 Of 2012 | 19-03-2012

1. Delay condoned.

2. Leave granted.

3. Feeling dissatisfied with the nominal enhancement granted by the High Court in the amount of compensation awarded by the Motor Accident Claim Tribunal, Maddur (Karnataka) in M.V.C.No.106/2003, the appellant has filed this appeal.

4. The appellant, who has suffered 90% permanent disability in his right leg which is paralysed and 50% to 60% disability of mouth and other parts of the body due to an accident which occurred on 28th February, 2003, filed a petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') for award of compensation of Rs.21,50,000/- with interest.

5. The case of the appellant is that on 28th February, 2003 at about 11.30 a.m., he along with his wife-Savitha was travelling on a TVS Moped bearing Registration No.KA-01/H4236 on the left side of the road. He was waiting near T. Ballekere cross to take turn to go to Koppa. At that time, a lorry bearing Registration No.CNT/7206 driven by its driver in a rash and negligent manner with high speed came to the extreme left side of the road and dashed into the vehicle of the appellant and caused the accident. Due to the accident, the appellant fell down and sustained grievous injuries. He was shifted to the hospital and in course was given treatment at different hospitals. The appellant contended that he was aged about 32 years on the date of accident and was earning more than Rs.8,000/- per month. After the accident, he has suffered

permanent disability and, therefore, he is not in a position to work as before. During the course of treatment in different hospitals, he had incurred medical expenses to the tune of Rs.4,50,000/- so far. After the accident, he was immediately taken to the Government Hospital, Koppa. Thereafter he was shifted to Mandya General Hospital and then he was taken to J.S.S. Hospital, Mysore and from there he was further shifted to Mallige Hospital, Bangalore. Lastly, he was taken to St. John Medical College Hospital, Bangalore where he was treated as indoor patient and underwent an operation of the right leg mandible, right hip, left leg, stomach and jaw(face). In the said accident, the appellant lost all his teeth except 7 teeth in the upper jaw and 5 teeth in the lower jaw. After the operation he has become permanently disabled and will have to spend a huge amount towards medical expenses. The Doctor has assessed the disability at 90% in his right leg which has permanently paralysed; 50% to 60% disability of his mouth and 20% to 25% disability of his whole body. There was amputation below the knee of the right leg.

6. The owner of the lorry did not contest the case before the Tribunal. The 2nd respondent, the New India Assurance Co.Ltd. (hereinafter referred to as Assurance Company) disputed the claim and denied the allegations made by the appellant. However, it is admitted that the lorry was insured with the 2nd respondent, the Assurance Co. The Assurance Co. took a plea that the accident occurred due to the negligent driving of the TVS Moped by the appellant himself, who without giving any signal and without noticing the vehicle coming from the right side, dashed into the lorry and caused the accident. The Assurance Co. also denied the quantum of amount spent in the treatment of the appellant.

7. On hearing the parties the Tribunal framed the following issues:

“1. Whether the petitioner proves accident was solely due to rash and negligent driving of the driver of the offending vehicle as alleged ?

2. Whether petitioner proves that he sustained injuries due to impact of the vehicle as alleged?

3. Whether the petitioner is entitled to get compensation? If so, to what amount and from whom?

4. To what order or relief the petitioner is entitled?"

8. In order to prove his case, the appellant examined eight witnesses including PW.2- N.K. Narayanashetty, Sales Manager in Adiswara Marketing Company where the appellant was working since two and a half years, PW.3- Dr. N. Sundar, Parlour Surgeon of St. John Medical College and Hospital and PW.7- Dr. Natashekara M., Assistant Professor of Kempegowda Dental College and Hospital, PW.6- Y.M. Thimmaiah, Postman in Haralekere Post Office and PW.8-N.V. Santosh, Manager of Adiswara Marketing Company. He also produced 27 exhibits including medical bills, discharge summary of the hospital, salary certificate/ vouchers, vouchers of commission, etc.

9. The Tribunal on hearing both the parties and appreciation of evidence on record answered the first issue in affirmative in favour of the appellant and held that the appellant sustained injuries due to the impact of vehicle as alleged. The second issue relating to the entitlement of compensation was also decided in affirmative in favour of the appellant but while deciding the issue Nos.3 and 4, the Tribunal awarded total compensation of Rs.4,17,000/- with interest at the rate of 6% per annum against the following heads:

1.Towards pain and sufferingsRs.50,000/-

2.Towards loss of future earningsRs.1,55,000/-

3.Towards medical expenses and other Incidental chargesRs.2,00,000/-

4.Towards loss of income during treatmentRs.12,000/-

TotalRs. 4,17,000/-

10. The High Court by impugned order dated 28th September, 2010 nominally enhanced the amount against different heads along with 6% interest as shown hereunder:

1. Towards pain and sufferings Rs. 1,00,000/-

2. Towards medical expenses Rs. 1,50,000/-

3. Towards conveyance, nourishing food and attendant charges Rs. 40,000/-

4. Towards loss of income during laid-up Period Rs. 18,000/-

5. Towards loss of amenities Rs. 1,00,000/-

6. Towards loss of future income Rs. ,88,000/-

7. Towards future medical expenses Rs. 30,000/-

Total Rs. 7,26,000/-

11. Learned counsel appearing on behalf of the appellant contended that the High Court has failed to appreciate the income of the appellant by calculating it to Rs. 3,000/- though there was evidence on record to show that the earning of the appellant was much more than Rs. 8,000/- per month. The High Court has failed to consider the permanent disability and loss of future income of the appellant who was working hard to earn the income of more than Rs. 8,000/- per month.

12. It was further contended that taking into consideration the permanent disability of more than 90% of the leg and 60% disability of mouth, the High Court ought to have assessed permanent disability accordingly. Apart from this, the Tribunal and the High Court have also failed to grant appropriate amount

towards medical expenses and other incidental charges apart from Rs.30,000/- towards future medical expenses as granted.

13. In spite of the service of notice, nobody has appeared on behalf of the respondents to dispute the claim.

14. We have considered the arguments as advanced on behalf of the appellant and perused the record. The questions which arise for consideration in this case are :

(i) What was the earning of the appellant prior to the accident and the permanent disability incurred during accident to decide the quantum of loss of future earning and loss of income during the treatment/laid up period and

(ii) What amount the appellant is entitled towards medical expenses incurred, other incidental charges and future medical expenses.

15. The Tribunal has noticed and appreciated different evidence on record relating to earning and disability to decide the loss of future earning, the relevant portion of which reads as follows:

“(ii) Towards loss of future earning capacity: Petitioner contended that prior to accident he was hale and healthy aged about 32 years on the date of accident. He was working as mail courier in Kowdle Post Office (DDSMC) and getting Rs.2,494/- p.m. since 1994. Apart from that work he was working in Adiswara Market Company as Deputy Sales Officer and getting commission of Rs.1,500/- to Rs.3,000/- p.m. along with salary of Rs.2,000/- p.m. He got 4th medal in the State. Apart from that he is working as agent in PGF Limited, Mandya getting Rs.2,000/- to 3,000/- p.m. From all he was earning Rs.8,000/- p.m. His wife, mother and children were depending upon his income. So there is loss of future earning capacity. In this connection he has been examined as P.W.1 and deposed about the services given by him. P.W.2 one N.K. Narayanashetty, who is Sales Manager in Adiswara Marketing Company deposed that Petitioner is working in their Company since 2-1/2 years and getting Rs.2,000/- p.m. apart from commission of Rs.1,500/- to 3,000/- p.m. Now he is not working there. P.W.5 Chikkathimmaiah is Inspector in PGF Limited, Mandya deposed that

Petitioner was working as Assistant Agent and getting Rs.2,000/- p.m. He has produced identity card at Ex.P-22. Commission vouchers were also produced at Ex.P-14. P.W.6 Thimmaiah, who is postman in Haralekere Post Office deposed that the Petitioner was working as Mail Courier since 10 years and getting income. P.W.8 Manager of Adiswara Marketing deposed that Petitioner was working in their company and getting Rs.2,000/- p.m. and also getting commission of Rs.4,000/- to 5,000/- p.m. He has issued certificates as per Ex.P-7. Now he is not working in the company, Ex.P- 15 his salary vouchers. Some commission vouchers of Adiswara Marketing Limited were produced. Ex.P-13 is Postal Department Certificate stating that he was working as mail courier, Ex.P-11 is certificate of Post Department stated that from March 2003 to August 2003 they have not paid the salary. Ex.P-12 is salary certificate of PGF Limited stated that he was paid with Rs.2,000/- monthly income. Ex.P-13 shows that he was working as mail courier since 1994. There is no specific details about his income. He was getting average commission. Looking to the nature of the works stated by the Petitioner if is not possible to do all those works every day, he might have done work here and there. He has not stated from which time to which time he was working his particular job and whether they are continuous. Hence, considering all these aspects his income is considered at Rs.2,000/- p.m. He is suffering from permanent physical disability of 90% in his right leg and 50% to 60% in his mouth, his face become ugly and he could not open his mouth, he is suffering from fracture of mandible and maxilla. He inserted with plates and screws, his right leg is fractured, he cannot chew and he became weak. Doctor has stated he cannot work. P.W.3, Doctor deposed about the disability in right leg at 90%, not deposed what will be the disability comparing to whole body. P.W.7 dentist deposed that he was suffering from permanent physical disability of 50% to 60% in his face and comparing to whole body it come to 20% to 25%. Considering all these injuries his working capacity is reduced. Hence, it is found just and proper to consider disability remained with the Petitioner at 40%. He stated that he is aged about 32 to 33 years at the time of accident. He has not produced any age proof documents. Medical certificate shows his age is 32 years. If there is so the proper multiplier would be 16. If income is considered at Rs.2,000/- p.m. it comes to Rs.24,000/- p.a. 40% of the same comes to Rs.9,600/-. If same is multiplied by 16 it comes to Rs.1,53,600/-. It is found proper to award Rs.1,55,000/- under this head.”

16. From the evidence as recorded, it is evident that prior to the accident the appellant used to earn the following amount:

1.Towards Salary from Adiswara Marketing Company (As deposited by PW-8. Manager, Adiswara Marketing Company, Cited at Exhibit P-15)Rs. 2,000/- p.m.

2.Commission from Adiswara Marketing Company (Rs. 4,000/- to Rs. 5,000/-) (as deposited by P.W.8, Manager, Adiswara Marketing Ltd.)Rs. 4,500/-p.m. (average)

3.Towards Salary as Assistant Agent from PGF Limited, Mandya (as deposited by P.W.5, Chikkathimmaiah; Inspector, PGF Ltd. Mandya)Rs. 2,000/- p.m.

4.As mail courier of Kowdle Post Office (as deposited by appellant and corroborated by P.W.6, Thimmaiah, Postman)Rs. 2,495/- p.m.

TotalRs. 10, 995/-

Therefore, it can safely be stated that the appellant was earning minimum Rs.8,500/- per month prior to the accident.

17. The PW.3, Doctor deposed that the right leg is 90% disabled and is permanently paralysed. The leg is amputated. Apart from this, his face has been deformed and is disabled to the extent of 50% to 60%, due to which he is not in a position to open his mouth fully. Therefore, it can safely be stated that the appellant is 90% permanently disabled to earn any income. The Tribunal and the High Court failed to appreciate the facts and fixed the disability at a lower level of 40% or 50%.

18. Admitted, the appellant was about 32 years of age at the time of the accident, therefore, the Tribunal was right in applying the multiplier of 16 to determine the compensation. Once the income is considered at Rs.8,500/- per month it comes to Rs.1,02,000/- per annum, 90% of the same comes to Rs.91,800/-. If the same is multiplied by 16 it comes to Rs.91,800/- x 16 =

Rs.14,68,800/-. Therefore, it is proper to award Rs.14,68,800/- towards “loss of future earning”.

19. So far as loss of income during the treatment is concerned, the Tribunal has noticed the nature of injuries and treatment taken by the appellant to come to the conclusion that the appellant might not have worked at least for six months. Even if such minimum period for treatment is accepted as six months, the appellant is entitled for a just and proper award of Rs.51,000/- under the head of “loss of income during the treatment”.

20. So far as medical expenses and other incidental charges are concerned, the Tribunal appreciated the different evidence and observed as follows:

“iii)Towards medical expenses and other incidental charges:

Petitioner contended that he has taken treatment in several hospitals. Initially he was taken to Mandya General Hospital. Later in private car he was taken to JSS Hospital, Mysore. On the same day he was taken to Mahaveer Jain Hospital, Bangalore. He was operated on his right leg and discharged for higher treatment. He was admitted in Boring Hospital, Bangalore wherein he was paid Rs.5,000/- . From that hospital also he was discharged. Later he was admitted in St. John Hospital on 2.3.2003. He was operated on his hand, right leg, left leg, stomach. He was indoor patient for 2 months. Later he took treatment in Kempegowda Dental Hospital for mandible and he was indoor patient for 1 week. All his teeth were removed. He lost all teeth and left leg. He has become completely disabled. P.W.7 Doctor Natarajshekar of Kempegowda Hospital deposed that he treated his dental problems stated that on 9.7.2003 to 15.7.2003 he was indoor patient. All teeth were removed, decided to insert entire set. On 10.7.2003 he was operated and again on 4.9.2003 he was operated for 2nd time. In this connection he has produced Ex.P-5 wound certificate issued by St.John Medical Hospital, Bangalore, Ex.P-6 and P-7 is medical bills and Transporting charges. He has produced medical bills worth of Rs.1,85,628/- rounded off to Rs.1,86,000/- and transportation charges worth of Rs.27,230. Ex.P-9 to 16 case sheet, patient record, discharge summary, Ex.P-17 is the case sheet of St.John Medical College Hospital, Bangalore for having taken treatment from 2.3.2003 to 28.4.2003 and also taken treatment from 2.3.2003 to 28.4.2003 and also taken treatment from 29.3.2003 to 20.4.2003. Others are ex-rays Ex.P-25 is KIMS Hospital records. He further produced Ex.P-26 cash bills worth of Rs.2,590/-.

On going through records Ex.P-6 the petitioner has taken into consideration double of hospital bills, which ought to have been reduced, which comes to Rs.1,85,000/- and not 4,83,000/- as calculated. The bills are repeated as item No.8,18,19,34,36,60. The only final bill worth of Rs.73,000/- is shown but he has considered the interval bills also including the final bills it comes to Rs.1,85,628/-. On going through all the medical bills some of them are not supported with prescriptions and not properly explained by the petitioner. Having regard to all the circumstances and treatment taken by him in different hospitals he might have spent for medical expenses. So it is better to consider medical expenses at Rs.1,50,000/-. On perusal of Ex.P-7 transportation charges receipts have been produced, but person who provide vehicle is not mentioned. However he might have spent something for transportation. It is proper to consider Rs.10,000/- for transportation. He was in hospital and taken treatment, he might have spent attendant expenses and special diet, it is found just and proper to award Rs.10,000/- for the same P.W.7 Doctor stated that he has to undergo in future operation of mandible by spending Rs.1,50,000/- for insertion of implant since all the sets removed. X-ray shows fracture of cants of left side. There is permanent disability in the mouth. Considering all these aspects it is found that he requires future medical expenses of Rs.30,000/-. Hence, Petitioner is entitled for compensation under this head is Rs.2,00,000/-.”

21. From the evidence on record the following amounts towards different medical bills are undisputed:

(1)The amounts paid during the treatment shows as interval bills and final billsRs. 1,86,000/-

(2)Cash Bill (Exhibit P-26)Rs. 2,590/-

In this background, the High Court and the Tribunal ought to have accepted the amount of Rs.1,86,000/- towards medical bills, apart from transportation charges.

22. If the aforesaid amount is taken into consideration towards the abovesaid heads, then as per High Court's calculation the break-up of amounts is as follows:

1. Towards pain and sufferings Rs. 1,00,000/- (as awarded by High Court)

2. Towards medical expenses Rs. 1,86,000/- (as determined above)

3. Towards conveyance, nourishing food and attendant charges Rs. 40,000/- (as awarded by the High Court)

4. Towards loss of income during laid-up period Rs. 51,000/- (as determined Above)

5. Towards loss of amenities Rs. 1,00,000/- (as awarded by the High Court)

6. Towards loss of future income Rs. 14,68,800/- (as determined Above)

7. Towards future medical expenses Rs. 30,000/- (as awarded by the High Court)

Total Rs. 19,75,800/-

23. Accordingly, the appeal is allowed and the impugned judgment and award passed by the Tribunal in MVC No.106/2003 dated 9th September, 2005 and the High Court in MFA No.11865/2005 dated 28th September, 2010 stands modified, awarding compensation of Rs.19,75,800/- with interest at the rate of 6% per annum from the date of the petition till realisation. The 2nd respondent- The New India Assurance Co.Ltd. is directed to pay immediately to the appellant total amount of Rs.19,75,800/- with 6% interest, after deducting the amount already paid by them.