

SUPREME COURT OF INDIA

Kavita

Vs.

Deepak

C.A.No.5945 of 2012

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya,JJ.)

22.08.2012

JUDGMENT

G.S.Singhvi,J.

1. Leave granted.

2. Feeling dissatisfied with the enhancement granted by the High Court in the amount of compensation awarded by the Motor Accident Claims Tribunal (for short, 'the Tribunal'), the appellant has preferred this appeal.

3. In an accident, which occurred on 2.5.2004, the appellant suffered grievous injuries. She was initially treated at Government hospital, Ratlam and then at Bhandari Hospital, Indore. On 4.5.2004, she was admitted in CHL Apollo Hospital. She remained in Intensive Care Unit from 4.5.2004 to 25.5.2004 and in the private ward from 25.5.2004 to 26.6.2004. As per the medical advice given at Indore she was taken to Mumbai, Chennai and finally to Delhi for treatment. At the time of accident, the appellant's age was about 30 years and she was working partner in Tirupati Enterprises.

4. At Bhandari Hospital, Indore she was treated by Dr. Rajesh Gangwani, Dr. Srikant Rege, Dr. Parag Aggarwal and Dr. Sunil Athwale. At Bombay, she was treated by Dr. B. S. Singhal, Dr. Bhagwati, Dr. K. K. Garg, Dr. Anukant Mittal, Dr. Khandilkar, Dr. Kenny and Dr. Bhatt. The Disability Certificate issued by Dr. Sunil Athwale, who was Neuro Physician at Bhandari Hospital, Indore reads as under:

“Disability Certificate. This is to certify that Smt. Kavita Singhal w/o Mr. Deepak Singhal R/o 100 old agrawal nagar indore aged 31 yrs met with an RTA on 02-05-2004 mid night on Ratlam - Indore State Highway Road. She was taken to Indore On ICU on wheels was given artificial 02 on the way which was 135 KM. We reached Indore nearly at 7.30 AM. and was admitted in Bhandari hospital. During

transit fluid resuscitation was done hemodynamically was maintained. (1.5 lts I/v I unit blood was given). CT scan was done nearly after 10 hrs. of injury. Onwards she is under my treatment and the patient is experienced as below: First MR Study of the brain (on 1.5 T) and the report of the same reveals:

Findings:-

Multiple DWI TI FLAIR T2 hyperintense signals are noted in left basal ganglia, right frontal periventricular white matter, left thalamus right basal frontal region with areas of magnetic susceptibility in it suggesting hemorrhaged. T2 Flair hyperintense signals are noted diffusely in corpus callosum, cingulate gyrus and periventricular white matter (frontoparietal suggestive of diffuse axonal injury). Second MR of brain has done and the report of the same reveals:

Findings:-

Old MRI Scan of brain dated 22/05/04 compared and following changes noted:

Follow up scan reveals that complete resolutions of the posterior inter hemispheric subdural collection noted in left occipitoparietal region. Old hemorrhagic products - noted in the left basal ganglia, left anterior thalamus, right frontal periventricular white matter and right basal frontal region (mild decrease in size as compared to old study especially in right basal ganglia). Diffuse axonal injury noted in corpus callosum, cingulate gyrus and periventricular white matter noted (mild decrease as compared to old study) She was discharged from CHL on 26/06/2004 in a vegetative stage, with a RT for feeding. That time she was unable to communicate in any way. She was undergoing extensive Physiotherapy there and was advised the same to continue.

Present Status:

*The patient follows elementary simple commands but with no other Communication, Verbal or Sign Language.

* Patient has marked Spastic Quadraparesis, despite anti spastic drugs.

* Patient is incontinent.

* Disability assessed around 90 %.”

5. The appellant filed a petition through her husband - Shri Deepak Singhal under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for award of compensation to the

tune of Rs.85 lakhs by alleging that the accident was caused due to rash and negligent driving of the truck owned by respondent No.1 and driven by respondent No.2. She alleged that the truck dashed against the Maruti Esteem car in which she was travelling and as a result of the accident she suffered injuries to her head, mouth, right ear and other parts of the body and consequentially she has become disabled from doing her routine work.

6. In the written statement filed on behalf of the insurance company, it was pleaded that the accident was not caused due to rash and negligent driving of the truck and that the driver was not holding a valid and effective driving licence on the date of accident.

7. The driver of the truck was prosecuted for offences under Sections 279, 337 and 338 IPC. During the trial, he made confession that the accident was caused due to his rash and negligent driving. The trial Court convicted the driver and imposed a fine of Rs.2,000/- and in default to undergo three months imprisonment.

8. After recording evidence of the parties, the Tribunal passed award dated 5.1.2007 and ordained the respondents to pay total compensation of Rs.4 lakh with interest at the rate of 6% per annum. The Tribunal relied upon the statements of the appellant's husband - Shri Deepak Singhal, Shri Pushpender Garg, who was driving the Car and two other occupants, namely, Prashant Agarwal and Renu, the Charge Sheet filed in the criminal case, the confession of the driver and the judgment of the trial Court and concluded that the accident took place due to rash and negligent driving of the truck. The Tribunal then considered the issue relating to quantum of compensation, referred to oral and documentary evidence and concluded that it would be just to award Rs.2,50,000/- under the head of treatment, Rs.1,25,000/- under the head of permanent disability and Rs.25,000/- under the head of pain and suffering.

9. The appellant challenged the award of the Tribunal in Miscellaneous Appeal No.870 of 2007. During the pendency of the appeal, she filed IA No.180/2010 under Order 41 Rule 27 for bringing on record the bills to show that she had spent Rs.5,94,013/- on treatment and as on the date of filing the application, Rs.7,76,480/- had been spent on treatment.

10. The learned Single Judge of the Madhya Pradesh High Court partly allowed the appeal and enhanced the compensation by a sum of Rs.12,76,480/- with interest at the rate of 7.5% on the enhanced amount payable from the date of the claim petition till realization. The reasons assigned by the High Court for enhancement of the compensation are contained in paragraph 6 of the impugned judgment which is extracted below:

“6.After having heard learned counsel for the parties, under the directions of the Court counsel appearing on behalf of the parties were directed to verify the bills which are

available till decision by the claims Tribunal. Admittedly, those bills are of Rs.7,76,480/-. I have also perused the bills, after verification in the opinion of this Court the Tribunal has refused to grant the Bills of Rs.5,26,480/-, without any reason. However, in the opinion of this Court such amount deserves to be allowed in the head of medical expenses in addition to the amount awarded by the Tribunal. In the opinion of this Court in the head of pain and suffering Rs.25,000/- as awarded is also inadequate; I further add Rs.25,000/- in the said head, looking to her position. In the heads of attendant, future medical expenses in my opinion Rs.2,00,000/- in each of the heads deserves to be granted, because the appellant is required an attendant for whole life. Some of the bills of physiotherapy has been produced along with application under Order 41 Rule 27 of CPC. After going through those bills I am not satisfied that such bills should be awarded at this stage, because it is in sequence. In some of the bills there is overwriting on the dates. In some of the bills there is signature of Sangita, but in other bills there is thumb impression. Thus I am not allowing the bills of under 41 Rule 27 of CPC as filed before this Court, but at the same time during pendency of this appeal some medical expenses would have been made, therefore, in the said head Rs.50,000/- is being awarded. In the head of future loss of earning due to the said permanent disability in the opinion of this Court a lump sum amount deserves to be granted, because the Income Tax papers of the firm are available on record and she was the partner in the said firm. Business is being carried out by other partners who are family members. Therefore, lump sum amount deserves to be granted. In my opinion Rs.2,75,000/- further deserves to be allowed making the total in the head of permanent disability Rs.4,00,000/-. Thus, the total amount comes to Rs.16,76,480/-. The Tribunal has already awarded Rs.4,00,000/-, after deducting the same the net amount comes to Rs. 12,76,480/- which is liable to be enhanced.”

11. Learned counsel for the appellant argued that even though the High Court has enhanced the compensation, the same cannot be treated as just because as a result of the accident the appellant suffered permanent disability and has virtually become a vegetable and would require treatment throughout her life. He submitted that due to neurological deformity the appellant is not in a position to do any work and had to give up her partnership in Triupati Enterprises where she was earning Rs.12,000/- per month. Not only this, she lost her memory and capacity of hearing and has spent about Rs.10.5 lakhs for treatment. Learned counsel relied upon the statement of Dr. Rajesh Gangwani and Dr. Sunil Athwale, who treated her and who were examined before the Tribunal to show that present mental state of the appellant is of a six year old and she would require constant physiotherapy and support of one attendant at all times. Learned counsel submitted that the compensation awarded under the head of pain and suffering is wholly inadequate and the amount of compensation should be

adequately enhanced keeping in view the fact that due to escalation in the cost of medical treatment, the appellant will have to incur substantial expenses in future medical treatment, physiotherapy and nursing. In support of his arguments, the learned counsel relied upon the judgments of this Court in *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka*¹ *Oriental Insurance Company Limited v. Mohd. Nasir*² and *Raj Kumar v. Ajay Kumar*³

12. Learned counsel for the insurance company argued that the enhancement granted by the High Court is just fair and reasonable and does not require to be further enhanced.

13. We have considered the respective submission. In *R.D. Hattangadi v. Pest Control (India) Private Limited*⁴ this Court observed that the exercise for determination of compensation in accident cases involve some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability. But these elements are required to be considered in an objective manner. In that case, the claimant was a retired judge and practicing when he met with an accident that caused 100% disability and paraplegia below the waist. While determining compensation payable to him in a claim filed under Section 110A, Motor Vehicles Act, 1939, this Court referred to the judgment of the *Court of Appeal in Ward v. James*⁵ Halsbury's Laws of England, 4th Edition, Volume 12 (page 446) and observed: "When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. 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 is 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 upto 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 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. It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain

and agony suffered by the appellant and for having become a life long handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury so far as money can compensate because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.”

14. In *Arvind Kumar Mishra v. New India Assurance Co. Ltd. and another*⁶ the Court sought to assess future earnings of a final year engineering student who received injuries to the brain among others which resulted in 70% permanent disability and he needed a helper throughout his life. 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 in so far 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. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum.” (emphasis supplied)

15. In *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka*⁷ this Court was called upon to assess the compensation payable under the Consumer Protection Act, 1986 to the victim of medical negligence who was left completely paralyzed at the age of 20. After detailed examination of the issue, the Court observed as under: “39. We must emphasize that the Court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the Court must not be chary of awarding adequate compensation. The adequate compensation that we speak of, must to some extent, be a rule of the thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned. It must also be borne in mind that life has its pitfalls and is not smooth sailing all along the way (as a claimant would have us believe) as the hiccups that invariably come about cannot be visualized. Life it is said is akin to a ride on a roller coaster where a meteoric rise is often followed by an equally spectacular fall, and the distance between the

two (as in this very case) is a minute or a yard. At the same time we often find that a person injured in an accident leaves his family in greater distress, vis-'a-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. We can also visualize the anxiety of the complainant and his parents for the future after the latter, as must all of us, inevitably fade away. We, have, therefore computed the compensation keeping in mind that his brilliant career has been cut short and there is, as of now, no possibility of improvement in his condition, the compensation will ensure a steady and reasonable income to him for a time when he is unable to earn for himself.”

16. In *Raj Kumar v. Ajay Kumar*⁸this Court considered large number of precedents and laid down the following propositions:

“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. The heads under which compensation is awarded in personal injury cases are the following:

“(i) Expenses relating to treatment, hospitalization, 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.”

17. In *Sri Ramachandrappa v. The Manager, Royal Sundaram Alliance Insurance Company Limited*⁹the Court observed:

“8. The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. The Courts have time and again observed that the compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper. The term disability, as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation. Disability benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case.”

18. In light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but

for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses.

19. Dr. Rajesh Gangwani, who was examined before the Tribunal deposed that the appellant is kept alive by feeding through a pipe and nursing care is required for daily routine work also. He stated that she had suffered 75% permanent disability and there seems to be no probability of recovery as she has lost her capacity for hearing, understanding, speaking and establishing interaction. However, he also stated that since appellant is still under treatment, final conclusion about permanent disability cannot be established. Dr Sunil Athwale, deposed that appellant was gaining consciousness slowly but the status of sense was at the lowest level and no improvement has come in the last 2 and half years. He stated that probability of further improvement is negligible and food and liquid are given through pipes. He stated that disability should be treated as 100% but he had not shown 90% as permanent disability in the certificate as while treatment continues, hope of improvement always prevails. On the basis of the same, the Tribunal held that the appellant had suffered permanent disability however the presumption cannot be drawn that she suffered 75% permanent disability because she is still undergoing treatment and the doctor himself had deposed that final conclusion regarding permanent disability cannot be established till the time treatment continues. The High Court did not record any finding on this issue but increased the amount awarded towards permanent disability and future loss of earning. Since the discharge certificate was issued on 26.6.2004, the claimant had made little progress up till the time the disability certificate was issued on 23.8.2006 and even till date she continues to be in a vegetative state and requires an attendant at all times and continued physiotherapy, we are not inclined to approve the approach of the Tribunal and High Court granting a lump sum compensation because both failed to take into consideration the loss of income during the period of treatment when the appellant was totally incapacitated. Even if the income of the appellant is taken to be Rs.2,000/- , the loss of income during the period of treatment, which continued till the judgment of the High Court i.e. from 2.5.2004 to 18.5.2010 would be Rs.1,47,000/- approximately.

20. As per the disability certificate issued on 23.8.2006, the appellant had virtually become vegetable and, therefore, she is not in a position to look after herself what to say of discharging her functions as partner of Tirupati Enterprises. Therefore, by applying the multiplier of 17, the future loss of earning would come to Rs.3,67,200/-.

21. In light of the decision in *Raj Kumar v. Ajay Kumar* (supra), the Tribunal and High Court erred in failing to award compensation under the heads of loss of amenities and loss of expectation of life. Relying on the decision in *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka* (supra) and assuming the claimant's life expectancy to be 55 years, we

