

Kum Michael

v.

Regional Manager Oriental Insurance Co. Ltd. & Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE FAKKIR  
MOHAMED IBRAHIM KALIFULLA

Civil Appeal No. 1100 Of 2013 (@ Slp (C) No. 1690 Of 2012) | 11-02-2013

Fakkir Mohamed Ibrahim Kalifulla, J.

1. This petition is directed against the Division Bench judgment of the High Court of Karnataka at Bangalore dated 15.09.2010 passed in M.F.A. No.7863 of 2004 (MV).

2. While hearing the S.L.P. on 06.01.2012 notice was ordered on the application for condonation of delay as well as on the main special leave petition and Dasti service was also permitted. After the service of notice, it was reported that the respondents did not enter appearance. As there was no representation on behalf of the respondents, the record of Courts below was called for. There was delay of 323 days in filing this petition. As the respondents have not bothered to contest this petition, we heard learned counsel for the appellant both on application for condonation of delay as well as on merits. As we are satisfied with the reasons adduced in the application filed in support of the condonation of delay petition, the delay stands condoned.

3. Leave granted.

4. We perused the judgment of the Motor Accident Claims Tribunal, Bangalore dated 02.07.2004 passed in M.V.C. No.248 of 2002, original record as well as the Division Bench Judgment impugned in this appeal. There was no dispute about the accident that occurred on 25.10.2001 at about 3:30 p.m. on the 1st Main Road, 2nd Cross, Valmikhinagar, Mysore Road, Bangalore. In the said accident the appellant who was then aged eight years was hit by Hero Puch

Motor Cycle bearing Registration No.KA-09-J-4982 which belonged to the second respondent, by its rider. The manner in which the accident took place was vividly stated by P.W.1 who was none another than the father of the appellant himself and who was an eye witness to the accident. After the accident, the appellant was stated to have been admitted in Victoria Hospital and that he was treated as inpatient between 29.10.2001 to 10.11.2001 for a period of 12 days. The appellant suffered injuries in his right leg which was fractured coupled with lower third displacement, Plaster of Paris was applied to the right leg, which was removed after three months. The appellant was doing his third standard at that time and due to the accident, as per the evidence of P.W.2 the doctor, who attended on him and who also subsequently examined him on 14.01.2004 noticed the following physical impairments:

"1. Painful limp

2. Wasting & Weakness of muscles of right limb.

3. Tenderness right with joint line tenderness of right knee.

4. Terminal restrictions of joint movements of right knee by last, 20 degrees and total restriction of dorsiflexion of right ankle joint.

5. Shortening of 1 cm of right lower limb (compared to opposite limb)

He has assessed the disability to the extent of 16% to the whole body because of these accidental injuries."

5. It was also in medical evidence that the appellant continued to take follow-up treatment subsequently. In support of the medical evidence, apart from the version of P.W.2 Doctor, Exhibit P-4 the copy of accident register maintained at Victoria Hospital, Exhibit P-5 the discharge summary, Exhibit P-6 the inpatient record, Exhibit P-7 the outpatient record and Exhibit P-8 the X-ray were all

produced. P.W.2 subsequently stated that there was a shortening of 1 cm of right lower limb as compared to the opposite limb.

6. Keeping the above factors in mind as there was no evidence placed on the side of respondents except the marking of the policy Exhibit R-1, the Tribunal held that the second respondent as the owner and the first respondent as the insurer were liable to pay compensation. The Tribunal computed the compensation payable under the following heads:

"For pain, agony, trauma, injury & suffering Rs.35,000/- Medical expenses as per bills and other Incidental charges like Conveyance, special Rs.12,000/-

Diet, Attendant charges, nourishment etc Loss of amenities in life Rs.30,000/-

Total Rs.77,000/-

Thus the petitioner is entitled for total compensation of Rs. 77,000/-."

7. Being aggrieved of the quantum of compensation determined by the Tribunal in a sum of Rs.77,000/- as against his claim of four lacs, the appellant approached the High Court by filing M.F.A. No.7863 of 2004 (MV). The Division Bench of the High Court while confirming the judgment of the Tribunal as regards the liability for payment of compensation by the respondents, however, enhanced the same to a sum of Rs.1 lac under the following heads:

Towards pain and sufferingsRs.40,000/-

Towards medical expenses, conveyance, nourishing food and attendant chargesRs.20,000/-

Towards loss of amenitiesRs.40,000/-

TotalRs.1,00,000/-

8. Being aggrieved of the judgment of the Division Bench, the appellant is before us. Having heard learned counsel for the appellant and the respondents not being represented either in person or through counsel and having perused the orders impugned in this appeal, the original records and other material papers, we are of the considered opinion that for various reasons stated herein the appellant was entitled for higher compensation than what has been ordered by the Tribunal as well as the Division Bench of the High Court. In this context when we refer to the evidence of P.W.2, as noted in the earlier part of this judgment, even after about three years of the accident the appellant continued to have a painful limp, weakness of muscle of right limb, tenderness in the joint line of right knee and terminal restrictions of joint movements of right knee and total restrictions of dorsiflexion of right ankle joint. That apart, there was shortening of 1 cm of right lower limb as compared to opposite limb. In the assessment of the doctor, the appellant suffered a permanent disability of 16% to the whole body because of the injuries sustained in the accident.

9. According to P.W.1 though he took the appellant to the hospital immediately after the accident, due to non-availability of bed facility he was advised to admit him after three days during which period the appellant suffered severe pain. The appellant was inpatient for 12 days as shown by Exhibit P-5 discharge summary. Appellant had suffered fracture of both bones of right leg with displacement. Plaster of Paris applied on the right leg of the appellant could be removed only after three months. Even after the discharge and removal of Plaster of Paris, as per the evidence, the appellant continued to visit the hospital for follow-up treatment. It has to be remembered that at the time the accident took place the appellant was an eight year old boy doing his third standard with all aspirations in life as spoken to by P.W.1 to involve himself in sports activities which could not be fulfilled by virtue of the accident.

10. De hors the evidence of P.W.1 considering the age at which the appellant suffered a dreadful accident in which the appellant suffered a severe injury in his right leg which has virtually created a deformity in the said leg, for the rest

of his life the appellant has to suffer with the disability. The age of the appellant was, therefore, a very relevant factor while determining the compensation payable as the sufferance of such physical disaster, that too on his right leg cannot be measured in terms of money precisely but yet having regard to the present day living conditions and the extent to which the aspirations of the appellant came to be demolished by suffering a permanent disability for no fault of his, it becomes the responsibility of the respondent to adequately compensate whatever sufferings undergone by the appellant at that time and immediately after the accident as well as the mental agony that is being suffered by the appellant life long.

11. In this context the reliance placed upon by the Tribunal in the decision reported in R.D. Hattangadi V. M/s. Pest Control (India) Pvt. Ltd. and others - AIR 1955 SC 755 was apposite. That was a case where an Advocate of 52 years met with an accident who suffered serious injuries resulting in 100% disability and paraplegia below the waist. The said claimant apart from claiming compensation on other heads made a claim for pain and suffering and loss of amenities of life in a sum of Rs.3 lacs each. As against claim of Rs.6 lacs, the High Court granted a sum of Rs.1 lac. This Court considering the claim for non-pecuniary loss stated as under in paragraphs 9 and 17:

"9. 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 is 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.

17. The claim under Sl. No. 16 for pain and suffering and for loss of amenities of life under Sl. No. 17, are claims for non-pecuniary loss. The appellant has claimed lump sum amount of Rs.3,00,000 each under the two heads. The High Court has allowed Rs.1,00,000 against the claims of Rs.6,00,000. 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. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs.1,50,000 in respect of claim for pain and suffering and Rs.1,50,000 in respect of loss of amenities of life. We direct payment of Rs.3,00,000 (Rupees three lakhs only) against the claim of Rs.6,00,000 under the heads 'Pain and Suffering' and 'Loss of amenities of life'."

12. The above-said ratio was subsequently followed in the decision reported in *Ashwani Kumar Mishra V. P. Muniam Babu and others* - (1999) 4 SCC 22 for enhancing the compensation on account of loss of expectation to life besides disappointment, frustration and mental stress suffered by the claimant therein.

13. The said decision was also followed in *The Divisional Controller, K.S.R.T.C. V. Mahadeva Shetty and another* - AIR 2003 SC 4172.

14. In B.T. Krishnappa V. D.M. United Insurance Co. Ltd. & Anr. - AIR 2010 SC 2630, where one of us (Hon. Mr. Justice G.S. Singhvi) was a party, has held in paragraphs 17 and 18 as under:

"17. Long expectation of life is connected with earning capacity. If earning capacity is reduced, which is the case in the present situation, that impacts life expectancy as well.

18. Therefore, while fixing compensation in cases of injury affecting earning capacity the Court must remember:

"... 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." [See R.D. Hattangadi v. Pest Control (India) (P) Ltd & others, (1995) 1 SCC 551:

(AIR 1995) SC 755 : 1955 AIR SCW 243) at page 556, para 10.]"

15. Having bestowed our serious consideration and having noted the various disadvantages suffered by the appellant by virtue of the accident, we are convinced that the appellant is entitled for still higher amount than what has been granted by the Tribunal as well as the High Court on account of pain and sufferings as well as loss of amenities. As held by us earlier, though it will be impossible to make a precise assessment of the pain and suffering of the appellant considering the age at which the appellant met with the accident and the consequent disability and also taking note of the deprivation of better prospects in the life of the appellant due to the physical disability suffered, we determine the compensation in a sum of Rs.4 lacs as claimed by the appellant under the following heads:

Towards pain and sufferings and permanent disability Rs.2,80,000/-

Towards medical expenses, conveyance, nourishing food and attendant chargesRs.20,000/-

Towards loss of amenitiesRs.1,00,000/-

TotalRs.4,00,000/-

16. Consequently, the impugned judgment of the Division Bench in M.F.A. No.7863/2004 (MV) dated 15.09.2010 and the award of the Tribunal in M.V.C. No.248/2002 dated 02.07.2004 stand modified, granting a compensation of Rs.4 lacs. The enhanced compensation comes to Rs.3 lacs with interest at 6% per annum from the date of petition till the date of realization. The first respondent-Insurance Company is directed to deposit the enhanced compensation with interest within six weeks from today. Since the appellant was aged 8 years at the time of the accident, namely, 25.10.2001 and eleven years have gone by, he is now 19 years old. We, therefore, declare him as major and direct the Tribunal to release the compensation amount to him as and when it is deposited by the first respondent as directed in the judgment. Accordingly, the appeal stands allowed with the above directions.