

SUPREME COURT OF INDIA

V.Sudha

Vs.

P.Ganapathi Bhat

C.A.No.4340 of 2013

(G.S.Singhvi and H.L.Gokhale JJ.)

06.05.2013

JUDGEMENT

H.L. GOKHALE J.

1. Delay condoned. Leave granted.

2. This appeal by special leave seeks to challenge the judgment and order dated 1.2.2011 rendered by a Single Judge of the Karnataka High Court in MFA No.3356 of 2009 (MV), whereby the learned Single Judge modified the award rendered by the Motor Accident Claims Tribunal (“MACT” for short) Bangalore dated 7.2.2009 in M.V.C. No.7724 of 2007. The High Court by the impugned judgment and order has enhanced the compensation payable to the appellant for the accidental injury suffered by her, though not fully meeting her requirement, and hence this appeal by Special Leave. Facts leading to this appeal are as follows:-

3. The appellant then aged about 36 years sustained grievous injuries on 11.9.2007 in a road accident which occurred at Mill Road Junction, Cottonpete Main Road, Bangalore. The appellant claims to be doing the business of selling saaris and on that date when she was proceeding on that road at about 3.30 pm, a motorcycle driven by the respondent no.1 bearing registration no.KA-02-ET-8786 came in a rash and negligent manner at a high speed and dashed against her. The appellant sustained grievous injuries and was admitted in Srinivasa Hospital, Bangalore where she was treated by Dr. Avinash s/o B. Parthosarthi, Orthopaedic Surgeon.

4. The appellant was treated for the following injuries:-

(i) Fracture of distal end of left radius (forearm bone)

(ii) Fracture of left neck of femur – (hip bone)

(iii) Abrasions over left elbow

The wound certificate issued by the doctor stated that injury no.1 and 2 above were grievous in nature.

5. As per the medical record the appellant had to be operated for ‘close reduction and annulated screw fixation of fractured neck of femur’. ‘Close reduction and B/E POP cast was applied for fractured lower end of left radius’. After the discharge from the hospital she continued to suffer pain in left forearm and left hip, and found difficulty in walking. She suffered for inability to stand with full weight in left lower limb, and needed crutches to walk. She could not squat and sit cross legged, had great difficulty in climbing stairs, and could not stand for longer duration.

6. The appellant filed the above referred motor accident claim petition bearing MVC No.7724 of 2007 and claimed the compensation of Rs.3,50,000/-. The respondent no.2-National Insurance Company with which the motorcycle was insured, filed its written statement and produced the insurance policy which showed that the motorcycle was insured with it on the date of the accident. Respondent no.1 did not file any written statement. The MACT framed two issues, firstly whether the appellant proved that she has sustained grievous injuries in the road accident on that date due to the rash and negligent act of the rider of the concerned motorcycle. The second issue framed was whether the appellant was entitled for compensation, and if so what amount and from whom. The appellant filed her evidence by affidavit and supported her claim with the affidavit of above referred Dr. Avinash dated 3.12.2008.

7. While deciding the first issue, the MACT considered the statement of the appellant in her affidavit about the occurrence of the accident. The Court noted the contents of the FIR, and the chargesheet filed in the Magistrate’s Court. The rider of the motorcycle did not file the written statement, nor did he step into the witness box. The Tribunal was therefore, constrained to draw the adverse inference that the respondent No. 1 was responsible for the accident, and that the accident was caused by his rash and negligent driving.

8. Turning to the issue no.2, the MACT considered the evidence produced by the appellant by way of her affidavit, as well as the evidence through the affidavit of Dr. Avinash (PW2) dated 3.12.2008. Dr. Avinash placed on record as to how the appellant was admitted to Srinivasa Hospital, and the treatment given to her. He pointed out that after her discharge from the hospital she continued to come to the hospital with complaints of pain in left forearm and left hip, difficulty in walking, inability to stand with full weight, restriction of the movement, needing the crutches to walk and not being able to sit down with cross legs or to squat. He opined that there was serious physical impairment in her left leg. Its mobility component as well as the stability component had been seriously eroded. Its mobility component was eroded by 16.3% and stability component was eroded by 30%. The doctor assessed the permanent disability to the left lower limb at 52%, and in relation to the whole body at 17.3%. In his affidavit, the doctor referred to the future treatment which was expected for the appellant. He stated that to minimize the persistent disablement, she needed to undergo femoral head excision and Bipolar Hemi- arthroplasty which would cost more than Rs.90,000/-.

9. The appellant had claimed her monthly income in the range of Rs.6000 to Rs.7000 but the MACT took it as Rs.3000/- and arrived at annual income of Rs.36,000/-. The Tribunal awarded an amount of Rs.1,94,350/- with interest @ 8% per annum from the date of petition till the date of depositing the amount in Court with advocate fee fixed at Rs.500/-. The amount of compensation was arrived at in the following manner:-

- 1) Pain and suffering Rs.30,000/-
- 2) Loss of future income & disability Rs.81,000/-
- 3) Loss of amenities Rs.20,000/-
- 4) Loss of expectation of life Rs.15,000/-
- 5) Medical Expenses Rs.38,346/-
- 6) Travelling expenses Rs.10,000/-

Total Rs.1,94,350/-

10. When the appeal filed by the appellant under Section 173 (1) of the Motor Vehicles Act, 1988 (M.V. Act for short) was heard by the High Court, it came to the conclusion that the compensation awarded by the Tribunal under the loss of earning capacity and future loss of earning was on the lower side. The Court noted that the Tribunal had not awarded compensation towards loss of earning,

attendants, nourishment and food charges as well as for future medical expenses. The High Court, therefore, modified the award rendered by the MACT and awarded the compensation of Rs.2,65,000/- in the following manner:-

- “1) Pain and suffering Rs.30,000/-
 - 2) Medical Expenses Rs.39,000/-
 - 3) Loss of earning during laid up Period (Rs.3000 x 6) Rs.18,000/-
 - 4) Loss of amenities Rs.40,000/-
 - 5) Travelling expenses Rs.10,000/-
 - 6) Attendant & nourishing food Rs.5,000/-
 - 7) Loss of earning capacity & Future loss of earning (Rs.3000 x 12 x 15 x 0.20) Rs.1,08,000/-
 - 8) Future medical expenditure Rs.15,000/-
- Total Rs.2,65,000/-“

11. The learned counsel for the appellant criticised the judgment of the High Court principally for accepting the permanent physical disability of the appellant at 17.3% only, and for not considering the supporting medical evidence for future expenses. It was contended that the permanent physical disability was 52%. However, when we see the evidence of the doctor, it is seen that the disability to left lower limb is 52% but the disability to the whole body is 17.3%. However, as far as the award of Rs.15000/- for future medical expenses is concerned, as can be seen the High Court has lost sight of the statement of the doctor that to minimize the persistent disablement the appellant needed to undergo femoral head excision and Bipolar Hemi-arthoplasty which would cost more than Rs.90,000/- .

12. When this special leave petition came for consideration a notice was issued on the prayer of condonation of delay as also on merits of the appeal. The notice has been served on the respondents. Ms. Kiran Suri has appeared for appellant and Mr. Parmanand Gaur has appeared for the insurance company. Ms. Suri appearing for the appellant has submitted that the future medical expenses and necessary treatment have not been considered adequately by the High Court. In fact now the appellant claims that she needs to undergo hip replacement surgery which could cost Rs.2 lakhs. She has produced a certificate of a consulting orthopedic surgeon of a health centre dated 14.7.2011. (We may however note that the certificate is issued on a date which is even subsequent to the decision of the High Court, and it

does not contain the address of the concerned health centre). The counsel for the insurance company has submitted that the compensation has to be in proportion to the injury suffered and not in excess.

13. We have considered the submissions of both the counsel. Section 168 of the Motor Vehicle Act under which the Tribunal passes its award requires the Tribunal to determine the amount of compensation ‘which appears to it to be just’. While considering the claim of a injured retired Judge we may note that in R.D Hattangadi Vs. Pest Control (India) Pvt. Ltd. reported in 1995 (1) SCC 551 this Court has observed that the determination of compensation involves some hypothetical consideration linked with the nature of the disability, but these factors are required to be considered in an objective manner. In Arvind Kumar Vs. New India Insurance reported in 2010 (10) SCC 254, this Court was concerned with the 70% permanent disability suffered by a final year engineering student, and the Court observed that the whole idea in granting the compensation is to put the claimant in the same position as he was in so far as money can. In Raj Kumar Vs. Ajay Kumar reported in 2011 (1) SCC 343, this Court observed that the provision of M.V. Act makes it clear that the award must be just, which means that the compensation should, to the extent possible fully and adequately restore the claimant to the position prior to the accident. With respect to the heads of compensation, the court observed:-

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

Pecuniary damages (Special damages)

(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.”

14. In the present case, the claim petition filed by the appellant claimed an amount of Rs.3,50,000/-, the Tribunal awarded Rs.1,94,350/- which was enhanced by the High Court to Rs.2,65,000/-. The evidence of the doctor tendered in the Tribunal on 3.12.2008 stated that the future treatment would cost more than Rs.90,000/-. This corroborating evidence has not been contravened. The High Court however awarded only an amount of Rs.15,000/- towards future medical expenses. In view of the dicta in Raj Kumar Vs. Ajay Kumar (supra) we accept the corroborative evidence given by the doctor, and add the amount as reflected in the doctor’s evidence. A similar view has been taken by a Bench of this Court recently in Civil Appeal No. 5945 of 2012 Kavita Vs. Deepak, decided on 22.8.2012 to which one of us (G.S. Singhvi J) was party. This would add the remaining amount of Rs.75,000/- to the compensation awarded by the High Court which takes it to a figure of Rs.3,40,000/-. Since, the doctor has said that the expenses could be more than Rs.90,000/- but has not specified how much would be that amount, we add the remaining amount of Rs.10,000/- to make it Rs.3,50,000/- and thus fully allow the claim of the appellant. The amount of Rs.85,000/- thus added, with interest at 8% from the date of the petition (as originally awarded) will give her an added amount in the range of Rs. 1,25,000/-. That will meet her requirement as placed before the MACT in her claim petition in its entirety.

15. The appeal is accordingly allowed. The claim petition filed by the appellant will stand decreed at Rs.3,50,000/- with interest @ 8% per annum from the date of the petition as awarded by the MACT. The respondent No.2 insurance company is

directed to pay the amount as now added with interest at 8% as above within 8 weeks from today.