

SUPREME COURT OF INDIA

G.Ravindranath @ R.Chowdary

Vs.

E.Srinivas & Anr

C.A.No.5520 OF 2013

(G.S. Singhvi and V. Gopala Gowda JJ.)

01.07.2013

JUDGMENT

G.S. Singhvi, J.

1. Leave granted.

2. This appeal is one of the several such cases which the victims of accidents are compelled to file because the compensation awarded by the Motor Accident Claims Tribunal and/or the High Court is abysmally inadequate or tragically disproportionate to his/her suffering.

The appellant, who was 19 years old at the relevant time and was assisting his father in agricultural operations, suffered grievous injuries in an accident which occurred on 31.10.2000 when respondent No.1 reversed Tipper No. APH 5971 in a rash and negligent manner without care and without signal and dashed against the appellant. The rear tyre of the Tipper caused fracture in the pelvic region of the appellant. He was initially treated at Bhandari Hospital, Raichur. Later, he was taken to Nizam's Institute of Medical Sciences, Hyderabad (NIMS). The doctors at NIMS diagnosed that the appellant had sustained pelvic and urethral injuries (total urethral rupture).

3. The appellant filed a petition under Section 166 of the Motor Vehicles Act, 1988 and prayed for award of compensation under the following heads:

- “1. Annexure-I Medical expenses 65,399.00 incurred
2. Annexure-II Hospitalization 42,113.00 charges incurred
3. Annexure-III Mess and Lodging 31,555.00 charges
4. Annexure-IV Transportation 74,540.00 charges
5. Damages, physical and mental 2, 00, 000.00 shock, pains, sufferings suffered by claimant and likely to suffer in future
6. Damages for loss of amenities, 5, 00, 000.00 life including loss of marriage, cannot sit and walk
7. Damages for loss of expectation 2, 00,000.00 of life

8. Frustration, hardship, 1,50,000.00 inconveniences, disappointment, mental shock in life, dejection and unhappiness in future life
9. Loss of earnings 2,80,000.00
10. Loss of income to the parents of 2,00,000.00 the claimant.
11. Future medication, 3,00,000.00 hospital-ization expenses.

Grand Total 20,43,607.00”

4. The appellant pleaded that he was a student of PUC second year and was earning Rs.3,500/- per month by extending help to his father in agricultural operations at Amareshwara Camp. Some of the averments contained in the claim petition are extracted below:

“The claimant was studying in PUG IInd year on the date of this illegible. He was helping his father in the agriculture operations since as family they own 8 acres of irrigated land at Amareshwara camp include other similar land of extent of 20 acres taken under lease basis. The accident has left him as a person of impotence since it was diagnosed he will have the erectile dis- function throughout his life by making him unfit for any marital life. The claimant was contributing the service to his parents and agriculture activities to the extent of Rs.3,500/- p.m. including his absorption in the dairy farm being maintained by his mother. The claimant's prospects of better studies and good employment have disappeared. The parents of the claimant have lost the agriculture income on account of their compulsion to accompany him. The claimant suffered permanent disability and he is still undergoing treatment. He experiences severe pain and inconvenience in passing urine and he is undergoing series of surgical operations. He requires medical attention for rest of life as he needs constant care. He needs the attendance of other persons to be looked after. He suffered loss of expectation of life and he is now compelled to lead agonizing and dejected life. The parents of claimant are now finding extreme difficult to arrange for his further treatment by, abandoning their agriculture and other operations and works. The clamant is put to separatism marital life as he cannot marry.”

(emphasis supplied)

5. The owner, the driver and the insurance company (respondent No.2 herein) were proceeded ex-parte because no one appeared on their behalf. However, on an application filed by respondent No.2, the ex- parte proceedings were set aside qua that respondent and it was given an opportunity to file the written statement. By taking advantage of the liberty given by the Tribunal, respondent No.2 filed objections to contest the appellant’s claim on all possible counts.

On the pleadings of the parties, the Tribunal framed the following issues:

“1. Whether the claimant proves that he met with accident on 31.10.2000 at about 10.30 AM at Amareshwara Camp due to the rash and negligent driving of Respondent No.1 who caused the accident while taking reverse of his Tipper bearing No.APH 5971?

2. Whether the claimant further proves his medical treatment- expenses and also his disability along with loss of income and his future treatment as averred in para-1 of the claim petition?

3. Does the Respondent No.3 proves that he is not liable to pay the compensation since Respondent No.1 was driving the said vehicle without DL and also due to violation of policy conditions?

4. Whether the claimant is entitled for compensation? If so, how much and from whom?” The appellant examined himself as PW1, Dr.P.V.L.N. Murthy as PW2, Dr. Sudhakar Krishnamurthy as PW3 and produced documents, which were marked as Exhibits P.1 to P.18. On behalf of respondent No.3, only one witness was examined as RW1 and one document, i.e., the insurance policy was produced as Exhibit R1.”

6. The Tribunal relied upon the contents of the First Information Report and the statement of the appellant (P.W.1), who gave vivid description of the accident and whose testimony was not shaken in the cross-examination and held that the accident was caused due to rash and negligent driving of Tipper by its driver. The Tribunal then referred to the evidence relating to the appellant’s treatment at Bhandari Hospital, Raichur and NIMS, Hyderabad and held:

“Therefore, I am of the clear opinion that the claimant has sustained fracture of pelvic region, and he subsequently developed all the above handicaps due to non-passing of urine by natural passage and his extensive treatment has also not cured him for the said accidental injury. PW.2 and 3 who have treated the claimant extensively in NIMS Hospital at Hyderabad, have clearly deposed that the claimant has now erectile dysfunction (impotence) and he needs follow up treatment for 5 to 10 years in future. Therefore, under this back ground, the claimant is entitled for Rs.30,000/- for fracture of pelvic region.” The Tribunal awarded Rs.75,000/- towards medical expenses and Rs.10,000/- for transportation, lodging and boarding and conveyance expenses. The Tribunal did not accept the appellant’s assertion that he was a student of PUC-II by observing that he has not produced any document to substantiate the same. The Tribunal also declined to rely upon the appellant’s statement regarding his income and observed that his notional income could be taken as Rs.600/- per month. After deducting 1/3rd towards personal expenses, the Tribunal held that the appellant’s net income would be Rs.4,800/- per annum. The Tribunal awarded Rs.50,000/- towards disability due to erectile dysfunction, Rs.25,000/- for future treatment and other unforeseen expenses, Rs.10,000/- towards pain and suffering and Rs.10,000/- towards doctors’ fees, vehicle expenses etc. On an appeal filed by the appellant, the High Court took cognizance of his statement about the age, educational qualification and the fact that he was assisting his father in agricultural operations and held that it would be just and proper to award compensation of Rs.2,00,000/- for the injuries

suffered by the appellant and an additional compensation of Rs.1,50,000/- The High Court awarded additional amount of Rs.25,000/- in lieu of medical expenses and another sum of Rs.25,000/- towards transportation charges, nourishment, attendants charges, etc. This is evinced from paragraphs 11, 12, 13 and 14 of the judgment under challenge, which are extracted below:

“11. In a case of this nature, when his limbs and hands are not affected, his ability to earn is not affected. But the fact remains, at the prime of his youth, he has become impotent. Therefore, the compensation of Rs.50,000/- under the heading of erectile dysfunction is certainly on the lower side. In some what similar situation in the year 1999, the Apex Court had awarded a sum of Rs.1.00,000/- and now the accident has taken place nearly five years thereafter and we are awarding compensation nearly after eleven years. Therefore, in our view, the just amount of compensation to be awarded under the said heading is Rs.2,00,000/- and the additional compensation is Rs.1,50,000/-.”

11. Though the Tribunal has awarded a sum of Rs.75,000/- towards medical expenses, it has not taken into consideration other bills produced and the treatment appears to be continuous. Though another sum of Rs.25,000/- is awarded towards future expenses, we are of the view that towards medical expenses - past and future, another sum of Rs.25,000/- would be an appropriate compensation.

12. Similarly, the evidence on record shows, for taking treatment the claimant has to leave Raichur to go to Hyderabad on many occasions. In that context, the amount of compensation awarded towards transportation charges, nourishment, attendant charges, is on the lower side and we deem it just and proper to award a sum of Rs.25,000/- under the aforesaid head.

14. The amount of compensation awarded under the heading of pain and suffering, having regard to the nature of injury and the number of days he has taken treatment, appears to be on the lower side. Therefore, we award an additional amount of Rs.25,000/- under the aforesaid head".

7. We have heard learned counsel for the parties and carefully perused the record.

It is settled law that compensation in personal injury cases should be determined under the following heads:

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.

8. In *Ibrahim v. Raju* (2011) 10 SCC 634, this Court took cognizance of the plight of the victim of road accidents and observed:

“The sufferings of the dependants of those who are killed in motor accidents and the survivors who are disabled are manifold. Sometime these can be measured in terms of money but most of the times it is not possible to do so. If an individual is disabled as a result of road accident, the cost of treatment, care and rehabilitation is likely to be very high. A very large number of people involved in motor accidents are pedestrians, children and women and, on account of sheer ignorance, poverty and other disabilities, majority of them are unable to engage competent lawyers for putting their cause before the Tribunals and the courts. The insurance companies, with whom the vehicles involved in the accidents are insured always have the advantage of assistance of legally trained mind (law officers and panel lawyers). They contest the claim petitions by raising all possible technical objections for ensuring that their clients are either completely absolved or their liability is minimised and in the process, adjudication of the claims filed by the victims and/or their legal representatives is delayed for years together. At times, the delay in disposal of the claim cases and litigation expenses make the award of compensation meaningless for survivors of the accidents and/or families of the victims.” The Court also referred to the judgments in *Ward v. James* (1965) 1 All ER 563 (CA), *R.D.Hattangadi v. Pest Control (India) (P) Ltd.* (1995) 1 SCC 551, *Nizam’s Institute of Medical Sciences v. Prasanth S. Dhananka* (2009) 6 SCC 1, *Reshma Kumari v. Madan Mohan* (2009) 13 SCC 422, *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* (2010) 10 SCC 254, *Raj Kumar v. Ajay Kumar* (2011) 1 SCC 343 and enhanced the compensation from Rs.1,89,440/- to Rs.6 lakhs. The factual matrix of that case and the factors considered by this Court for awarding enhanced compensation to the appellant in that case are contained in paragraphs 17 to 20 of the judgment, which are reproduced below:

“17. A perusal of the record shows that the appellant had produced substantive evidence to prove that as a result of the accident he had suffered 8 grievous injuries including fracture of pelvis and he had to remain in the hospital for one month and a half; that he was treated by Dr. Anil K. Bhat, Assistant Professor, Orthopaedics and Dr. Joseph Thomas, Professor of Urology and that on account of grievous injuries he

was unable to continue his studies. In his deposition, Dr. Joseph Thomas categorically stated that the appellant will have to undertake life-long treatment for recurrence of urethral strictures and consequential dysfunction due to fracture of pelvis. Unfortunately, neither the Tribunal nor the High Court adverted to this part of the evidence and omitted to award compensation for the expenses likely to be incurred by the appellant for future treatment.”

9. One can reasonably expect that the appellant who was only 18 years old at the time of accident would live for at least next 50 years. The Tribunal awarded Rs 20,340 for expenses incurred by the appellant for treatment taken by him in the hospital. Although, Dr. Thomas did not indicate the approximate expenditure likely to be incurred by the appellant and his family for future treatment, keeping in view the nature of injuries and the fact that he will have to take treatment for the remaining life, it will be reasonable to infer that he will be required to spend a minimum of Rs 1000 per month for future treatment, which would necessarily include fees of the doctors, medicines, transportation, etc. In the absence of concrete evidence about the anticipated expenditure, we think that ends of justice will be met if the appellant is awarded a sum of Rs 2 lakhs which, if deposited in a fixed deposit, would earn an interest of Rs 14,000 to 16,000 per annum.

10. On account of the injuries suffered by him, the prospects of the appellant’s marriage have considerably reduced. Rather, they are extremely bleak. In any case, on account of the fracture of pelvis, he will not be able to enjoy the matrimonial life. Therefore, the award of Rs 50,000 under this head must be treated as wholly inadequate. In the facts and circumstances of the case, we feel that a sum of Rs 2 lakhs should be awarded to the appellant for loss of marriage prospects and enjoyment of life.

11. The compensation awarded for loss of future earning on account of permanent partial disablement is *ex facie* unreasonable. Respondent 3 did not produce any evidence to controvert the appellant’s assertion that on account of the injuries suffered in the accident, he had to abandon his studies. The consequences which followed were extremely grave inasmuch as he lost all opportunities for making a career in future. The prospects of the appellant’s marriage are extremely bleak. Therefore, a sum of Rs 2 lakhs deserves to be awarded under these heads.” In *Ramachandrappa v. Royal Sundaram Allinace Insurance Co. Ltd.* (2011) 13 SCC 236, this Court observed:

“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.”

12. In *Kavita v. Deepak*(2012) 8 SCC 604, the Court referred to earlier precedents and held:

“In the 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.”

13. We may now revert to the case in hand. In his statement, the appellant had vividly described the injuries suffered by him, the treatment taken in Bhandari Hospital, Raichur and NIMS, Hyderabad as also the expenses incurred for the treatment, loss of education and income in the following words:

1. Due to impact the rear tyre of the tipper caused me grievous injury at the pelvic region and the said injury was internal. After the accident I fell down and was in conscious. My father who was with the me at that time, immediately admitted me to Bhandari Hospital Raichur. Due to the internal injury the urine was stopped and it was extracted by catheter. My father was advised to take me for further treatment at Hyderabad Accordingly I was taken to Nizam Hospital Hyderabad on 1-11-2000. The doctor on my examination came to the conclusion that I sustained fracture of pelvis and total rupture of urethra. In the said hospital also I was not passing the urine and it was extracted by catheter. I was advised to come after 3 weeks to under go operation and also the RGU and HCU test. Thereafter I returned to Amareshwar Camp and during that period I was not passing my urine naturally and also I was unable to move. I was also getting severe pains in that is region. I was passing my urine and stool on ray bed only. After 3 weeks I was taken to Nizam Hospital by my father. On 1-12-2000 and I was in the Hospital upto 4-12-2000 for above tests. Again I went to the Hospital on 18.12.2000, and the operation was not conducted, since the same has to be undergone only after observation of results of RGU and MCU tests. Again I went to the Hospital on 27.1.2001 and at that time I was not passing the urine naturally and I was in lot of pains and was unable to stand and move. The RGU and MCU Tests were done on 31-1- 2001. The doctor advised me that my urethra is

completely damaged and he asked me to come after one month for operation of electively operation. The doctors extracted my urine by SPC test since it was not coming through catheter. Again I went to the said hospital on 1.3.2001 and I was operated on 20-3-2001. I have undergone transpubic end to urethroplasty. Due to the injury I developed erectable unction and the doctors suggested me that the same cannot be cured in the near future. The doctors have mentioned the said disability in, their medical records. Subsequently I went for further treatment on 25.4.2001, 16.5.2001, 11-6-2001 and 23-7-2001, 10.8-2001, 20-8-2001, 3-9- 2001, 5-9-2001 and 15-9-2001. On all these days I went to Hyderabad in a hired jeep from Amareshwar Camp and I have paid Rs.5000 to Rs.6000 per trip. I have produced those hire bills in this court. Now the catheter is removed only before one month back.

2. In between the period of treatment had the swelling of my private part. Now also I am going to Nizam Hospital Hyderabad for my treatment as advised. Now also I have pain in the pelvic region and now also I find it very difficult to pass my urine naturally.

3. At the time of accident was studying in PUC II year (commerce) in Kalmath College Manvi, and the said college is about 15 KM from Amareshwar Camp. I used to attend to my college by a bus on Student Pass.

4. I was also assisting my father in my agricultural work after my college hours, My father has 8 acres of land (irrigated), at Amareshwar Camp. I was also vending the milk from the 6 she buffalo which were maintained by my family. Now I am unable to assist my father in agricultural work and also in milk vending due to ray pain and injury in the pelvic region. I was forced to discontinue my studies due to the said factor. I was contributing about Rs.4000 under my services to my family.

5. The doctors have also ruled out my marriage due to pelvic injury and also erectile dysfunction. I am also advised to future long treatment. Now I am maintained by my parents, and due to the above accident my life has become dejected.” In cross-examination, the counsel appearing for respondent No.2 did make laboured attempt to discredit the testimony of the appellant but he firmly withstood his ground and reiterated the facts relating to accident, his injuries, pain and suffering and the expenses incurred under various heads. It is quite interesting to note that the appellant was not cross-examined on the issue of his educational qualification and the assistance provided by him to his father in doing agriculture. Therefore, that part of the testimony also remained unshaken.

PW-2 - Dr. P.V.L.N. Murthy, Professor of Urology and H.O.D. of Urogoly, NIMS gave detailed description of the nature of injuries and the treatment given to the appellant in the following words:

“On 1-11-2000 the patient was admitted on emergency ward under the care of emergency Medical department or the poetics ward/Urology. An initial emergency treatment was given and discharged on 3.11.2000 with advise to review in urology O.P and Ortho O.P after three weeks. By the time he was admitted here he was with a SPC through which Urine was collected by a bag/ he was unable to pass urine via

natural passage. The patient was admitted back on 27.1.2001 as per advise and we discharged him on 31-1-2001. During his admission he was treated for infection & fever (U.T.L.) and special X-ray procedures (R.G.U 85 M.C.U) were conducted to evaluate the stricture. The length of the stricture evaluate the strictures. The length of the stricture was 3 to 4 centimeters and urinary passage was blocked completely. By history of the patient it was know that he was suffering from erectile dysfunction because of injury (Trauma).”

14. He was admitted on 21-3-2001 and operated for the Traumatic stricture Urethra, he under went transpubic urithroplasty. The stricture length was 3 to 4 centimeters and there was extensive callous which was removed. Postoperatively patient had wound infection which was treated. After removing the Unwarily Catheter / Cystoscopy was performed and adhesions and granucalation tissue were removed and catheter reinstated. He was discharged on 21.4.2001 to review back in urology O.P. after one week for cathetal removal.

After cathetral removal patient passed urine and readmitted on 16- 5-2001 for the management of recurrence of the stricture. He under went VIU (Visual Internal Urithrotonomy) endoscopic operation for the recurrence of tine stricture. He was discharged on 23-5-2001 for the removal of the Urothrill cathotic. He was called back to O.P. and catheter was removed, and he passed urine satisfactorily.

15. He was re-admitted on 11-6-2001 for narrowing of the urinary stream die to recurrence of the stricture. He under went endoscope report operation (VIU) and advised him to perform self dilatation. AS the nature of the injury is severe the results of the primary operation (Urithroplast) was explained to the patient required multiple operations and continuous fallow at periodical intervals because the initial trauma was severe and the results of operation will not be satisfactory in this type of injuries. Patient developed ere tile dysfunction following trauma. This could be due to impairment in blood supply or nerve supply to the penis. Ex. P. 5 which was already marked is the cut patient record shows about the regular and periodical visit and follow-up. Whenever a procedure was under taken he was advised to take medicines for two to three weeks. Most of the visits he was accompanied with his father. Totally there are 13 X-rays which were already marked as Ex. P-10 are pertaining to pelvic fracture and traumatic stricture of the Urethra. Some of the X-rays are related to post operation condition. How I see already marked Ex. P-11 which is the outpatient card dt. 11-12-2002 containing past operative follow- up after one year of self dilatation and erectile disjunction. Patient was passed urine satisfactorily with self dilatation. His urine flow rate was peak flow 31.3 average flow 16.3. He complained absence of nocturnal erections since the accident there was minimum tuniscence after sexual arosal. Regiscan and Papavarin (PIPE) were advised to evaluate erectile dysfunction at an endrology centre. xxx xxx xxx For erectile disjunction he might retire if he is willing prosthetic penile implantation which is an artificial erection. It is an expensive operation and fraught with complications.” In cross-examination, nothing could be elicited by Dr.P.V.L.N.Murthy which may cast doubt on his testimony regarding the nature of injuries and treatment given to the appellant by NIMS. PW-3 – Dr. V.Krishnammurty, Andrologist and Microsurgeon described the test conducted on the appellant. He denied the suggestion that the certificates Exhibits P-13 to P-16 and Exhibits P- 16 (a) to (c) were false.

16. From the testimony of three witnesses, it is established that as a result of accident the appellant had suffered grievous injuries in the pelvic region and he has become impotent. It is also established that he has already undergone multiple surgeries and will have to take treatment in institutes like NIMS for at least 10 years. Unfortunately, the Motor Accident Claims Tribunal, Raichur did not give due weight age to the evidence produced by the appellant and awarded meager compensation and that too by overlooking the documentary evidence produced by the appellant regarding the expenses incurred by him at Bhandari Hospital, Raichur and NIMS at Hyderabad. The High Court also failed to properly analyse and evaluate the evidence produced by the appellant and did not adequately enhanced the compensation determined by the Tribunal.

17. In our view, the appellant is entitled to Rs.2,20,000/- towards the expenses incurred in the treatment including hospitalization charges, mess and lodging charges, transportation, etc. For future medical expenses including hospitalization, medicines, attendant charges, etc., the appellant is entitled to Rs.6 lakhs. For pain, suffering and trauma, the appellant is entitled to a sum of Rs.3 lakhs. For loss of amenities and prospects of marriage, the appellant is entitled to Rs.4 lakhs. For loss of expectation of life and loss of future earning, the appellant is entitled to a sum of Rs.5 lakhs.

18. In the result, the appeal is allowed, the impugned judgment is set aside and it is held that the appellant is entitled to total compensation of Rs.20,20,000/- (rupees twenty lakhs twenty thousand only) with interest at the rate of 6% per annum from the date of filing the claim petition till the date of actual payment.

19. Since the offending vehicle was insured with respondent No.2 and no evidence was produced by it to prove that the driver was not having any valid license or that there was any breach of the insurance policy, respondent No.2 is held liable to pay the enhanced compensation and interest to the appellant. The needful must be done within a period of eight weeks by getting a demand draft prepared in his name from a nationalized bank.

20. If respondent No.2 has already paid the compensation awarded by the Tribunal and enhanced compensation awarded by the High Court then it shall pay the balance amount i.e. the enhancement granted by this Court along with interest within eight weeks from today by getting a demand draft prepared in the appellant's name from a nationalized bank.