

N. Manjgowda

v.

The Manager, the United India Insurance Co. Ltd

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE SHIVA  
KIRTI SINGH HON'BLE MR. JUSTICE C. NAGAPPAN

Civil Appeal No. 10192 Of 2013 & 10193 Of 2013 [Special Leave Petition  
(Civil) No. 401-402 Of 2013] | 12-11-2013

Shiva Kirti Singh, J.

1. Leave granted.

2. The appellant has preferred these appeals against final judgment and order dated 06.09.2012 whereby the High Court of Karnataka has dismissed appeal preferred by the appellant bearing M.F.A. No. 2386 of 2007 (MV) preferred for enhancement of compensation allowed in his favour by the judgment and Award dated 11.12.2006 in MVC No. 1322 of 2005 by the Additional Civil Judge (Senior Division) and Additional Member of Motor Vehicles Accident Claims Tribunal (MACT), Hassan, and partly allowed appeal preferred by the respondent-Insurance company bearing M.F.A. No. 6612 of 2007.

3. The appellant is an Advocate by profession. On 17.04.2005 while he was riding his motor bike and his wife was a pillion rider with him, he met with an accident involving motor bike of respondent no. 2. As a result, the appellant sustained grievous injuries over his hands, legs and spinal cord. He preferred claim petition on 05.12.2005 under Section 166 of the Motor Vehicles Act before the Tribunal claiming compensation of Rs. 15,00,000/- (rupees fifteen lacs) with interest at the rate of 18% p.a. from the respondent by way of just compensation for injuries, losses, medical expenses, loss of income due to disability, etc. By judgment and Award dated 11.12.2006 the Tribunal considered the relevant facts as well as evidence and awarded total compensation of Rs. 08,87,300/- (rupees eight lacs eighty seven thousand and three hundred only). This included an amount of Rs. 06,17,500 (rupees six lacs

seventeen thousand and five hundred only) on the head of Loss of income due to disability. The Tribunal also allowed interest at the rate of 6% p.a. from the date of petition till payment.

4. As noted earlier, the matter was taken in appeal to the High Court of Karnataka through two appeals, one preferred by the appellant complaining against inadequacy of the compensation and the other by the Insurance Company for reduction of the same. By the impugned judgment, the High Court reduced compensation of Rs. 06,17,500/- (rupees six lacs seventeen thousand and five hundred only) under the head Loss of Income due to disability to Rs. 01,50,000/- (rupees one lac and fifty thousand only) and accordingly the total amount of Rs. 08,87,300/- (rupees eight lacs eighty seven thousand and three hundred only) was reduced by a sum of Rs. 04,67,500/- (rupees four lacs sixty seven thousand and five hundred only). The appeal of the appellant seeking enhancement of compensation was dismissed without interfering with Award of compensation on eight other heads.

5. Before noticing the submissions it is useful to indicate that there is no dispute over most of the relevant facts except what should have been accepted as the annual income of the appellant, what would be appropriate multiplier and what should be taken to be the loss of income due to admitted disability. At the time of the accident appellant was aged about thirty six years.

6. The accident and the injuries sustained by the appellant are not in dispute. On the basis of the evidence of a treating physician, PW.36 a Neuro Surgeon, at the time of admission in the hospital it was found that the appellant had no strength in hands and legs, there was full loss of sensation below the neck and the urinary track was blocked. The Tribunal has taken a note of all the relevant details and injuries in paragraph 11 of its judgment and Award wherein it has been accepted on the basis of medical evidence that the appellant has sustained whole body disability of 50%. That paragraph 11 reads as follows:

11. PW3 Dr. Dhananjaya I. Bhat the Neuro Surgeon of Mangala Hospital has deposed the condition of the petitioner on 19.04.2005 at Sanjeevini Hospital, Hassan for having admitted the history of accident. On examination found that there was no strength in hands and legs, full loss of sensation below the neck,

the urinary track was blocked. M.R.I., revealed injury on neck spine, for which he was treated between 1 to two months as inpatient. The clinical treatment, physiotherapy and medicines were carried out during the course of treatment. The follow up examination of PW 1 on 01.10.2006 revealed that weakness of all four limbs at grade-4 out of normal 5 to the lower limb grade-3 out of normal 5 for upper limbs. The petitioner has to walk slowly require help for climbing steps, cannot run, he could not write sharply and speedy in his right hand. From his left hand not in a position to lock the shirt button, slow and difficult holding of spoon for feeding. The petitioner still having partial sensory loss over his limbs and improper co-ordination in all four limbs. The urinary dysfunction and is prone for urinary track infection and also kidney damage. The petitioner is suffering from pain and burning sensation and there is a disturbance in his sleeping. For these reasons for daily routine work of the petitioner require an assistant. For having evaluated the petitioner PW 3 has issued certificate as per Ex.P. 166. According to him the above: deformities caused 50% whole body permanent disability. PW 3 has been cross examined by the learned counsel for 2nd respondent. The cross-examination failed to bring out that the petitioner has not sustained, any disability, deformity and difficulty in doing his job. Except suggesting that the disability was excessively spoken to though that much of disability was not at all sustained, which in fact have been denied by the expert doctor. The petitioner being an advocate being suffered the above deformities certainly effects his functioning. Thus, the medical evidence is accepted holding that the petitioner has sustained whole body disability of 50%.

7. Although the appellant claimed that his earning was Rs. 15,000/- p.m. (rupees fifteen thousand only) and also produced copy of his Pan Card as Ex.P. 9 but on the basis of Income Tax Returns for the Assessment Year 2005-2006 showing income of Rs. 95,000/- p.a. (rupees ninety five thousand only), the Tribunal accepted annual income of the appellant to be Rs. 95,000/- (ninety five thousand) and selected 13 as the multiplier on the basis of the age of the appellant. According to the Tribunal the loss of earning could be 50% and hence it calculated the compensation on that head to be Rs. 06,17,500/- (rupees six lacs seventeen thousand and five hundred).

8. The High Court was called upon to decide the annual income of the appellant, the correct multiplier and the loss of income out of the total sum arrived at by

multiplying the annual income with the chosen multiplier. On account of the income tax returns, the High Court came to an opinion that the accident and the injuries which were proved to have caused 50% disability of whole body would have no effect on the earning capacity of the appellant. On the basis of decision of this Court in the case of Raj Kumar v. Ajay Kumar [JT 2010 (13) SC 38 : 2011 (1) SCC 343] the High Court proceeded to reconsider compensation for the loss of future income and reduced it from Rs. 6,17,500 to Rs. 1,50,000/-.

9. On behalf of the appellant the aforesaid reduction has been challenged on the ground that the view taken by the High Court ignores the nature of injuries which has been proved by medical evidence and reduction is without any rational basis because the High Court has neither doubted the annual income of the appellant nor the multiplier chosen by the Tribunal and has not addressed the issue raised by the appellant as to what should be the correct multiplier.

10. A perusal of the impugned judgment, particularly paragraph 22 thereof, shows that there is no basis for allowing only Rs. 1,50,000/- under the head Loss of future income.

11. This Court in the case of Yadava Kumar v. Divisional Manager, National Insurance Company Limited and Another [JT 2010 (9) SC 91 : 2010 (10) SCC 341] (to which one of us G.S. Singhvi, J. was a member) held that in determining compensation in non fatal accidents the Court should award just compensation by taking a reasonably compassionate view of things. While disapproving the view of the High Court is not allowing any compensation for loss of future earnings to the appellant this Court allowed Rs. 2,00,000/- (rupees two lacs) along with 8% interest. In that case the appellant was a Painter and had incurred disability of 33% in respect of right upper limb, 21% in left limb and 20% in respect of whole body. Paragraphs 15 and 16 of that report indicate the proper approach required of the Tribunal and the High Court in such matters. They are as follows:

15. It goes without saying that in matters of determination of compensation both the tribunal and the court are statutorily charged with a responsibility of fixing a just compensation. It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of just compensation obviously suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the courts. This

reasonableness on the part of the tribunal and the court must be on a large peripheral fields. Both the courts and the tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result becomes just and equitable (see *Helen C. Rebello v. Maharashtra SRTC* [JT 1998 (6) SC 418]).

16. This court also held that in the determination of the quantum of compensation, the court must be liberal and not niggardly inasmuch as in a free country law must value life and limb on a generous scale (see *Hardeo Kaur v. Rajasthan State Transport Corpn.* [JT 1992 (2) SC 409]).

12. In a recent judgment in the case of *Rekha Jain v. National Insurance Company Limited and Others* [JT 2013 (11) SC 42: 2013 (8) SCC 389], this Court drew a very relevant distinction between permanent disability which was found to be 30% and functional disability which this court held to be 100% on account of serious disfigurement of the face of the appellant because it was bound to cause loss of career for the appellant who in that case was an actress in films/T.V. features. Hence, it must be taken as a trite law that functional disability of an accident victim requires determination on the basis of nature of disability in the light of the career or profession which he or she was pursuing in life. It should not be computed mechanically only on percentage of physical disability.

13. In the present case the appellant has been found to suffer weakness of four limbs. He has to work slowly and requires help in climbing steps, cannot run, cannot write sharply and speedily with his right hand. With his left hand he cannot lock the shirt button and has difficulty in holding of spoon for self-feeding. He was having partial sensory loss all over his limbs and lacked proper coordination in all four limbs. It is the medical opinion that for these reasons the appellant requires an assistant for daily routine work. In view of aforesaid medical assessment of appellants condition after sustaining injuries in the accident and in the light of whole body disability of 50%, it would be certainly very difficult for the appellant to practice as an Advocate and compete with others so as to command confidence and acceptability of general clients. Unlike many other professions, legal profession requires not only sharp and focused mind but also good health and ability to put in hard work within a limited time

frame. The requirement of impressing the clients at the age of 36 is much more. It is only when a young Advocate has built a good impression and reputation, then in the evening of his life he may continue to command professional work on the basis of his acquired knowledge and reputation. A young Advocate is bound to suffer huge professional loss on account of injuries as have been sustained by the appellant and the condition in which the Doctor found him.

14. In the facts of the case we have no hesitation in holding that the High Court erred in reducing the loss of income due to disability. The amount on that head of Rs. 6,17,500/- did not require any reduction. On the other hand, the facts of the case persuade us that to do complete justice in the matter, the loss of earning should be treated as 70% and the appropriate multiplier should be 16 in place of 13. On that basis, the loss of income due to disability requires to be enhanced from Rs. 6,17,500/- by at least Rs. 4,00,000/- (rupees four lacs) although the exact amount would be a bit more. Accordingly, the impugned judgment of the High Court is set aside and the Award made by the Tribunal is modified by adding Rs. 4,00,000/- (rupees four lacs) towards the heading Loss of income due to disability. As a result, the total compensation payable to the appellant would now be Rs. 12,87,300/- (rupees twelve lacs eighty seven thousand and three hundred only) in place of Rs. 8,87,300/- (rupees eight lacs eighty seven thousand and three hundred only). Rest of the order of the Tribunal is confirmed. The enhanced amount shall also carry an interest at the rate of 6% p.a. from the date of petition till payment. The amount of compensation now found due shall be paid to the appellant within two months from the date of this order along with costs quantified at Rs. 15,000/-.

15. Accordingly appeals are allowed to the aforesaid extent.