

# SUPREME COURT OF INDIA

Rajasthan State Road Transport Corpn.

Vs.

Alexix Sonier & Anr.

C.A.No.2967 of 2012

(Ranjan Gogoi and R.K.Agrawal, JJ.,)

08.10.2015

## JUDGMENT

### **R.K. Agrawal, J.,**

1. This appeal has been filed by the Rajasthan State Road Transport Corporation (in short 'the Corporation'-the appellant herein against the judgment and order dated 23.04.2010 passed by the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in S.B. Civil Misc. Appeal No. 2629 of 2003 wherein the appeal filed by the present appellant has been partly allowed and the sum of US\$125,348.01 awarded by the Motor Accidents Claims Tribunal (in short 'the Tribunal') under the category 'Special Damages' has been disallowed and the remaining part of the award has been maintained. Civil Appeal Nos. 9944-9946 of 2011

2. The above appeals have been filed by Alexix Sonier through next friend-Mrs. Dominique Sonier (his mother)- against the aforementioned order passed by the High Court wherein the appeal filed by the claimant for enhancement of amount awarded by the Tribunal has been dismissed.

### Brief facts:

3. Alexix Sonier-the claimant is an American citizen. On 08.01.1988, the claimant was participating in a 'Peace March' along with the citizens of various other countries from Ahmedabad, in the State of Gujarat to Rajghat, in New Delhi. While participating in the aforesaid march along with a group of other persons, between Jaipur and Delhi, near Chandwazi, a bus of the Corporation, bearing Registration No. RNP-897, which was driven by one Banwari Lal Chowdhary rashly and negligently, at a very high speed, came and struck the claimant from behind. As a result of which, the claimant fell down on the road and became unconscious and sustained injuries in the said accident. The claimant was taken to the Sawai Man Singh Hospital, Jaipur where it was found that among other injuries he had also received head injury. Three surgical operations were performed on the claimant,

however, he did not regain consciousness. On medical advice, the claimant was shifted to Vadilal Sarabhai Hospital, Ahmedabad, Gujarat and despite all possible efforts, the condition of the claimant did not improve. He was discharged from the hospital at Ahmedabad on 22.04.1988 and shifted by air, under medical supervision of the doctors, to the United States of America. The claimant, through his next friend-Mrs. Dominique Sonier-his mother, filed a claim petition through an authorized person viz., Surendra Nath Singh Javeria. Mrs. Dominique Sonier-mother of the claimant also joined the said claim petition through that authorized person. In the claim petition, after narrating the entire facts of the accident, injuries as also the treatment undergone, a total sum of Rs. 2,02,36,000/- as compensation was claimed along with interest at the rate of 18% per annum from the date of filing of the claim petition till the actual date of payment.

4. The various heads under which the claimant had claimed damages/compensation are as follows:-

“(i) For treatment undertaken in India Rs. 1,50,000/- less Rs. 16411.79 = Rs. 1,33,588.21

(ii) Expenses to be paid to Dr. Chawala for his services + the amount spent in shifting the patient from Jaipur to Ahmedabad by air: Rs.1,40,000/-

(iii) The amount spent for treatment in America = Rs. 13,00,000/-

(iv) The amount proposed to be spent on keeping a nurse at home at the rate of Rs. 40,000/- per month. A sum of Rs. 4,00,000/- is claimed under this head.

(v) Compensation for loss of earning Rs. 1,68,000/-

(vi) Compensation for loss of future earnings Rs. 1,25,00,000/-

(vii) Compensation for physical and mental suffering Rs. 25,00,000/-

(viii) Compensation for need of a helper Rs. 25,00,000/-

(ix) Compensation for keeping an attendant Rs. 10,00,000/-

(x) Compensation for the loss of earning of his mother who will look after him Rs. 10,00,000/-—Hence, a total sum of Rs. 2,02,36,000/- was claimed.”

5. The Corporation, apart from raising the objections on technical grounds, denied the manner in which the accident occurred as stated in the claim petition. A specific stand was taken that the accident occurred on account of the negligence of the claimant himself and, at best, it was a case of contributory negligence as the claimant was trying to cross the road but midway he back tracked and met with an accident. It was further pleaded that the best

medical facilities were available at Jaipur and there was no need to shift the claimant from Jaipur to Ahmedabad without having the full treatment at Jaipur itself. Also, there was no necessity for the claimant to proceed to United States of America without proper treatment and the Corporation was not liable for the condition of the claimant- Respondent No. 1 herein. Further, the expenses in the claim petition were very high and exaggerated so also the amount of compensation claimed.

6. The Tribunal held the claim petition to be in accordance with law and properly presented. It, however, held that the accident had occurred on account of negligence on the part of the driver of the Corporation. The Tribunal, on the basis of evidence on record, awarded damages as follows:-

“(a) Special Damages Dollar Rupees

- (i) Expenses incurred on treatment in India 50,000/-
  - (ii) Air Fare for Jaipur to Ahmedabad 4,000/-
  - (iii) Air Fare to Ahmedabad to USA 1,00,000/-
  - (iv) Medical Expenses in USA borne by Medi-Cal 125,348.01
  - (v) Medical expenses in USA borne by parents 25,000.00
  - (vi) Future expenses on Medical Treatment 4,00,000/-
  - (vii) Loss of income by Claimant 408,000.00
  - (viii) Loss of income of attending mother 81,584.00
  - (ix) Future expenses for management of attendant 60,000.00
  - (x) Expenses on Two Commissions 1,61,954/- (b) General Damages
    - (i) For pain, sufferance and mental agony 10,00,000/-
    - (ii) For loss of amenities and enjoyment of life 10,00,000/-
- Total \$699,932.01  
Rs. 27,15,954/- So Total damages in Rupees: (699932.01 x 14) + 2715954 =  
Rs. 1,25,15,002.14 In round figure, it is Rs. 1,25,15,002/-“

The Tribunal further awarded interest at the rate of 6 per cent per annum with effect from the date of presentation of the claim petition, that is, 07.07.1988, after deducting a sum of Rs. 25,000/- paid to the two Commissioners who were appointed for the recording of evidence

and Rs. 1,16,411.69/- towards the expenses incurred and the amount paid by the Corporation for the treatment etc., in India to the claimant.

7. Being aggrieved by the Award dated 29.09.2003, the Corporation as also the claimant have filed appeals before the High Court. The High Court gave an opportunity to the parties to arrive at a mutual settlement regarding the claim but the Corporation declined to negotiate the matter. It may be mentioned here that on an application filed by the claimant before the Tribunal seeking appointment of a Commissioner to the United States of America to record the statements of 11 persons, the Tribunal, vide order dated 11.07.1990, allowed the said application to record the statements of 11 persons as mentioned in the order and also appointed a Commissioner for that purpose. It was contended by the appellant that AW-10A to AW-19 all of whom except AW-18 were not named in the order dated 11.07.1990. The Commissioner submitted his report and also the evidence of all the persons recorded by him before the Tribunal. No objection was taken by the Corporation regarding recording of evidence of persons not named in the order dated 11.07.1990. In fact, the Tribunal, in its order dated 24.06.1991, has specifically recorded that Mr. Manish Bhandari, learned counsel who appeared on behalf of the Corporation was asked as to whether he has any objection to take on record the statements of witnesses but he did not raise any objection and the statements of witnesses were taken on record.

8. Before the High Court, the Corporation took an objection that the evidence recorded by the Commissioner of the persons who were not named in the order dated 11.07.1990 cannot be taken into consideration. The Corporation also objected to the order of the Tribunal awarding damages under the head 'Special Damages' in respect of medical expenses incurred in United States of America borne by Medi-Cal amounting to US\$125,348.01 on the ground that witness AW-18 had admitted that in the State of California a medical programme is in force under which persons who were not covered under any insurance and/or unable to pay their medical expenses, all their medical expenses will be borne by the State. According to the Corporation, since the aforesaid amount has been awarded under the head of medical expenses borne by Medi-Cal, the claimant cannot be held entitled to receive the aforesaid amount of US\$125,348.01 and the same is liable to be reduced. It was further submitted before the High Court that the claimant has failed to prove the negligence on the part of the driver of the Corporation and the Tribunal has erred in applying and holding the Corporation liable. The High Court, on appreciation of evidence on record, upheld the findings of the Tribunal that the driver of the bus of the Corporation was negligent and driving the bus rashly and it is not a case of contributory negligence, however, the High Court deleted the amount of US\$125,348.01 under the head of special damages on the ground that there is no manner for the courts in India to verify the fact as to whether or not the aforesaid amount will be paid to the concerned Medi-Cal department by the claimant and apart from it, no statutory enactment of any such Scheme was produced before the Court in evidence of existence of such a Scheme for the Court to take cognizance of. Moreover, there is no averment in the claim petition regarding the amount spent by the Medi-Cal Programme and for reimbursing the aforesaid amount to the said department. The High Court further held that the statements of the persons recorded by the Commissioner, pursuant to the order dated 11.07.1990, cannot

be ignored and have to be taken into consideration in view of the fact that the Corporation had raised no objection, as would be clear from the order dated 24.06.1991. The High Court, however, declined to enhance the amount of award by the Tribunal by stating that it cannot be said to be inadequate.

9. Heard the arguments advanced by learned counsel for the parties and perused the records. Since a common question of law and facts arise in these appeals, they are being disposed of by this common judgment.

10. Learned Counsel for the Corporation submitted that the High Court erred in law in upholding the order of the Tribunal awarding compensation to the claimant which is highly on the exaggerated side. He further submitted that the claimant had not claimed any damages in terms of US Dollars and claim was made only in Indian currency, therefore, the award of compensation by the Tribunal as upheld by the High Court in respect of certain claims in US Dollars was not justified in law. He further submitted that there was no question of applying the currency exchange rate of Rs. 14 per US Dollar as the claim itself has not been made in it. He further contended that the driver of the bus of the Corporation was not at fault and he was not driving the bus rashly or speedily and in fact, if at all, the accident was a result of contributory negligence, and therefore, the Corporation is not liable to pay any amount as damages or compensation.

11. Learned counsel for the claimant, on the other hand, submitted that the High Court was not justified in deleting the medical expenses in USA borne by Medi-Cal, as in the State of California, it is government policy that medical treatment is to be given by the State to such persons who are unable to afford and further such persons are not reimbursed by anybody else, however, if any reimbursement of any medical expense is received, it has to go to the State. He further submitted that the claimant was entitled to the amount given by the Tribunal under expenses borne by Medi-Cal. He further submitted that the claimant was also entitled for the amount to be spent for helper/attendant to be engaged as the claimant had suffered brain injury and have been confined to bed. According to him, as the expenses have been incurred and are to be incurred in US dollars, exchange rate which was prevalent at the time of the passing of the award by the Tribunal ought to be given. In support of this, he placed reliance on a decision of this Court in *Sanjay Verma vs. Haryana Roadways*<sup>1</sup>

12. With regard to the plea taken by the Corporation that the statement of the persons recorded by the court appointed Commissioner, who were not named in the order dated 11.07.1990 cannot be taken on record is concerned, we find that though the Commissioner has recorded evidence of persons viz., AW-10A to AW- 19 except AW-18 who were not named in the order dated 11.07.1990, yet, when the Commissioner filed the report along with the evidence so recorded, a specific question was put to the counsel of the Corporation as to whether he has any objection but he did not raise any objection as would be clear from the order dated 24.06.1991 passed by the Tribunal which for ready reference is reproduced below:

“On behalf of the applicant Shri Bhartiya and on behalf of R.S.R.T.C Shri Manish Bhandari and Commissioner Shri Bhag Chand Jain are present. Today Shri Bhag Chand Jain, court commissioner presented an application annexing the statements which he recorded of 10 witnesses after visiting America. Shri Manish Bhandari was asked whether he has any objection to take on record the statement of witnesses Dr. E.Scott Conner, Dr. Thomas Z. Weber, Mr. Courtney Billups, Mr. Kent Furguson, Mr. Walter Joseph Babine, Mr. Jan Robert, Mrs. Nancy Brooks, Miss Maureen Mckenzie, Mrs Carole Kellogg and Mr. Ivan Sonier. Mr. Ivan Sonier which was recorded in his presence. He did not raise any objection. Therefore the aforesaid statements of witnesses are taken on record and exhibited as AW 10A and AW-19. The applicant concludes his depositions.”

In this view of the matter, it is not now open for the Corporation to raise this plea.

13. So far as the question as to whether the accident in question which occurred on 08.01.1988 was a result of contributory negligence or the driver of the bus of the Corporation was driving rashly and speedily is concerned, we find that the driver of the bus had denied that any accident in fact had taken place, however, the site plan (Exh. 52), which has been taken into consideration by the High Court, shows that the bus was driven at a sufficiently high speed and skid marks of the tyres of bus are about 32 ft. in length which were because of the speed of bus. The speed of the bus was quite high and at the relevant time it cannot be stopped immediately. The High Court has, therefore, correctly held that the bus was driven rashly and negligently and at a very fast speed. Therefore, the question of accident being a result of contributory negligence does not arise. So far as the question regarding the amount of damages/award in respect of Medical, which has been deleted by the High Court is concerned, we are of the considered opinion that in the State of California, there is a Scheme under which persons who are not covered under any insurance scheme like claimant are extended medicare facilities for which no payment is to be made by such persons and only the amount received as reimbursement has to be handed over to the Medical Department. In the present case, we find that the Medical Department has already incurred expenses for the treatment of the claimant. It will be very difficult to keep a track, as observed by the High Court, as to whether the amount awarded under this head would be paid over to the Medi-Cal Department or not, and therefore, in our considered view, the High Court was justified in modifying the award of the Tribunal by disallowing US\$125,348.01 under the category ‘Special Damages’ relating to the Medical.

14. However, we find that the claimant had claimed a sum of Rs. 10 lakhs for keeping an attendant for the entire life. Neither the Tribunal nor the High Court had given any amount under the said head. We find that this Court, in the case of Sanjay Verma (supra), has held that where any claim is made towards cost of attendant from the date of accident till he remains alive and it is also proved, then that claim is justified. In paragraph 22 of Sanjay Verma (supra) this court has held as follows:

“22. In the claim petition filed before the Motor Accidents Claims Tribunal the claimant has prayed for an amount of Rs 2,00,000 being the cost of attendant from the date of accident till he remains alive. The claimant in his deposition had stated that “he needs one person to be with him all the time”. The aforesaid statement of the claimant is duly supported by the evidence of PW 1 who has described the medical condition of the claimant in detail. From the aforesaid materials, we are satisfied that the claim made on this count is justified and the amount of Rs 2,00,000 claimed by the claimant under the aforesaid head should be awarded in full. We order accordingly.”

Following the principles laid down by this Court in Sanjay Verma (Supra) reproduced above, we accordingly hold that the claimant is entitled for a sum of Rs. 10 lakhs plus interest at the rate of 6 % per annum from the date of presentation of the claim petition till the date of actual payment towards expenses to be incurred for keeping an attendant for the rest of his life to look after him.

15. We further find that even though the claimant had not claimed any amount in US dollars in the claim petition and the entire claim was in the Indian currency, the amount awarded by the Tribunal in respect of some of the items under head ‘Special Damages’ has been given in terms of US dollars and the exchange rate has been applied at the rate of 14 per US dollar. This has been done on the specific finding that the claimant himself had claimed exchange rate of Rs. 14 per US dollar. Even though this Court in the case of *United India Insurance Co. Ltd. and Others. Vs. Patricia Jean Mahajan and Others*<sup>2</sup> has held that there would be three relevant dates for the purpose, viz., the date on which the amount became payable, the date of the filing of the suit and the date of the judgment and it would be fairer to both the parties to take the latest of these dates, namely, the date of passing of the decree as the relevant date for applying the conversion rate. Yet, where the prayer for passing a decree is indicated in rupees, there would not be any dispute regarding what rate of conversion to be applied. As in the present case, we find from the claim petition that claimant had claimed the amount only in Indian rupees and there is no specific mention of US dollars, there is no question of applying any exchange rate. The Tribunal, while awarding compensation under the head ‘Special Damages’ in terms of US dollars when converted into Indian rupees, we find that the amount comes much less than the amount claimed by the claimant in the claim petition. Therefore, there is no question of any further reduction in the said amount.

16. We are also of the view that the amount awarded by the Tribunal as modified by the High Court and further modified by us by awarding a sum of Rs. 10 lakhs towards the cost of helper/attendant is appropriate and does not call for any further enhancement. In view of the aforementioned discussions, Civil Appeal No. 2967 of 2012 is dismissed. However, Civil Appeal Nos. 9944-9946 of 2011 are partly allowed. Interlocutory applications, if any, are disposed of accordingly. In the facts and circumstances of the case, the parties shall bear their own costs.

Judgment Referred.

*1(2014) 3 SCC 0210*  
*2(2002) 6 SCC 0281*