

SUPREME COURT OF INDIA

Lal Singh Marabi

Vs.

National Insurance Company Ltd.

C.A.No.3764 of 2017

(Jagdish Singh Khehar,CJI., N.V. Ramana and Dr.D.Y.Chandrachud,JJ.,)

15.02.2017

ORDER

N.V. Ramana,J.,

SLP(Civil)No.21856 of 2014

1. Delay condoned. Leave granted.

2. The appellant, who was severely injured in a motor accident, has preferred this appeal aggrieved by the quantum of compensation awarded by the Principal Bench of the High Court of Madhya Pradesh at Jabalpur by its judgment and order dated 4th April, 2013.

3. Briefly stated the undisputed facts are that on 13th April, 2004 when the appellant was travelling in a mini bus from Mandla to Bamhni, being driven by Respondent No. 1, suddenly it turned turtle at a place called Kishanpuri Ghat, resulting in grievous injuries to his left leg. He was rushed to the Medical Hospital at Jabalpur where he underwent treatment till 19th April, 2004. As his condition was deteriorating, he was referred to Victoria Hospital at Jabalpur where in order to save his life his left leg had to be amputated from the thigh portion and he remained there as an indoor patient till 5th June, 2004.

4. Owing to the permanent disability caused on account of the amputation of his leg, the appellant filed a claim petition before the Motor Vehicle Accident Claims Tribunal seeking compensation of Rs.10,10,000/-. The driver and owner of the bus were made parties along with the insurance company. For claiming the said amount, the appellant took a plea that he was a professional driver with a monthly earning of Rs.4,000/- which he lost due to the 90% disability sustained over the accident.

5. The Tribunal decided the claim petition observing that (i) the driver (Respondent No. 2 herein) drove the vehicle negligently which caused the accident; (ii) the claimant (appellant) suffered serious injuries due to the accident and consequently his left leg has been severed from the upper portion of thigh, causing permanent disability; and (iii) that on the

date and at the time of the accident, the driver of the bus Respondent No. 2 herein, did not possess a valid license for driving the vehicle. The Tribunal observed that the claimant appellant could not prove the fact of his earning Rs.4,000/- p.m. by doing the driving job as he did not produce any driving license or authentic evidence to establish his monthly earnings. The Tribunal came to the conclusion that the annual income of the appellant would have been Rs.15,000/- and the accident caused a 60% decrease in his work efficiency. The Tribunal, therefore, fixed Rs.1,62,000/- for physical and mental pain and compensation for the future by applying a multiplier of '18' in view of the appellant's age being 29 at the time of the accident, besides Rs.60,000/- for an artificial limb, Rs.40,000/- for medical expenses and Rs.13,000/- towards expenses incurred for food, travelling etc. The Tribunal thereby directed a total compensation of Rs.2,75,000/- payable by the driver and owner of the bus severally and jointly together with interest @ 6% p.a. and exempted the insurance company from liability.

6. Aggrieved by the quantum of compensation ordered by the Tribunal exempting the liability of the insurance company, the appellant approached the High Court by way of a Miscellaneous Appeal. The High Court, upon deeming the annual income of the appellant to be Rs.24,000/- enhanced the compensation amount to Rs.2,44,800/- under the head 'permanent disability' and awarded the total amount of Rs.3,57,800/-, after applying a multiplier of '17'. Though the High Court agreed with the Tribunal that the insurance company is not liable to bear the burden of the awarded sum, in view of decision of this Court in *National Insurance Co. Ltd. Vs. Swaran Singh & Ors'*., it directed National Insurance Company to pay the awarded sum to the appellant first and recover the same from the driver and owner of the bus.

7. We have heard learned counsel for the parties. It is the contention of the appellant that the Courts below have committed a grave error in not considering the monthly income of the appellant at par even with an unskilled worker whose minimum wage in the State of Madhya Pradesh is about Rs.4,000/- p.m. The appellant was the only earning member of the family, who lost his livelihood due to the accident that resulted in amputation of his leg resulting in a 90% permanent disability and requiring him to spend about Rs.2.5 lakhs for fixing an artificial limb. Learned counsel further argued that while calculating the compensation amount the Courts below did not correctly appreciate the loss of expectation of life, loss of impairment of physiological functions, medical expenses, pain and mental suffering of the appellant.

8. Learned counsel appearing for the insurance company pleaded that the present appeal is filed belatedly that at the instance of owner of the bus against whom Respondent No. 1 has got recovery rights. It was urged that only with an ulterior motive to prevent the insurance company from proceeding with recovery, the owner of the bus got this appeal filed with the connivance of the appellant.

9. Having heard learned counsel on either side, this Court is of the opinion that there is no denial of the fact that the appellant had suffered a major injury in the accident and sustained a permanent disability by the amputation of his left leg. Consequently, the appellant,

who was only 29 years old at the time of accident, has undergone agony, both physically and mentally besides spending money on his treatment and for the artificial limb. It is clear from the medical certificate issued by Dr. Naveen Kothari (PW-2) that due to the amputation of his leg, the appellant sustained a permanent disability of 90%. We find from the impugned judgment that the Courts below have reduced the permanent disability factor from 90% to 60%. We are not satisfied with the reasoning of the Courts below for reducing the permanent disability determined by the Doctor to 60% on the ground that despite the amputation of his left leg, the remaining body of the appellant is healthy. Upon appreciating the factual matrix of the case including the fact that with the amputated leg the appellant cannot pursue his livelihood as a driver or daily wage labourer and taking into account the Doctor's Certificate, we are of the considered opinion that the appellant has sustained a 90% permanent disability due to the accident.

10. Thus, considering the appellant's annual income as Rs.24, 000/- p.a., 90% of it would come to Rs.21,600/- and applying the multiplier 17, he would be entitled under the head of 'permanent disability' to compensation computed at Rs. 3,67,200/- (i.e.Rs.21,600 multiplied by 17). In our view, the appellant is also entitled to get Rs.1,00,000/- instead of Rs.60, 000/- as awarded by the High Court towards the cost of the artificial limb.

11. Taking into account the aforesaid figures, the total quantum of compensation amount would stand enhanced from Rs. 3,57,800/- as awarded by the High Court, to Rs. 5, 20, 200/- and we order accordingly. Needless to say that the appellant is also entitled to receive interest at the rate of 6% p.a. from the date of filing of the claim petition till realization of the amount. The insurer, Respondent No.1 shall pay the awarded amount of Rs.5,20,000/- plus interest accrued thereon to the appellant within six weeks from today, and recover the same from Respondent Nos. 2 & 3 severally and jointly.

12. The appeal stands allowed accordingly with no order as to costs.

Judgment Referred.

¹(2004) 3 SCC 0297