

SUPREME COURT OF INDIA

Jagdish

Vs.

Mohan

C.A.No.2217 of 2018

(Dipak Misra,CJI., A.M.Khanwilkar and Dr.D.Y.Chandrachud,JJ.,)

06.03.2018

JUDGMENT

Dr D.Y.Chandrachud,J.,

SLP(C) No 7739 of 2017

1. The appellant was injured in a motor accident. The Tribunal awarded compensation of Rs. 12,81,228/- for the injuries suffered by him. The High Court enhanced the award of compensation by an amount of Rs.2,19,000/-. Interest of 7.5 per cent per annum has been awarded from the date of the filing of the claim. The appellant seeks an enhancement of compensation.

2. The appellant was 24 years of age when the accident took place on 24 November 2011. The accident occurred at 4pm when the appellant and another person were riding on a motor cycle. The appellant who was riding the motor cycle at a moderate speed indicated to a dumper which was ahead of him to allow him to pass. When the appellant was passing the vehicle, it swerved on the driver's side and hit the motor cycle of the appellant. The appellant was injured in the course of the accident.

3. The nature of the injuries is evident from the following extract from the judgment of the Motor Accidents Claims Tribunal No. 2, Kota.

“As for the claimant due to the injuries received by the claimant he has suffered 90% permanent disability... The claimant came to give evidence in the matter. looking at both the hands of the claimant it was noted that. the hands are not able to perform any function. It has also been submitted on behalf of the claimant that the claimant himself is unable to eat food or go to toilet for which he requires the assistance of someone else as both his hands are unable to perform any function as it has been stated in Exhibit 168. In such situation if a person of labour class suffers from an injury due to which 90% of both his hands are unable to perform any function then in such situation the claimant would have same difficulty which would be the permanent

disability of his body. Therefore relying on Exhibit 168 I hold that there has been loss of 90% of earning ability of the claimant”.

4. The Tribunal found that there was negligence on the part of the driver of the dumper and that the appellant was liable to be compensated for the injuries sustained by him.

5. In computing the amount of compensation, the Tribunal noted that the appellant was a carpenter and had claimed that he was in receipt of an income of Rs. 6,000/- per month. In the absence of documentary evidence, the Tribunal took the monthly income of the appellant at Rs. 4,050/-. The appellant having been found to suffer from 90 per cent disability, the loss of the future monthly income was computed at Rs. 3645/-. The Tribunal applied a multiplier of 18 and held that the appellant was entitled to compensation for loss of future income of Rs. 7,87,320/- (Rs. 3645 X 12 X 18). The Tribunal awarded an amount of Rs. 1.80 lakhs on account of mental and physical hardship and agony, Rs. 90,000/- for loss of comfort, Rs. 25,000/- for expenses and Rs. 95,908/- on account of medical expenses. An amount of Rs. 1 lakh was awarded for attendant charges. The Tribunal awarded a total amount of Rs. 12,81,228/- as compensation on which interest was allowed at the rate of 7.5 per cent per annum from the date of the filing of the claim petition. No amount was awarded towards expenses for future treatment.

6. In appeal, the High Court awarded an additional amount of Rs. 2,19,000/-. The High Court directed that if the enhanced amount is not deposited within 8 weeks, it would carry interest at 9 per cent per annum.

7. The appellant has sought an enhancement of compensation under the following heads:

“(i)The Tribunal ought to have, but did not award any amount towards loss of future prospects. The appellant submits that in view of the recent judgment of the Constitution Bench in National Insurance Company Limited v Pranay Sethi , he would be entitled to be compensated for loss of future prospects even though he is self-employed;

(ii)According to the appellant, the nature of the injuries suffered, resulting in a total loss of the functionality of both the hands would require compensation to be computed on the basis of a disability of 100 per cent and not 90 per cent; and

(iii) The income as claimed of Rs. 6,000/- per month should be the basis of computation and not Rs. 4,050/- as allowed by the Tribunal and confirmed by the High Court.

8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:

- (i) Pain, suffering and trauma resulting from the accident;
- (ii) Loss of income including future income;
- (iii) The inability of the victim to lead a normal life together with its amenities;
- (iv) Medical expenses including those that the victim may be required to undertake in future; and
- (v) Loss of expectation of life.

In *Sri Laxman @ Laxman Mourya v Divisional Manager, Oriental Insurance Co. Ltd*¹, this Court held:

“The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim’s inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.”

In *K Suresh v New India Assurance Company Ltd*², this Court adverted to the earlier judgments in *Ramesh Chandra v Randhir Singh*³ and *B Kothandapani v Tamil Nadu State Transport Corporation Limited*⁴. The Court held that compensation can be granted for disability as well as for loss of future earnings for the first head relates to the impairment of a person’s capacity while the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself. In *Govind Yadav v New India Assurance Company Limited*⁵, this Court adverted to the earlier decisions in *R D Hattangadi v Pest Control (India) (Pvt) Ltd*⁶, *Nizam’s Institute of Medical Sciences v Prasanth S Dhananka*⁷, *Reshma Kumari v Madam Mohan*⁸, *Arvind Kumar Mishra v New India Assurance Company Limited*⁹, and *Raj Kumar v Ajay Kumar*¹⁰ and held thus:

“18. In our view, the principles laid down in *Arvind Kumar Mishra v. New India Assurance Co. Ltd*¹¹. and *Raj Kumar v. Ajay Kumar*¹² must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then 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 his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.” (Id at page 693) These principles were reiterated in a judgment of this Court in *Subulaxmi v MD Tamil Nadu State Transport Corporation*¹³ delivered by one of us, Justice Dipak Misra (as the learned Chief Justice then was).

9. Having regard to these principles, it would be now appropriate to assess the case of the appellant for enhancement of compensation. The accident took place on 24 November 2011. The appellant was a skilled carpenter and self-employed. The claim of the appellant that his

earnings were Rs. 6,000/- per month cannot be discarded. This claim cannot be regarded as being unreasonable or contrary to a realistic assessment of the situation on the date of the accident.

10. In the judgment of the Constitution Bench in *Pranay Sethi (supra)*, this Court has held that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals. In the case of a self-employed person, an addition of 40 per cent of the established income should be made where the age of the victim at the time of the accident was below 40 years. Hence, in the present case, the appellant would be entitled to an enhancement of Rs. 2400/- towards loss of future prospects.

11. In making the computation in the present case, the court must be mindful of the fact that the appellant has suffered a serious disability in which he has suffered a loss of the use of both his hands. For a person engaged in manual activities, it requires no stretch of imagination to understand that a loss of hands is a complete deprivation of the ability to earn. Nothing - at least in the facts of this case - can restore lost hands. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity. The Tribunal has noted that the appellant is unable to even eat or to attend to a visit to the toilet without the assistance of an attendant. In this background, it would be a denial of justice to compute the disability at 90 per cent. The disability is indeed total. Having regard to the age of the appellant, the Tribunal applied a multiplier of 18. In the circumstances, the compensation payable to the appellant on account of the loss of income, including future prospects, would be Rs. 18,14,400/-. In addition to this amount, the appellant should be granted an amount of Rs. 2 lakhs on account of pain, suffering and loss of amenities. The amount awarded by the Tribunal towards medical expenses (Rs. 98,908/-); for extra nourishment (Rs. 25,000/-) and for attendant's expenses (Rs. 1 lakh) is maintained. The Tribunal has declined to award any amount towards future treatment. The appellant should be allowed an amount of Rs. 3 lakhs towards future medical expenses. The appellant is thus awarded a total sum of Rs. 25,38,308/- by way of compensation. The appellant would be entitled to interest at the rate of 9 per cent per annum on the compensation from the date of the filing of the claim petition. The liability to pay compensation has been fastened by the Tribunal and by the High Court on the insurer, owner and driver jointly and severally which is affirmed. The amount shall be deposited before the Tribunal within a period of 6 weeks from today and shall be paid over to the appellant upon proper identification.

12. The appeal is accordingly allowed. There shall be no order as to costs.

Judgment Referred.

¹ (2017) 13 SCALE 0012

² (2011) 12 SCALE 0658

³ (2012) 12 SCC 0274

⁴ (1990) 3 SCC 0723

⁵ (2011) 6 SCC 0420

⁶ (2011) 10 SCC 0683

⁷ (1995) 1 SCC 0551

⁸ (2009) 6 SCC 0001

⁹ (2009) 13 SCC 0422

¹⁰ (2010) 10 SCC 0254

¹¹ (2011) 1 SCC 0343

¹² C.A.No.7750 of 2012