

ORISSA HIGH COURT

Orissa Road Transport Co. Ltd

Vs

Umakanta Singh

Misc. Appeals Nos. 190 to 192 and 194 of 1977

(H.L. Agrawal, C.J. and S.C. Mohapatra, J.)

25.08.1986

JUDGEMENT

S.C. Mohapatra, J.

1. Determination of just compensation to the persons injured and the legal representatives of the persons, who became victims of the collision between a passenger bus of the appellant and 37-Up Howrah-Madras Janata Express, is the subject-matter of these four appeals under Section 110-D of the Motor Vehicles Act, 1939 (in short 'the Act'). The learned single Judge who heard these four appeals has referred them to be decided by a Division Bench, since he could not accept the principle adopted by an earlier single Judge decision of this Court reported in (*Commissioner, N.C.C. Group, Cuttack v. Smt. Nirmala Maharana*¹). The passage in dispute reads as follows :-

"The average bank rate of interest has been 10 per cent on term deposits for a term of three years and above. If Rs. 25,000/- is deposited, it would earn interest of 2,500/- a year and that should adequately compensate the claimants taking into account the possibility of variation of the rate of interest and the losing value of the rupee on account of deflation."

2. Mr. Y.S.N. Murty, the learned counsel for the appellant, taking advantage of the order of reference where the learned single Judge referred the appeals to be decided by the Division Bench challenged the award of the Tribunal on all points. In spite of the fact that the learned single Judge gave clear findings on all points, except determination of the just compensation, we permitted Mr. Murty to argue on all points since on account of the matter being referred to a Division Bench the appellant lost the right of appeal to Division Bench against the order of the learned single Judge.

3. All the claim applications were heard together by the Tribunal and one set of evidence was led. There was one common award against which these four appeals have been filed. The learned single Judge heard all the four appeals together. Since these appeals arise out of the same facts and common questions are involved, we heard them analogously and they are disposed of by this common judgment.

4. These four appeals arose out of the following facts : On 29-7-1975 at about 10.30 am. the passenger bus (ORG 2351) left the Puri-Cuttack Road (State High Way No. 8) towards Vani Vihar. After a very short distance it was to cross a manually operated railway level crossing, the driver had to stop the bus on the railway track to give space to a truck coming from the opposite direction to pass. The bus which had starting trouble from before became immobile on account of the starter going off. A few minutes after the train was seen to be reaching the level crossing. The imminent approach of the train caused panic to the passengers who began to get down and run for safety. Shortly after the train dashed against the immobile bus on the track with a few passengers left inside resulting fatal injuries to two passengers and serious bodily injuries to two others. Legal representatives of the two deceased passengers and the two injured passengers filed the four claim petitions under Section 110-A of the Act against the appellant and We South Eastern Railways for compensation.

5. Injured Umakanta Singh, who is respondent 1 in M.A. No. 190 of 1971, was aged about 21 years at the time of accident and was a Post Graduate student in Political Science in Utkal University. As a result of the accident, he sustained multiple injuries and his right leg had to be amputated after a prolonged treatment from 29-7-1975 to 28-3-1976 and he had to artificial limb fitted at Poona. His claim is on the following counts :

(i) Mental shock ..	Rs. 6,000/-
(ii) Physical pain ..	Rs. 5,000/-
(iii) Expenses incurred for treatment from the date of accident till the date of filing of the claim petition on 14-11-1975. ..	Rs. 4,000/-
(iv) Future probable expenditure ..	Rs. 6,000/-
(v) Loss of pleasure in life and longevity ..	Rs. 10,000/-
(vi) Loss of future career and income at Rs. 400/- per month till the injured completes the age of 70 years.	Rs. 1,50,000/-
Total	Rs. 1,81,000/-

From out of it, the claimant adjusted Rs. 1,000/- already received and claimed the balance of Rs. 1,80,000/-.

6. Injured Nityananda Ray, who is respondent 1 in M.A. No. 194 of 1977, was aged about 42 years at the time of accident. He was a lecturer in Vani Vihar drawing a monthly salary of Rs. 670/-. He sustained multiple injuries including fracture of femurs, right pelvis bone and inclination of left pelvis. He made a consolidated claim towards mental shock and physical pain, decrease in physical efficiency, happy healthy life and longevity and medical expenses of Rs. 3,000/- consolidating the same to Rs. 25,000/-. Having already received Rs. 1,000/- as compensation, he claimed Rs. 24,000/- in his claim petition.

7. Deceased Khetrabasi Nanda, who was aged 39 years at the time of accident, was a Copyist in the Utkal University and was drawing a monthly salary of about Rs. 300/-. His widow, five minor daughters and only minor son, who are respondents 1 to 7 in M.S. No. 191 of 1977, claimed Rs. 74,000/- (Rs. 8,000 towards compensation for mental shock and Rs. 66,000/- towards loss of dependency). Adjusting Rs. 1500/- already received by them, they filed a petition claiming Rs. 72,500/-.

8. Deceased Shyamsundar Rath, who was aged about 47 years at the time of accident, was Grade I Assistant in the Utkal University and was drawing salary of about Rs. 600/- per month. His widow, two minor daughters and two minor sons, who are respondents 1 to 5 in M.A. No. 192 of 1977, assessed their claim to be Rs. 78,000/- (Rs. 8,000/- towards mental shock and Rs. 70,000/- towards loss of dependency). Adjusting Rs. 1500/- already received, they claimed Rs 76,500/-.

9. In the written statement, the appellant took the plea that all the passengers having got down from the bus by the time of accident, the railway administration would only be liable for having kept the gate open to permit the bus to enter in.

10. The Deputy Chief Commercial Superintendent of the South Eastern Railways, in the written statement asserted that the driver of the bus drove in despite warning of the gateman who was just going to close the gate after allowing a truck on the midway to get out of the crossing, on getting information that a train was to shortly pass through the level crossing. The maintainability of the claim against railways before the Tribunal constituted under the Act was also challenged.

11. On appreciation of evidence, the Tribunal found :

- 1) Claim against railway administration is not maintainable;
- (ii) Railway administration had no negligence, and
- (iii) the appellant is directly liable for the accident to pay compensation.

12. It awarded compensation as under;

(a) Umakanta Singh and another -	(M.A. No. 190 of 1977)
(i) Expenditure for treatment.	Rs. 5000/-
(ii) Pain and suffering	Rs. 10,000/-
(iii) Inconvenience in life and loss of longevity	Rs. 10,000/-
(iv) Loss of earning capacity at Rs. 300/- per month for 25 years.	Rs. 75,000/- (deducting 1/6th out of Rs. 90,000/- on account of lump sum payment and future uncertainties.)Rs. 1,00,000/- (one lakh)

(b) Nityananda Ray and another (M.A. No. 194 of 1977) Pain and agony Rs. 15,000/-

(c) Legal representatives of deceased Khetrabasi Nanda (M.A. No. 191 of 1977) :

Loss of dependency for 23 years @ Rs. 160/- per month Rs. 37,000/- (deducting 1/6th out of Rs. 44,160/-)

(d) legal representatives of deceased Shyamsundar Rath (M.A No. 192 of 1977) : Loss of dependency for 12 years at Rs 300/- per month deducting Rs. 5,000/- for subsequent employment of the widow (further deducting one-sixth from Rs. 38,200/-)

Rs. 32,000/-

13. On the submission of Mr. Y.S.N. Murty the following points arise for consideration in these appeals.

- (a) Whether the Tribunal constituted under the Act has jurisdiction to make the railway administration liable to compensate the claimants ?
- (b) Whether the gateman of the level crossing was negligent in any manner to be guilty of contributory negligence ?
- (c) Whether the appellant is liable to pay the compensation to the claimants ?
- (d) Whether the determination of compensation amount which would be adequate to earn the annual loss of dependency should be held as just ?

14. Point (a) : From the plain language of Section 110-B of the Act, it is clear that the Tribunal has jurisdiction to direct the insurer, owner and driver of the vehicle responsible for the accident to pay the compensation. Section 110-B reads as follows :-

"110-B. Award of the Claims Tribunal. - On receipt of an application for compensation made under Section 110-A, the Claims Tribunal shall after giving the parties an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and subject to the provisions of Section 109-B, may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be".

Tribunal being a creature of the statute is required to exercise the power vested in it. In the absence of any other provision authorizing the Tribunal to direct persons other than the owner, driver and insurer to pay compensation determined by it, there is no scope for directing the railway administration to pay compensation. There is, thus, no scope to interfere with the finding of the Tribunal which has been affirmed by the learned single Judge.

15. Point (b) :- The part played by the railways has to be considered to find out the extent of negligence of the driver of motor vehicle even though no direction can be given to it for payment of the compensation. In order to determine the same, I perused the materials on record. P.Ws. 5, 6 and O.P.W. 1 speak about the accident. P.Ws. 5 and 6 were the passengers who got down from the bus to escape unhurt. O.P.W. 1 was the conductor. From the evidence of P. W. 5 it is clear that the gateman was attempting to close the gate when the bus entered in. There was sufficient time for the bus for its exit out of the level crossing but for the defective engine. Appreciating the materials on record, the Tribunal as well as the learned single Judge held that the gateman was not negligent in keeping the gate open. In view of the evidence of P.Ws. 5 and 6 and O.P.W. 1, I am of the same view.

16. Point (c) :- The Tribunal found that the driver of the bus was negligent as he should not have anticipated the worst (sic) since he knew that the vehicle was having frequent starting trouble. The appellant was also blamed for providing a defective vehicle. Therefore the appellant was held to be liable to pay the compensation both on account of its own negligence as well as on account of its vicarious liability. The learned single Judge while considering the question affirmed the finding. On assessment of the evidence on record, I am satisfied that on the facts and in the circumstances, the finding is fully justified and the appellant is liable for payment of the, compensation to be determined to the claimants.

17. Point (d) :- This is the main and principal dispute in these appeals. The Act does not provide for any method of determination of the compensation. In Section 110-B it is provided that the Tribunal is to determine the just compensation. The language leaves no room for doubt that the phrase 'appears to be just' is wide and comprehensive in its scope. As has been held in the Division Bench decision of this Court reported in (*Oriental Fire and General Insurance Company Limited v. (Mrs.) Kamal Kamini Das*²) the determination of just compensation would be guided by the principles in the Law of Torts since the claim for compensation on account of negligence in respect of motor vehicle is a branch of that Law. This has been accepted by another Division Bench of this Court reported in, (*Hemalata Devi v. Sk. Lokman*³).

18. The basic principle for measure of damages in Tort is that there should be restitution in integrum as has been observed at pages 775-776 in the Seventh Edition of Winfield on Tort by J. A. Jolowicz and T. Ellis Lewis. It has been further observed that in cases of compensating injuries by damages, one is to get at the sum of money which will put the party who has been injured or who as suffered in the same position as he would have been if he had not sustained the wrong for which he is to get the compensation for reparation. This principle is applied by adopting various methods of determination of the compensation which appear to be just. All the decisions of the Supreme Court and for the various High Courts have been rendered in line with the aforesaid principles.

19. Compensation is claimed under the Act for pecuniary loss and non-pecuniary loss. Amount actually loss on account of medical expenses and other expenses are pecuniary loss. The loss of future pecuniary benefit is also pecuniary loss. Loss on account of mental and physical pain, longevity and of similar type are non-pecuniary loss. So far as non-pecuniary loss, a reasonable guesswork is the only method. While making reasonable guesswork in respect of pecuniary loss, it is to be divided into two categories. Amounts actually spent or lost on account of medical and

other expenses and amount of loss on account of damage of the property is one category and loss of future pecuniary benefit is another.

20. The compensation to be paid on account of non-pecuniary loss and actual expenses and loss of property is to be paid as such. So far as the loss of future pecuniary benefits, the annual loss is to be first determined. In some cases the annual loss is multiplied to the period of its continuance and from the total amount a percentage is deducted on account of the benefit obtained for lump sum payment and taking into consideration the future uncertainties. In some cases the principle of suitable multiplier is applied. The annual pecuniary loss is multiplied by years of purchase. The years of purchase are fixed depending on the length of continuance of the loss. Supreme Court and other Courts have applied fifteen years or twenty years purchase depending on the facts and circumstances of the case. The third method of determination of compensation is to fix an amount which would be sufficient to earn the annual loss. The annual loss is made equal to the interest receivable on the available bank rate of interest and the amount which would be sufficient for earning that interest is determined as the compensation. The basic principle being restitution in integrum, one of the method as applied to the facts and circumstances of each individual case.

21. Mr. Y.S.N. Murty reiterating the stand annual loss with the years for which such loss of the appellant from initial stage, submitted would continue and held that multiplier that the claimants are to get compensation principle is the only method of determination calculating it on the basis of annual interest of compensation available at bank rate. Mr. P.K. Misra, the learned counsel for the claimants, submitted that the normal basis adopted by the Courts are the first two categories and in some cases the category suggested by Mr. Murty has not been accepted.

22. Various decisions have been cited by both the sides in support of their contentions. They are not necessary to be tabulated since this Court in a Division Bench has refused to adopt the last basis and in a single Judge decision has adopted the said principle the correctness of which is the subject-matter of consideration in these appeals.

23. A Division Bench of this Court in the decisions reported in (*Orissa Road Transport Company Limited v. Sibananda Patnaik*⁴) did not adopt the third basis on the following finding :

"...Rate of interest varies and there is no provision under the Motor Vehicles Act to obtain review of the compensation once awarded on the basis of variance of the rate of interest. That apart, the persons entitled to compensation should have the control over the compensation amount and there can be no justification to keep it out of their reach and make an annuity available to them. We are, therefore, not prepared to accept the proposition as a general rule in the matter of award of compensation under the Motor Vehicles Act....."

I have already quoted the disputed passage from the decision of the learned single Judge reported in AIR 1983 Orissa 193 (supra). The Full Bench decision of Punjab and Haryana High Court rendered by five learned Judges of that Court reported in (*Lachhman Singh v. Gurmit Kaur*⁵) has been very strongly relied upon by Mr. P.K. Misra in which at pages 59-60 in para 27 that Court laid down certain principles after consideration of some of the decisions of the Foreign

Courts and the decisions of the Supreme Court. They also rejected the principle of multiplying the amount of the annual loss with the years for which such loss would continue and held that multiplier principle is the only method of determination of compensation.

24. Discussion on these decisions would not be of much value in view of the fact that in a recent decision of the Supreme Court reported in *Pushpa Thakur v. Union of India*⁶⁾ the interest theory has been accepted. It was observed :

"We, therefore, allow the appeals, set aside the order made by the High Court and direct that the Union of India shall pay to the appellant a sum of Rs. 1,00,000/- as and by way of compensation. The amount of Rs. 1,00,000/- shall be deposited with the Tribunal within four weeks from today. This amount shall be deposited by the Tribunal in the name of the appellant in a nationalized bank at New Delhi on long term fixed deposit with a direction that interest on the said amount shall be paid by the nationalized bank to the appellant every quarter. The appellant will also be at liberty to apply to the Tribunal for withdrawal of any part of the principal amount in case it becomes necessary for her to do so for sufficient reasons. If the Union of India does not deposit the amount of Rs. 1,00,000/- within four weeks from today, the said amount shall carry interest @ 12 per cent per annum from today".

(Emphasis supplied)* The above quoted passage of the Supreme Court clearly shows that an amount of compensation can be fixed which will be equivalent to the annual loss for compensating the claimants. In view of this decision of the Supreme Court, the Division Bench decision of this Court discarding the principle on the ground that the claimant shall have no control over the amount will not be of much avail. Another ground in the Division Bench decision was that the bank rate of interest fluctuates and there is no provision for review in the Act. This ground would not be available since the bank rate is now almost static for a long period. Thus, the Division Bench decision has to be confined to the facts of that case.

25. In conclusion, the non-pecuniary losses as determined are to be paid as such and the pecuniary losses on account of expenses already incurred or damages to the property are to be paid as such. So far as loss of pecuniary benefit in future, any of the three principles can be adopted depending upon the facts and the circumstances of the case. Before applying any of the methods the future annual pecuniary loss on account of the accident is to be determined. It may either be multiplied by the years for which the loss would continue or may be multiplied by a suitable multiplier or an amount can be fixed whose annual yield would be equal to the annual loss preferably calculating the same on basis of prevailing bank rate of interest on a fixed deposit for three years.

26. In these appeals the claimants are residing in towns where banks are at distance of stone-throw. There would be no difficulty for the claimants to collect the amount. Accordingly, the Tribunal is directed to re-determine the compensation on the basis of availability of bank rate of interest.

27. In the result, the appeals are allowed in part, But in the peculiar facts and circumstances, there shall be no order as to costs.

28. Agrawal, C.J.

29. I agree.

Order accordingly.

Cases Referred.

¹ AIR 1983 Ori 193

² ILR (1972) Cut 275

³(1973) 59 Cut LT 539

⁴(1979) 47 Cut LT 368

⁵ AIR 1979 Punj and Har 50

⁶ AIR 1986 SC 1199