
(2005) 03 SHI CK 0031
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 410 of 1998

Chetan

APPELLANT

Vs

Himachal Road Transport Corporation and Others

RESPONDENT

Date of Decision : 16-03-2005

Acts Referred:

Citation : (2005) 3 ACC 386 : (2006) ACJ 1326

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : Sanjay Dutt Vasudeva, for the Appellant; Ashok Sharma and D.S. Parmar, for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, J.—The appellant Chetan, a minor, was aged about 11 years at the time of the accident. He was a student of class VII. On 16.4.1996, when he was travelling with his parents on a scooter, the same met with an accident with bus No. HP 22-0581 owned by the Himachal Road Transport Corporation and driven by Ramesh Kumar, respondent No. 3.

2. As a result of the accident, the claimant suffered serious injuries, in which his pelvis was fractured and he also suffered fracture of the inferior pubic rami. He was initially taken to the hospital at Namhol on 16.4.1996, from where he was referred to the District Hospital at Bilaspur. The doctors at District Hospital, Bilaspur, referred him to the Indira Gandhi Medical College and Hospital, Shimla, where he remained admitted from 17.4.1996 to 6.6.1996. During this period he underwent surgery in that hospital. Three of his teeth were also broken in the accident.

3. The claimant being a minor filed the present claim petition before the Motor Accidents Claims Tribunal (I), Kangra at Dharamshala through his mother Anita Kumari Sharma. The Tribunal after holding that the accident had been caused due to rash and negligent driving of the driver of the bus, held the respondents

jointly and severally liable to pay the compensation. On the basis of evidence, the compensation has been assessed at Rs. 89,000.

4. The claimant has filed the present appeal for enhancement of the award. Mr. Sanjay Dutt Vasudeva, learned Counsel for the claimant has contended that the award is extremely meagre and the Claims Tribunal has not awarded just and reasonable compensation. He also submits that the compensation has not been awarded under the various heads and the claimant has, only been awarded Rs. 14,000 for medical expenses and Rs. 75,000 towards pain and agony, etc. He submits that nothing has been awarded for transportation, attendant and future loss of earnings, keeping in view the disability of the claimant.

5. The principles with regard to determination of just compensation contemplated under Motor Vehicles Act are well settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by claimant in the accident. On account of the injuries, claimant may suffer consequential losses, such as, (i) loss of earnings; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges, etc; (iii) loss or diminution to pleasures of life by loss of a particular part of the body; and (iv) loss of future earning capacity. The damages can be pecuniary as well as non-pecuniary, but all have to be assessed in rupees and paise. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Motor Vehicles Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by him. Such compensation is what is termed as just compensation. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. The compensation or damages assessed for the personal injuries should be substantial damages to compensate the injured for the deprivation suffered by him throughout his life. They should not be only token damages.

6. There are numerous cases where the principles for grant of compensation have been enunciated. It would be relevant to quote a few. The following observations of Lord Morris in his speech in *H. West & Son Ltd. v. Shephard* 1958 ACJ 504 (HL, England), are very pertinent:

... Money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew 1958 ACJ 504 a physical frame that has been battered and shattered. All that Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with

moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards.

7. Lord Denning while speaking for the Court of Appeal in the case of *Ward v. James* (1965) 1 All ER 563, laid down the following three basic principles to be followed in such like cases:

Firstly, assessability: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases; otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good.

8. The assessment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guesswork and conjecture. An assessment, as best as can, in the circumstances, be made. In the case of *Mediana* (1900) AC 113, Lord Halsbury held:

Of course the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. But, nevertheless, the law recognises that as a topic upon which damages may be given.

9. In *Perry v. Cleaver* 1969 ACJ 363 (HL, England) Lord Morris of Borth-y-Gest held thus:

To compensate in money for pain and for physical consequences is invariably difficult but...no other process can be devised than that of making a monetary assessment.

10. In *Phillips v. Western Railway Co.* (1874) 4 QBD 406, Field, J., while emphasising that damages must be full and adequate held thus:

You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation once

and for all. He has done no wrong, he has suffered a wrong at the hands of the defendants and you must take care to give him full and fair compensation for that which he has suffered.

11. Besides, Claims Tribunals should always remember that the measure of damages in all these cases "should be such as to enable even a tortfeasors to say that he had amply atoned for his misadventure". The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to "hold up his head among his neighbours and say with their approval that he has done the fair thing", should be kept in mind by the court in determining compensation in personal injury cases.

12. McGregor on Damages, 14th Edn., para 1157, referring to heads of damages in personal injury actions states:

The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury and the courts have subdivided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life.

13. In R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , speaking about the heads of compensation, the Apex Court held thus:

Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas the non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they shall include: (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

14. In Concord of India Insurance Co. Ltd. v. Nirmala Devi 1980 ACJ 55 the Apex Court held:

The determination of the quantum must be liberal, not niggardly since the law

values life and limb in a free country in generous scales.

15. This court in *Brestu Ram Vs. Anant Ram and Others*, held:

It is pecuniary loss, i.e., capable of calculation in terms of money and non-pecuniary loss, i.e., loss that cannot be easily assessed with accuracy. Pecuniary loss is the loss suffered by the victim due to the loss of earnings or other profits which he had been earning and was to earn in future at the same rate or at some promoted scale. Non-pecuniary loss consists of damages awarded for pain and suffering, loss of amenities and loss of enjoyment of life and prospects. Under non-pecuniary loss, for want of accurate assessment, a global figure could be arrived at and paid as compensation. Under pecuniary loss the assessment can be made easily by taking into consideration at least the monthly income actually earned by the victim and the difference between what he would be capable to earn on disablement.

It is well settled that in disablement cases compensation has always to be higher than even in cases of death since it is given to the living victim of the accident both for his personal loss and for economic loss. It can be said that the bodily injury is to be treated as a deprivation which entitled the victim to claim damages, which vary according to the gravity of the injury. Further, due to this injury, there can be loss of earnings, completely or partially due to the accident on his capacity to earn the same. Another consequence may be the loss, he suffers on account of the enjoyment of life or full pleasures of living.

16. Taking into consideration, the law laid down by Apex Court and this Court, I am constrained to observe that the award of the learned Motor Accidents Claims Tribunal awarding a sum of Rs. 89,000 is abysmally low and not at all in consonance with the principles enunciated above. The Tribunal has been extremely conservative in awarding compensation. In addition, the learned Motor Accidents Claims Tribunal has not awarded the compensation under the various heads to which undoubtedly the claimant was entitled to claim the compensation.

17. Turning to the evidence in the present case, it would be apposite to refer to the statements of doctors examined in the case. Dr. S.K. Patial, PW 2, is the Medical Officer, District Hospital, Bilaspur. His statement is only to the effect that claimant was examined by him on 16.4.1996 and he has issued M.L.C., Exh. PW2/A. Claimant was admitted in Civil Hospital, Bilaspur, on 16.4.1996.

18. Dr. Ved Prakash Lakhanpal, PW 1 is Professor in Orthopaedics in Indira Gandhi Medical College and Hospital at Shimla. He states that the claimant was referred to him by the District Hospital, Bilaspur and was admitted on 17.4.1996 and remained as indoor patient till 6.6.1996. The claimant had suffered fractures of the pelvis superior and inferior pubic rami right side with disruption of sacroiliac joint left side and fracture of neck of the femur right side with contusion of the bladder with bleeding from urethra. He had also broken three upper teeth in his jaw. This witness states that the patient was operated upon for fracture of neck, femur fracture and at the time of recording of statement, i.e.,

12.6.1997 the patient was still under treatment. He proved the discharge slip, Exh. PW1/A. According to this witness, the petitioner must have suffered severe pain and would have necessarily required the help of an attendant during the period of admission in the hospital.

19. Dr. S.M. Mehta, PW 3, was member of the Medical Board which assessed the disability suffered by claimant. This Board found that the right leg of the claimant had been shortened and there were wasting of gluteal muscle. They assessed disability at 25 per cent. The Dental Surgeon assessed the dental disability at 3 per cent and Board assessed total disability at 28 per cent. This witness also states that the petitioner cannot join the military and para-military forces and the disability may increase till the boy attains skeletal maturity. The discharge slip, Exh. PW1/A shows that the claimant has been under treatment and even after discharge from the hospital on 6.6.1996 has been coming regularly to the hospital as an outdoor patient for regular check-up. The visits are extensive and he visited the hospital every 10-12 days for his check-up.

20. The mother has appeared in the witness-box as PW 5. She has stated that during the period the claimant was in hospital at Shimla they spent Rs. 20,000 for attendant. She also claimed that Rs. 50,000 was spent on the treatment of the claimant. There is no documentary proof of the same. This statement appears to be highly exaggerated and has not been supported by any other independent witnesses. It may be noted from the record that it is apparent that both the parents of the claimants are government servants.

21. Now come to the question of ascertaining the compensation in the present case. The first head is medical expenses. Claims Tribunal has awarded Rs. 14,000 under this head. However, there are no documents or receipts of medicines on the record. This apparently is because the parents of claimant being government servant must have claimed medical reimbursement. Therefore, with regard to expenses on medicines, there is no proof on the record and nothing is awarded under this head.

22. Exhs. P1 to P23 are the receipts of various taxi services to prove the amounts spent on transportation by the claimant for his follow-up check-up after his discharge from hospital. He had to make numerous visits from Kangra to Shimla. The Claims Tribunal has assessed Rs. 14,000 as medical expenses, but this should have been assessed for transportation charges. The award of Rs. 14,000 is upheld but not for medical expenses but on account of transportation charges related to the treatment.

23. The claimant must have been looked after by his parents during the period he was in the hospital. He was only a child aged 11 years. Both his parents must have attended him in the hospital night and day. They must have taken leave, spending the entire time in hospital. Though PW 5 has stated that they stayed in the hotel, but no evidence has been produced to support this fact. However, they must have arranged for some residence at Shimla during the period he remained

in hospital and during the period he was coming regularly as an O.P.D. patient thereafter. The claimant therefore, is entitled to attendant charges for a period from 16.4.1996 till 30.6.1996, i.e., two and a half months. Shimla is an expensive town. The parents must have taken leave and stayed at Shimla not only when claimant was admitted but also when he was brought for follow-up treatment and check-ups. It would therefore be reasonable to award an amount of Rs. 25,000 on this count.

24. Claimant must have been advised special diet, fruits, juices, etc., during his treatment and he is awarded Rs. 5,000 on this count.

25. The claimant remained in hospital for about seven weeks as indoor patient. He underwent two operations. He was still under treatment when the statement of PW 1 was recorded more than one year after the accident. Claimant must have suffered immense pain and suffering. Therefore, it would be reasonable to award the claimant a sum of Rs. 25,000 on account of pain and suffering.

26. The claimant is also entitled to damages on account of discomfort and loss of amenities. He has suffered serious injuries in the pubic region and the urethra, which may cause him problems in future also. He is physically scarred for life and has to live with a disability of 28 per cent throughout life. Therefore, he is awarded Rs. 35,000 under this head.

27. The claimant was minor and was not earning anything. Therefore, he has not suffered any actual loss of income himself. The loss caused to his parents had already been taken into consideration while assessing the damages under the head of attendant charges. So, no pecuniary loss on this count is to be awarded.

28. Now comes the question of loss of future income. PW 3 has categorically stated that the claimant cannot join the armed forces or the para-military forces. Mr. Ashok Sharma, the learned Counsel appearing on behalf of the respondent Nos. 1 and 2 has contended that the claimant is a brilliant student and there are sufficient avenues for him in the future. This may be true but the tortfeasor cannot claim any benefit therefrom. One cannot lose sight of the fact that a person with disability is never welcomed with open arms by any organisation. Such a person even in private sector would not get employment easily. He will always be compared with a person who has no physical disability. The task of determining the future loss of income is indeed difficult, especially when there is not much evidence led in this regard. Keeping in view the fact that both the parents of the claimant are government servants and are employed in the government sector the claimant can also be reasonably expected to reach the same if not a higher level. The disability suffered by him is not such as to make him incapable of getting a job. He does not belong to that strata of society which earns by manual labour. The work he would do in future would not be of manual nature. Therefore, his loss of earning capacity cannot be taken at 28 per cent which is his physical disability. In the realm of assessing future loss, there has to be some speculation based on calculated guesswork and the experience of the

court. Thus taking his estimated future income at Rs. 5,000 per month and loss at 15 per cent the same can be assessed at Rs. 750 per month or Rs. 9,000 per year. It would be pertinent to note that claimant would get this amount in lump sum much before he starts earning and, therefore, it would be reasonable to apply the multiplier of 15 and award Rs. 1,35,000 on this account.

29. The claimant is held entitled to compensation as under:

(1) Medical expenses Nil (2) Transportation expenses Rs. 14,000 (3) Attendants expenses Rs. 25,000 (4) Special diet and nutrition Rs. 5,000 (5) Pain and suffering Rs. 25,000 (6) Loss of amenities of life Rs. 35,000 (7) Actual loss of income Nil (8) Estimated future loss of income Rs. 1,35,000 _____
Total Rs. 2,39,000 _____

30. Award is enhanced from Rs. 89,000 to Rs. 2,39,000 (rupees two lakh thirty-nine thousand only), i.e., by Rs. 1,50,000. Claimant shall also be entitled to interest on the enhanced amount. Since major portion of the enhanced amount is on account of future loss of income, the interest shall be payable only at the rate of 6 per cent per annum on the enhanced amount w.e.f. 7.8.1996 the date of filing of petition till deposit/payment of amount. The appeal is accordingly allowed with costs assessed at Rs. 3,000.

Cross-objection No. 77 of 2000:

31. In view of the judgment of the Full Bench of this Court in Lata Vs. United India Insurance Co. Ltd. and Others, the cross-objections filed by the Himachal Road Transport Corporation, respondent Nos. 1 and 2, are not maintainable, hence, rejected.

32. The respondent Himachal Road Transport Corporation is directed to deposit enhanced compensation along with interest and costs in the Registry of this Court within eight weeks failing which the claimant shall be entitled to interest at the rate of 12 per cent from today.