
(2005) 07 SHI CK 0013
In the High Court Of Himachal Pradesh

Gita Devi

APPELLANT

Vs

Himachal Road Transport Corporation and Others

RESPONDENT

Date of Decision : 29-07-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2005) 4 ACC 709 : (2007) ACJ 1061

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—The appellant, Gita Devi, was a minor aged about 10 years at the time when the accident took place on 4.12.1994. She, at the relevant time, was a student of class III. On the said date at about 12 noon, she was walking on the side of the road to her house when bus No. HP 37-0439, belonging to H.R.T.C. hit her. This resulted in serious injuries to her and her right foot was crushed. Dr. Harish Behl, who was examined as PW 4, has stated that the right lower limb of the claimant was amputated below knee and her disability was assessed at 60 per cent as per disability certificate, Exh. PW 4/A.

2. The claimant, being a minor, filed a claim petition u/s 166 of Motor. Vehicles Act before the Motor Accidents Claims Tribunal (II), Mandi (hereafter referred to as "the Tribunal"), through her father and natural guardian. She has now attained the age of majority and is prosecuting the appeal in her own capacity.

3. The case was contested. The Tribunal after holding that the accident had been caused due to rash and negligent driving of the driver of the bus, held the claimant entitled to a compensation of Rs. 1,40,000.

4. The present appeal has been filed by the claimant for enhancement of compensation. H.R.T.C. has filed cross-objections, which are also being disposed of along with this appeal.

5. Mr. Lovnesh Kanwar, the learned Counsel appearing for the claimant, has contended that the award is extremely meagre and the Tribunal has not awarded just and reasonable compensation. He also submits that the compensation has not been awarded separately under different heads but compensation of Rs. 1,15,000 has been assessed in lump sum for loss of amenities, loss of future income, loss of marriage prospects, etc.

6. So far as the cross-objections are concerned, strictly they are not maintainable. They deal only with the issue of negligence. It is well established law that no negligence can ever be attributed to a minor especially a young girl of 10 years. In any event, the evidence in this case goes to show that she was walking on the side of the road when her foot was crushed. The Tribunal has rightly held the driver to be negligent.

7. The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act are well settled. Injuries cause deprivation to the body which entitles the claimant to claim the damages. The damages may vary according to the gravity of the injuries sustained by the 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 of the 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 the 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.

8. There are numerous cases where the principles for grant of compensation have been enunciated. It would be relevant to quote a few.

9. The following observations of Lord Morris in his speech in *H. West & Son Ltd. v. Shephard* 1958 ACJ 504 (HL, England), are very pertinent:

(13) ...Money may be awarded so that something tangible may be procured to replace something else of like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that the 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....

10. 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.

11. 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.

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

(31) ...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...

13. In *Phillips v. Western Railway Co.* (1874) 4 QBD 406, Field, J., while emphasizing 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 defendants and you must take care to give him full and fair compensation for that which he has suffered.

14. Besides, Claims Tribunals should always remember that the measures of damages in all these cases "should be such as to enable even a tortfeasor 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 the 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.

15. 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.

16. 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:

(9) 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 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 may include: (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in the future; (ii) damages to compensate for the 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 the 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.

17. In *Concord of India Insurance Co. Ltd. v. Nirmala Devi* 1980 ACJ 55 (SC), the

Apex Court held:

(2) ...the determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales...

18. This court in *Brestu Ram v. Anant Ram* 1989 (2) Sim LC 298 : 1990 ACJ 333 (HP), 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 the 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, 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 partial 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.

19. Taking into consideration the law laid down by Hon"ble Apex Court and this court, I am constrained to observe that the award of learned Motor Accidents Claims Tribunal awarding a sum of Rs. 1,40,000 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.

20. Turning to the evidence in present case. The doctor PW 4 has clearly stated that the claimant's leg had been amputated below knee joint and her disability has been assessed at 60 per cent. Unfortunately, the claimant or her guardian had not led any evidence to show what were the expenses incurred, the period of treatment, the attendant charges, etc. However, the fact remains that the claimant has lost her right lower limb. She was young girl of 10 years. She, in her statement, stated that at that time she used to play with the children but now she is unable to do so.

21. It is, no doubt, true that as observed above, claimant had not led any evidence to show what was spent on the treatment of the claimant. However,

keeping in view the nature of the injuries, she must have been attended upon by her parents and some amount must have been spent for medicines, transportation, etc. Due to lack of evidence, on a conservative basis, the claimant is held entitled to Rs. 10,000 for medical expenses including transport expenses, attendance charges and special diet and nutrition, keeping in view the nature of injuries and extent of treatment.

22. The claimant has become crippled. She had to undergo an operation whereby her right leg has been amputated below knee joint. Therefore, it would be reasonable to award Rs. 50,000 to her on account of pain and suffering.

23. Claimant on account of the injuries cannot function as a normal human being. She has lost the joys of her childhood. She cannot play with her friends and has to sit in one corner while seeing others playing. This is a loss which she has to suffer throughout her life. She cannot function as normal human being. She has become crippled due to negligence of the respondents. In my opinion, she is entitled to Rs. 75,000 on account of loss of amenities of life and loss of enjoyment of life.

24. The claimant is a young girl and her marriage prospects have been totally marred. In the society that we live in, it is difficult for a girl with such a disability to get married. Therefore, she is awarded Rs. 50,000 on account of loss of marital prospects.

25. Next comes the estimated loss of future income. The claimant belongs to rustic society. In this society, manual work is expected of each and every member of the family. When she grows up, claimant would be unable to do normal functions. Her disability has been assessed at 60 per cent. Even if her disability is not taken as 60 per cent loss of earning capacity, it would not be unreasonable to assess the loss of earning capacity at about 40 per cent of the estimated income of the claimant. She would start earning now in the year 2005 when she is about 20 years of age. Taking today's wages into consideration, it would be reasonable to assess her loss of income at Rs. 1,000 per month or Rs. 12,000 per year. Applying a multiplier of 18, the loss of future income comes to Rs. 2,16,000.

26. Therefore, the total compensation comes to Rs. 4,01,000 or say Rs. 4,00,000.

27. In view of the above discussion, this appeal is allowed and the cross-objections are dismissed. The award of the Tribunal is modified and the compensation is enhanced from Rs. 1,40,000 to Rs. 4,00,000. The claimant is also held entitled to interest on this amount at the rate of 6 per cent per annum from the date of filing of the claim petition, i.e., 7.2.1995 till the date of deposit of the amount. The interest has been awarded at the lower rate keeping in view the fact that a major portion of the compensation awarded is on account of future loss of income which would have accrued to her only in future. H.R.T.C. is directed to deposit the compensation after adjusting the amount already deposited in the Registry of this court within 12 weeks from today, failing which

the interest will be at the rate of 12 per cent with effect from today.

28. The appeal and the cross-objections are disposed of in the aforesaid terms.
No orders as to costs.