
(2011) 11 SC CK 0054

In the Supreme Court Of India

Case No : Civil Appeal No. 9014 of 2011 (Arising out of S.L.P. (C) No. 30556 of 2009)

Govind Yadav

APPELLANT

Vs

The New India Insurance Company Limited

RESPONDENT

Date of Decision : 01-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 7 ALLMR 800 : (2012) 1 AWC 204 Supp : (2012) 2 CGBCLJ 1 : (2011) 4 CPJ 111 : (2012) 1 CTC 437 : (2012) 1 JLJR 617 : (2011) 13 JT 40 : (2012) 1 KLJ 303 : (2012) 2 PLJR 142 : (2011) 4 RCR(Civil) 817 : (2011) 2 SCALE 336 : (2011) 10 SCC 683 : (2012) 1

Hon'ble Judges : Surinder Singh Nijjar, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Rajnish K. Singh and Vipin Kumar Jai, for the Appellant; S.L. Gupta, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Leave granted.

2. The Appellant has approached this Court because he is not fully satisfied with the enhancement granted by the High Court in the amount of compensation awarded by 9th Additional Motor Accident Claims Tribunal, Jabalpur (for short, 'the Tribunal?').

3. In the petition filed by him u/s 166 of the Motor Vehicles Act, 1988 (for short, "the Act"), which came to be registered as MVC No. 59 of 2005, the Appellant prayed for award of compensation to the tune of Rs. 10,70,000/- with interest @ 18%. The Appellant's claim was founded on the following assertions:

(i) That he had suffered grievous injuries in an accident which occurred on 14.11.2004 when the mini bus in which he was working as Helper overturned due to rash and negligent driving by the driver Shri Abdul Ahmad Musalman.

(ii) That he was initially treated at Government Hospital, Seoni from where he was shifted to Nagpur Medical College. He remained in the hospital from 14.11.2004 to 2.1.2005 and 15.2.2005 to 20.3.2005. Due to infection, his left leg was amputated above the knee. Thereafter, he was treated at National Hospital, Jabalpur.

(iii) That at the time of accident his age was about 24 years and he was drawing monthly salary of Rs. 4,000/-.

(iv) That on account of amputation of leg, he lost the job and his future was bleak.

4. The owner and the driver of the vehicle did not contest the claim of the Appellant, but the Respondent insurance company did so. In the written statement filed on behalf of the Respondent, it was pleaded that the accident was not caused due to rash and negligent driving of the mini bus and, in any case, the insurer was not liable to pay compensation because the driver of the mini bus did not have valid driving licence.

5. After considering the pleadings of the parties and evidence produced by them the Tribunal held that the accident was caused due to rash and negligent driving of the mini bus by its driver. However, the Tribunal did not accept the appellant's version that he was working as a Helper and was getting salary of Rs. 4,000/- by observing that he had not produced any evidence to prove the factum of employment and monthly emoluments. The Tribunal then referred to the Second Schedule of the Act and determined the amount of compensation by assuming the Appellant's income to be Rs. 15,000/- per annum. The Tribunal was of the view that due to 70% disability, the Appellant would suffer loss of income to the tune of Rs. 10,500/- per annum. The Tribunal then applied the multiplier of 17 and held that the Appellant is entitled to Rs. 1,78,500/- towards loss of future income. The compensation awarded by the Tribunal under other heads was as under:

1)

Mental agony and physical pain caused due to amputation of the leg and other injuries

Rs.25000/-

2)

Medical expenses

Rs. 3300/-

3)

Expenditure incurred on nutritious food and transportation during treatment

Rs.10000/-

4)

Loss of earning due to accident and entertainment from normal earning

Rs.10000/-

5)

Cost of artificial leg

Rs.30000/-

The Tribunal also awarded interest at the rate of 6% on the total compensation of Rs. 2,56,800/-.

6. The appeal preferred by the Appellant against the award of the Tribunal was disposed of by the learned Single Judge of the High Court by granting an enhancement of Rs. 50,000/-. In the opinion of the learned Single Judge, the income of the Appellant, who was working as Cleaner at the time of accident could be taken as Rs. 2000/- per month i.e. Rs. 24,000/- per annum and the loss of income due to 70% permanent disability would be Rs. 16,800/- per annum. He also applied the multiplier of 17 and held that the Appellant is entitled to compensation of Rs. 2,85,600/- towards future loss of income. The learned Single Judge added Rs. 20,400/- towards conveyance charges, special diet and medical expenses and concluded that the Appellant is entitled to total compensation of Rs. 3,06,000/- with interest at the rate of 7% per annum from the date of application.

7. Shri Rajnish K. Singh, Learned Counsel for the Appellant, argued that the compensation awarded by the Tribunal was wholly inadequate and the High Court committed serious error by not granting appropriate enhancement keeping in view the fact that on account of the permanent disability suffered by him, the Appellant will not be able to get suitable employment and lead normal life. He further argued that the Tribunal and the High Court gravely erred in not awarding just and reasonable compensation for future treatment including cost of artificial leg which will require periodical replacement.

8. Shri S.L. Gupta, learned counsel for the Respondent, supported the impugned judgment and argued that the Appellant has failed to make out a case for further enhancement in amount of compensation.

9. We have considered respective submissions. This Court has, from time to time, expressed concern over the increasing number of motor accidents and pendency of large number of cases involving adjudication of claims made by the legal representatives of the deceased and also by those who suffer injuries and disabilities of various types as a result of accidents. The statistics compiled by Transport Research Wing of Ministry of Road Transport and Highways, New Delhi show that between 2004 and 2008, more than 5,00,000 people lost their lives and about 22,60,000 people were injured. The table containing the details of road accidents in India (2004-2008) as published in the report titled "Accidental

Deaths and Suicides in India, 2008" by National Crime Records Bureau, Ministry of Home Affairs is reproduced below:

Sl No.

Year

Road Accidents (in thousand)

% variation over previous year

Persons injured ?(in thousands)

% variation over? previous year

Persons Killed (in nos.)

% variation over previous year

No. of vehicles (in thousands)

% variation over previous year

Rate of Deaths Per Thousand Vehicles (Col.7/ Col.9)

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

(11)

1

2004

361.3

7.4

413.9

8.1

91,376

8.2

66,289*

-

1.4

2

2005

390.4

8.0

447.9

8.2

98,254

7.5

66,289*

-

1.5

3

2006

394.4

1.0

452.9

1.1

1,05,725

7.6

72,718@

9.7

1.5

4

2007

418.6

6.1
465.3
2.7
1,14,590
8.4
72,718#
-
1.6
5
2008
415.8
-6.7
469.1
0.8
1,18,239
3.2
89,618@
23.2
1.3

The above noted figures do not include the accidents which are not reported to the police and other governmental agencies.

10. The personal sufferings of the survivors and disabled persons are manifold. Some time they can be measured in terms of money but most of the times it is not possible to do so. If an individual is permanently disabled in an accident, the cost of his medical treatment and care is likely to be very high. In cases involving total or partial disablement, the term "compensation" used in Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act") would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident. A very large number of people involved in motor accidents are pedestrians, children, women and illiterate persons. Majority of them cannot, due to sheer ignorance, poverty and other disabilities, engage competent lawyers for proving negligence of the wrongdoer in adequate measure. The insurance companies with whom the vehicles involved in the

accident are insured usually have battery of lawyers on their panel. They contest the claim petitions by raising all possible technical objections for ensuring that their clients are either completely absolved or their liabilities minimized. This results in prolonging the proceedings before the Tribunal. Sometimes the delay and litigation expenses" make the award passed by the Tribunal and even by the High Court (in appeal) meaningless. It is, therefore, imperative that the officers, who preside over the Motor Accident Claims Tribunal adopt a proactive approach and ensure that the claims filed under Sections 166 of the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure. The amount of compensation in such cases should invariably include pecuniary and non-pecuniary damages. In *R.D. Hattangadi v. Pest Control (India) Private Limited* (1995) 1 SCC 551, this Court while dealing with a case involving claim of compensation under the Motor Vehicles Act, 1939, referred to the judgment of the Court of Appeal in *Ward v. James* (1965) 1 All ER 563, Halsbury's Laws of England, 4th Edition, Volume 12 (page 446) and observed:

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 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 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.

In the same case, the Court further observed:

In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

11. In *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka* (2009) 6 SCC 1, the three-Judge Bench was dealing with a case arising out of the complaint filed under the Consumer Protection Act, 1986. While enhancing the compensation awarded by the National Consumer Disputes Redressal Commission from Rs. 15 lakhs to Rs. 1 crore, the Bench made the following

observations which can appropriately be applied for deciding the petitions filed u/s 166 of the Act:

We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned.

At the same time we often find that a person injured in an accident leaves his family in greater distress vis-?-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.

(Emphasis supplied)

12. In *Reshma Kumari v. Madan Mohan* (2009) 13 SCC 422, , this Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below:

The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms.

The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so.

In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in *Oriental Insurance Co. Ltd. v. Jashuben* held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.

One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor.

(Emphasis supplied)

13. In *Arvind Kumar Mishra v. New India Assurance Company Limited* (2010) 10 SCC 254 the Court considered the plea for enhancement of compensation made by the Appellant, who was a student of final year of engineering and had suffered 70% disablement in a motor accident. After noticing factual matrix of the case, the Court observed:

We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.

(Emphasis supplied)

14. In *Raj Kumar v. Ajay Kumar* (2011) 1 SCC 343 the Court considered some of the precedents and held:

The provision of the Motor Vehicles Act, 1988 ("the Act", for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences,

is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

(Emphasis supplied)

15. In our view, the principles laid down in *Arvind Kumar Mishra v. New India Assurance Company Ltd.* (supra) and *Raj Kumar v. Ajay Kumar* (supra) 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.

16. We shall now consider whether the compensation awarded to the Appellant is just and reasonable or he is entitled to enhanced compensation under any of the

following heads:

- (i) Loss of earning and other gains due to the amputation of leg.
- (ii) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.
- (iv) Compensation for pain, suffering and trauma caused due to the amputation of leg.
- (v) Loss of amenities including loss of the prospects of marriage.
- (vi) Loss of expectation of life.

17. A brief recapitulation of the facts shows that in the petition filed by him for award of compensation, the Appellant had pleaded that at the time of accident he was working as Helper and was getting salary of Rs. 4,000/- per month. The Tribunal discarded his claim on the premise that no evidence was produced by him to prove the factum of employment and payment of salary by the employer. The Tribunal then proceeded to determine the amount of compensation in lieu of loss of earning by assuming the Appellant's income to be Rs. 15,000/- per annum. On his part, the learned Single Judge of the High Court assumed that while working as a Cleaner, the Appellant may have been earning Rs. 2,000/- per month and accordingly assessed the compensation under the first head. Unfortunately, both the Tribunal and the High Court overlooked that at the relevant time minimum wages payable to a worker were Rs. 3,000/- per month. Therefore, in the absence of other cogent evidence, the Tribunal and the High Court should have determined the amount of compensation in lieu of loss of earning by taking the Appellant's notional annual income as Rs. 36,000/- and the loss of earning on account of 70% permanent disability as Rs. 25,200/- per annum.

The application of multiplier of 17 by the Tribunal, which was approved by the High Court will have to be treated as erroneous in view of the judgment in *Sarla Verma v. Delhi Transport Corporation* (2009) 6 SCC 121 . In para 42 of that judgment, the Court has indicated that if the age of the victim of an accident is 24 years, then the appropriate multiplier would be 18. By applying that multiplier, we hold that the compensation payable to the Appellant in lieu of the loss of earning would be Rs. 4,53,600/-.

18. The award made by the Tribunal for future medical expenses was wholly inadequate. In *Nagappa v. Gurudayal Singh* (2003) 2 SCC 274 this Court considered whether it was permissible to award compensation in installments or recurring compensation to meet the future medical expenses of the victim. After noticing the judgment of M. Jagannadha Rao, J. (as he then was) in *P. Satyanarayana v. I. Babu Rajendra Prasad* 1988 ACJ 88 (AP) the judgment of the Division Bench of the Kerala High Court in *Valiyakathodi Mohd. Koya v. Ayyappankadu Ramamoorthi Mohan* 1991 ACJ 140 (Kerala) , this Court observed:

In this view of the matter, in our view, it would be difficult to hold that for future medical expenses which are required to be incurred by a victim, fresh award could be passed. However, for such medical treatment, the court has to arrive at a reasonable estimate on the basis of the evidence brought on record. In the present case, it has been pointed out that for replacing the artificial leg every two to three years, the Appellant would be required to have some sort of operation and also change the artificial leg. At that time, the estimated expenses for this were Rs 18,000 and the High Court has awarded the said amount. For change of the artificial leg every two or three years no compensation is awarded. Considering this aspect, if Rs one lakh is awarded as an additional compensation, the Appellant would be in a position to meet the said expenses from the interest of the said amount.

After the aforesaid judgment, the cost of living as also the cost of artificial limbs and expenses likely to be incurred for periodical replacement of such limb has substantially increased. Therefore, it will be just and proper to award a sum of Rs. 2,00,000/- to the Appellant for future treatment. If this amount is deposited in fixed deposit, the interest accruing on it will take care of the cost of artificial limb, fees of the doctor and other ancillary expenses.

19. The compensation awarded by the Tribunal for pain, suffering and trauma caused due to the amputation of leg was meager. It is not in dispute that the Appellant had remained in the hospital for a period of over three months. It is not possible for the Tribunals and the Courts to make a precise assessment of the pain and trauma suffered by a person whose limb is amputated as a result of accident. Even if the victim of accident gets artificial limb, he will suffer from different kinds of handicaps and social stigma throughout his life. Therefore, in all such cases, the Tribunals and the Courts should make a broad guess for the purpose of fixing the amount of compensation. Admittedly, at the time of accident, the Appellant was a young man of 24 years. For the remaining life, he will suffer the trauma of not being able to do his normal work. Therefore, we feel that ends of justice will be met by awarding him a sum of Rs. 1,50,000/- in lieu of pain, suffering and trauma caused due to the amputation of leg.

20. The compensation awarded by the Tribunal for the loss of amenities was also meager. It can only be a matter of imagination as to how the Appellant will have to live for the rest of life with one artificial leg. The Appellant can be expected to live for at least 50 years. During this period he will not be able to live like normal human being and will not be able to enjoy the life. The prospects of his marriage have considerably reduced. Therefore, it would be just and reasonable to award him a sum of Rs. 1,50,000/- for the loss of amenities and enjoyment of life.

21. In the result, the appeal is allowed. The impugned judgment and the award of the Tribunal are set aside. It is declared that the Appellant is entitled to total compensation of Rs. 9,53,600/- with interest @ 7% per annum from the date of filing the claim petition till the date of realization. The Respondent is directed to pay the balance amount of compensation with interest within a period of three

months from today in the form of a Bank Draft prepared in the name of the Appellant.