

(2005) 12 GAU CK 0009
In the Gauhati High Court
Case No : MAC App. No. 30 of 1999

Jitendra Mallick

APPELLANT

Vs

Priya Kumar Chowdhury and Others

RESPONDENT

Date of Decision : 14-12-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2006) GLT 843 Supp

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : T.D. Majumder, for the Appellant; None, for the Respondent

Judgement

A.B. Pal, J.—By this appeal putting into challenge the judgment and award dated 17.2.99 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala in T.S. (MAC) No. 352 of 97, the claimant-Appellant has sought enhancement of the award of Rs. 5,000/- only with interest @ 12% p.a. with effect from the date of presentation of the petition before the learned Tribunal on 30.7.97 on the ground that the said amount is utterly inadequate being not based on proper appreciation of the evidence particularly relating to the nature of injuries sustained by him in the accident.

2. The brief facts giving rise to the claim proceeding originates from an accident on 16.1.96 when the Appellant was returning to Agartala from Charilam by a bus bearing No. TRS-8. It stopped near Amtali PS for disembarkment of some passengers when another vehicle (TRS-783) had dashed it and caused injuries to the passengers including the Appellant. After one day's treatment in G.B. hospital at Agartala, he was discharged on 17.1.96, but due to the injuries sustained by him he had lost 16 number of teeth which, apart from causing bodily pain and injury, deprived him from amenities of life. Claiming an amount of Rs. 4,70,000/- as compensation for the injury sustained by him in a claim petition u/s 166 of the MV Act, the Petitioner examined only himself and produced certain documents, namely, the First Information Report (FIR) relating

to the accident and a photocopy of the discharge certificate issued from the hospital. While the FIR testified to the facts of the accident, the discharge certificate indicates only about the teeth injury in a road traffic accident without stating the number of teeth lost. Though in the claim petition it has been clearly stated that the Appellant had lost 16 number of teeth, but in his deposition before the learned Tribunal he only stated that some of his teeth had been uprooted. He further claimed in his deposition that he spent Rs. 6,000/- towards his treatment.

3. The Oriental Insurance Company being the insurer of the offending vehicle contested the claim contending, inter alia, that the injury sustained by the Appellant leading to loss of teeth was not due to an accident involving the offending vehicle. The owner of the vehicle, however, did not contest the claim petition. Besides filing a written statement, the insurer adduced no evidence in support of the defence taken by it.

4. Learned Tribunal on careful appreciation of the inadequate materials on record proceeded to determine the amount of compensation after holding that the Appellant had sustained injuries in the motor vehicle accident which had taken place on 16-1-96 for which the fault was found to be with the driver of TRS-783 which was insured with the above noted Insurance Company. As there is no evidence on record about the amount spent by the Appellant towards his treatment for which he had to stay in the G. B. Hospital only for one day, the learned Tribunal made a guesswork and fixed Rs. 3,000/- as the possible amount of expenditure for the said purpose. Though he came to the finding that the Appellant had lost some teeth due to the injuries sustained by him in the said accident, he awarded only Rs. 2,000/- for bodily pain and suffering totaling the amount of compensation to Rs. 5,000/-. As regards interest, the rate of 12% from the date of presentation of the claim petition has been awarded with a stipulation that if the amount is not paid within a period of one month, the insurer who has been held liable for payment of the same shall pay the interest at a higher rate of 20% p.a. for the period after expiry of one month till payment.

5. I have heard Mr. T.D. Majumder, learned Counsel for the Appellant. None has appeared for the Respondents.

6. The present appeal by the claimant is confined to the only grievance that the amount awarded is abnormally low and cannot be said to be just and adequate compensation if the nature of injury is properly appreciated. No appeal has been preferred by the insurer or the owner about the other findings of the learned Tribunal with regard to the liability of the offending vehicle for the accident and of the insurer to pay the amount of compensation. It is, therefore, not necessary for this Court to enter into the other findings of the learned Tribunal except those pertaining to the appreciation of the evidence for determining the amount of compensation. Proceeding from the premises that the Appellant sustained injuries in a motor accident caused by the offending vehicle and he lost some of his teeth, the number of which has not been specifically mentioned either in his

deposition or in the discharge certificate, the question that falls for consideration is whether an amount of Rs. 5,000/- is adequate and just compensation. Though no supporting documents about the amount spent for treatment have been made available by the Appellant before the Tribunal, but in his deposition on oath he has stated that he had spent Rs. 6,000/- for the propose of his treatment. This statement on oath could not be discredited during cross-examination by the insurer and, therefore, it was not difficult to safely hold that the amount spent for treatment was Rs. 6,000/- as claimed by him. Learned Tribunal has not assigned any reason why the amount had to be brought down to Rs. 3,000/- only. I am of the considered view that the amount claimed by the claimant-Appellant cannot be said to be exorbitant and, therefore, the same should have been allowed by the learned Tribunal.

7. An amount of Rs. 2,000/- only has been awarded on account of bodily pain and suffering. But no amount has been awarded for loss of some teeth which undoubtedly deprived the person from certain amenities of life. As a matter of fact, the judgment impugned herein is totally silent about this aspect of the case which is undoubtedly important in determining compensation for the injuries. In *Lata Wadhwa and Others Vs. State of Bihar and Others*, the apex court in para 13 has laid down important guidelines in determing the amount of compensation on two heads of damages, pecuniary and non-pecuniary. While pecuniary damages encompasses loss of earning or earning capacity, medical, hospital and nursing expenditure and loss of matrimonial prospectas, non-pecuniary damages includes loss of expectation of life, loss of amenities or capacity to enjoy the life and loss or impairment of physiological functions. The said paragraph is gainfully quoted below for appreciation of the question involving the present case:

13. So far as the compensation to the injured persons are concerned, before Shri Justice Chandrachud, though on behalf of the claimants, compensation on several heads had been claimed, but unfortunately, no materials had been placed, which could have been placed. On the basis of meagre data available, the compensation has been determined ranging from Rs. 38 lakhs to Rs. 5 lakhs. In arriving at this figure, the percentage of burn has been taken into account, daily expenses have been taken into account, as indicated in Table I, cost of medical treatment has been taken into account, as indicated in Table II, expenses for psychotherapy has been taken into account, as indicated in Table III, effect on marriage prospects has been taken into account, as indicated in Table IV, non-pecuniary losses have been taken into account, as indicated in Table VII and even punitive damages have been taken into account, and finally the total amount of compensation has been arrived at. It may be stated that injured persons with burn injury of 10% and below have not been awarded any compensation. It may also be stated that while discussing the claim on daily expenses, cost of medical treatment and expenses for psychotherapy as well as punitive damages have been rejected, but in the ultimate tabular form, compensation has been awarded on that score also and since the company has not raised any objection on that score, we do not intend to consider and nullify

the said compensation amount, as indicated in the tabular form. It transpires from the Report of Shri Justice Chandrachud that in the statement of claim even there has been no indication as to the nature of burn injury suffered, the nature, duration and quality of treatment received, the requirement of future treatment prescribed by any doctor, the state or condition of burn injuries when the statement of claim was filed, the disability suffered by any burn victim and the expenditure, if any, incurred by any burn victim until the statement of claim was filed and last but not the least, the loss of earning capacity in any individual case. Shri Justice Chandrachud has also noted the statement of the counsel appearing for Tata Iron and Steel Company, that if any burn victim produces the advice of a burn-expert doctor for any further medical or surgical treatment in India, TISCO is prepared to bear the expenses of the said treatment. The materials produced indicate the anxiety and steps taken by the Company officials in making available the services of doctors from Delhi, Bombay, the U.K., USA and Italy and the injured patients were referred to hospitals in Delhi, Bombay, Madras and Bangalore. Even some of the injured patients were sent to the U.K., U.S.A. and Paris for cosmetic surgery at the Company's expense. In examining the question of damages for personal injury, it is axiomatic that pecuniary and non-pecuniary heads of damages are required to be taken into account. In case of pecuniary damages, loss of earning or earning capacity, medical, hospital and nursing expenses, the loss of matrimonial prospects, if proved, are required to be considered. In the case of non-pecuniary losses, loss of expectation of life, loss of amenities or capacity for enjoying life, loss or impairment of physiological functions, impairment or loss of anatomical structures or body tissues, pain and suffering and mental suffering are to be considered. But for arriving at a particular figure on each of the aforesaid heads, the claimant is duty-bound to produce relevant materials, on the basis of which, a determination could be made, as to what would be the best compensation.

8. The fact that the Appellant lost a good number of teeth at the age of 40 only, it may not be difficult to take a view that such loss has certainly deprived him from normal enjoyment of life which certainly includes taking daily food. Facial disfigurement and impairment of physiological functions are the inevitable result from such loss of teeth though in the absence of adequate materials on record regarding the number of teeth lost by the Appellant it is difficult to assess the extent of disfigurement or impairment resulted therefrom. Considering that the Appellant has certainly been deprived from the amenities of life and suffered from disfigurement of his face and impairment of physiological function to some extent at the age of 40 only, I am of the considered view that he is entitled to Rs. 25,000/- on that account. Accordingly, the Appellant is entitled to an amount of Rs. 25,000/- + Rs. 3,000 (additional amount on account of medical expenses) = Rs. 28,000 (rupees twenty eight thousand) only by which the total amount of compensation shall stand enhanced. This additional amount of Rs. 28,000/- shall bear interest @ 6%p.a. from the date of disposal of this appeal, if the amount is paid within a period of two months from the date of passing of the judgment. In

default, the rate of interest will be 9% p.a. for the period from expiry of two months till payment.

9. The appeal is allowed accordingly to the above extent without any cost.