

(2003) 06 KAR CK 0087
In the Karnataka High Court
Case No : M.F.A. No. 3932 of 2000

K. Jagannath Rai

APPELLANT

Vs

Gangarathna C. Bai and Others

RESPONDENT

Date of Decision : 06-06-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 118, 166, 173 (1)
Rules of the Road Regulations, 1989 — Regulation 9

Citation : (2004) 2 ACC 811 : (2004) ACJ 982 : (2003) 3 KCCR 2387

Hon'ble Judges : S.R. Nayak, J;K. Ramanna, J

Bench : Division Bench

Advocate : K. Chandranath Ariga, for the Appellant; Vishwanath S. Shetter, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The appellant is the claimant-petitioner in M.V.C. No. 744 of 1996 on the file of the Motor Accidents Claims Tribunal, Dakshina Kannada at Mangalore (for short, "the Tribunal") filed u/s 166 of the Motor Vehicles Act, 1988 (for short, "the Act"). In the said M.V.C., the appellant claimed total compensation of Rs. 6,00,000 from the respondent for personal injuries suffered by him in an accident occurred on 27.2.1996 involving the motor vehicle of the respondent. The Tribunal has awarded total compensation of Rs. 59,190 with court costs and interest on the said amount at 6 per cent per annum from 17.6.1996 up to the date of payment. The appellant not being satisfied with the quantum of compensation awarded by the Tribunal has preferred this appeal u/s 173(1) of the Act.

2. The facts of the case, in brief, are as under: Appellant is a businessman carrying on business in the name and style, Milton (India) Pharmaceuticals, in Balmata, Mangalore. Appellant was a very wealthy person and was regularly playing tennis. On 27.2.1996, after he played tennis at Kadarigudda, Mangalore, he was returning home on a Kinetic Honda scooter bearing No. KA 19-H 6124

from Nanthoor towards Kaikamba. When he reached SCS petrol bunk at Baikarnakatta, a lorry bearing No, KA 19-1230 owned by respondent No. 1, insured by the respondent No. 2 and driven by the respondent No. 3, came with high speed being driven in a most rash and negligent manner by the respondent No. 3 and dashed against the scooter of the appellant. As a result of the accident, the appellant suffered serious head injury and lost consciousness. The appellant was admitted to SCS Hospital, Mangalore and regained consciousness after five days. The appellant was an inpatient from 27.2.1996 to 13.3.1996. As a result of the accident, the appellant became totally deaf on the right ear and lost his mental equilibrium and lost the hearing capacity in the ear to an extent of 20 per cent. His eyesight got diminished and his speech has become slurred. Appellant cannot tolerate the noise and is suffering from anxiety, depression and loss of memory. On account of the mental and physical disabilities suffered in the accident, the appellant cannot carry on his business as usual. The appellant can no longer drive two-wheeler or four-wheeler. Appellant is totally disabled from attending to his regular activities and enjoyment of life. After the accident the appellant quite often suffered from nervous breakdown and was brought to NIMHANS, Bangalore on several occasions for advice and treatment.

3. The appellant on the basis of the above allegation filed a claim petition before the Tribunal u/s 166 of the Act claiming total compensation of Rs. 6,00,000.

4. The respondent No. 1 though served with notice remained ex pane. The respondent No. 2 insurance company filed its written statement on 7.10.1997 denying the cause of the accident. The respondent No. 2 pleaded that the lorry bearing No. KA 19-1230, insured with it was proceeding slowly on its correct side on the date of accident and at that time, the scooter bearing No. KA 19-H 6124 of the appellant, was driven by the appellant at a high speed and on the wrong side and he lost control of the scooter and consequently dashed against the lorry, resulting in the accident. The respondent No. 2 insurance company, alternatively, pleaded that the appellant, at the time of accident, did not possess valid driving licence and that the appellant contributed negligence for the accident. Respondent No. 2 also pleaded that the amount of compensation claimed by the appellant is highly excessive. It was also pleaded by respondent No. 2 that the petition filed by the appellant u/s 166 of the Act is bad for non-joinder of the owner and the insurer of the scooter.

5. On the basis of the above pleadings of the parties, the Tribunal framed the following issues:

"(1) Whether the petitioner proves that the accident was due to rash and negligent driving of the lorry bearing registration No. KA 19-1230 or the scooter bearing registration No. KA 19-H 6124 or on account of composite negligence of both?

(2) Whether the petitioner proves that he is entitled for compensation and if so, from whom and for what amount?

(3) What order?"

6. The appellant got examined himself as PW 1 and examined two doctors who are experts in the field of neurosurgery and ENT respectively, as PW 2 and PW 3. A chartered accountant was examined as PW 6. In addition, two more witnesses were also examined. Totally, six witnesses PW 1 to PW 6 were examined and 101 documents were marked as Exhs. P-1 to P-101. On behalf of the respondents no witnesses were examined nor any documents were marked.

7. The Tribunal on appreciation of oral and documentary evidence on issue No. 1 held that the accident had taken place on account of negligence of the driver of the lorry and that of the driver of the scooter. The Tribunal fixed the percentage of negligence contributed by the driver of the lorry and the appellant at 75 per cent and 25 per cent respectively. On issue No. 2, the Tribunal held that the appellant is entitled to compensation. Accordingly, the Tribunal awarded Rs. 15,000 for pain and suffering, Rs. 23,920 towards expenses of medical treatment, Rs. 10,000 for loss of income, Rs. 20,000 for loss of amenities of life and Rs. 10,000 as compensation for shortening of life, thus, in total a sum of Rs. 78,920. Out of this sum, 25 per cent is deducted and total sum of Rs. 59,190 is awarded as compensation with interest at 6 per cent per annum from 17.6.1996 up to the date of payment.

8. We have heard Mr. K. Chandranath Ariga, learned advocate for the appellant and Mr. Vishwanath S. Shelter, the learned counsel for the respondent No. 2. Mr. Chandranath Ariga would contend that the finding of the Tribunal that the accident resulted due to contributory negligence of the appellant to an extent of 25 per cent is totally erroneous and that finding cannot be sustained on the basis of the evidence on record. Mr. Chandranath Ariga would also contend that although it is satisfactorily proved that the appellant suffered serious injuries such as bleeding through right ear and left base frontal haemorrhagic contusion of the head, the Tribunal has chosen to hold the injuries suffered by the appellant as simple. Mr. Chandranath Ariga would contend that compensation awarded under several heads is very much on lower side. According to Mr. Chandranath Ariga, awarding a sum of Rs. 15,000 for pain and suffering is totally inadequate particularly in the light of the evidence of PW 2 and PW 3. Mr. Chandranath Ariga would contend that appellant had incurred other expenses to have proper medical care and treatment, apart from the medical bills submitted by him and that the Tribunal has not taken into account the other expenses while determining the compensation. The learned counsel would maintain that the Tribunal ought to have granted at least Rs. 25,000 for transport and Rs. 10,000 for nutrition. A sum of Rs. 1,500 awarded for attendant charges is also very meagre, according to the learned counsel. In awarding the sum of Rs. 10,000 for loss of income, the Tribunal has completely ignored the increase in the salary paid by the appellant from Rs. 9,600 to Rs. 36,600 and that was for the reason that the driver was continued to be engaged, because of the disability of the appellant. The Claims Tribunal has taken into account the salary paid to PW 4

only for a period of two months, completely ignoring the fact that the PW 4 has been serving the appellant as medical representative throughout and even on the date he gave evidence before the Claims Tribunal. Mr. Chandranath Ariga would also contest the correctness of awarding Rs. 20,000 for loss of amenities and Rs. 10,000 towards shortening of life as most arbitrary and unreasonable.

9. Mr. Vishwanath S. Shelter, on the other hand, would contend that the finding recorded by the Tribunal that the appellant also contributed for the accident is well founded because the accident took place in the middle of the road. According to the learned counsel, the reasons stated by the Tribunal to fix contributory negligence at 25 per cent on the part of the appellant are well founded and substantiated by the evidence on record. Learned counsel with regard to the quantum of compensation awarded by the Tribunal under various heads would meekly submit that they are just and reasonable.

10. Having heard the learned counsel for the parties, the following points arise for our decision:

(1) Whether the finding recorded by the Tribunal that the appellant scooterist also contributed negligence for causing accident to an extent of 25 per cent is justified and based on any substantive legal evidence?

(2) Whether the compensation awarded by the Tribunal under various heads are just and proper, having regard to the nature of injuries suffered by the claimant? If not, what shall be the proper and just compensation?

11. At the threshold, we are constrained to observe that the award passed by the Tribunal is rooted in extreme conservatism and not justified in the facts and circumstances of the case and evidence on record. In determining the compensation, the Tribunal has not adhered to well settled principles and parameters to which the Apex Court, this court and other High Courts have on a large number of occasions called attention to. We should state that the reasoning of the Tribunal by and large is perverse and findings are based on conjectures and not on any substantive legal evidence. In the circumstances, we are left with no alternative but to interfere with the award of the Tribunal to secure justice to the injured person.

Point No. 1:

12. We are of the considered opinion that the finding of the Tribunal that the accident occurred due to contributory negligence of the appellant to an extent of 25 per cent cannot be sustained. The appellant was riding his scooter on the left side of the road and was proceeding from west to east on the main road. At that time, the lorry came from the opposite direction and dashed against the scooter and as a consequence there was impact on the left side of the lorry. The report of the Motor Vehicle Inspector evidences this fact. The fact that there was an impact on the left side of the lorry itself would show that the lorry was on its wrong side and dashed against the scooter though the accident was almost at

the middle of the main road. It has come in the evidence that the road was a busy road and, therefore, it was not expected from the appellant to take his scooter to the extreme left obviously because there would have been a number of vehicles proceeding on the same direction by his side. In such a situation the appellant scooterist was neither required nor expected to slow down, his vehicle while entering the intersection. In the instant case, it is admitted that appellant was on the right side and, therefore, the driver of the lorry should have waited at the intersection. Regulation No. 9 of the Rules of the Road Regulations, 1989 framed by the Central Government in exercise of its powers u/s 118 of the Act to which reference is made by the Tribunal is of no help to fasten 25 per cent contributory negligence on the appellant having regard to the established facts of this case. Therefore, we set aside the finding of the Tribunal that the appellant contributed negligence to an extent of 25 per cent in causing the accident and hold that accident took place solely on account of rash and negligent driving of the driver of the lorry.

Point No. 2:

13. The appellant, on the date of the accident was aged 57 years. He is stated to be a businessman carrying on business in the name and style Milton (India) Pharmaceuticals at Balmata, in the city of Mangalore. It is said to be the centre of the city. The appellant on account of the accident suffered the following injuries and lost consciousness:

"(1) Lacerated wound on right occipital area 3x2 cm.

(2) Abrasion on the left leg 1x1 cm.

(3) Bleeding through right ear.

(4) Swelling in the left eye 2x2 cm.

(5) Left base frontal haemorrhagic contusion of the head."

14. The appellant was admitted to SCS Hospital, Mangalore and he was treated therein as an inpatient from 27.2.1996 to 13.3.1996. It is satisfactorily proved that as a result of the accident, the appellant became totally deaf on the right ear and lost his mental equilibrium and lost the hearing capacity in the ear to an extent of 20 per cent; his eyesight got diminished and his speech has become slurred. It is satisfactorily proved that due to the injuries suffered by the appellant in the accident, the appellant cannot tolerate the noise and he has been suffering from anxiety, depression and loss of memory. It is trite, among five injuries suffered by appellant, injuries 3 and 5 are grievous in nature, permanently impairing the vital faculties of the human body.

15. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies according to gravity of the injury. Deprivation of injuries may bring with it three consequences, namely, (i) loss of earnings and earning capacity, (ii) expenses to pay others for what otherwise he

would do for himself and (iii) loss or diminution in full pleasures of living. Though it is impossible to equate money with human suffering or personal deprivation, the court has to make an attempt to award damages so far as money can compensate the loss. Therefore, while considering deprivation, the court should have regard to the gravity and degree of deprivation and the degree of awareness of the deprivation. In awarding damages in personal injury cases, compensation awarded by the court should be substantial and it should not be merely token damages. Lord Morris in his memorable speech in *H. West & Son Ltd. v. Shephard* 1958 ACJ 504 (HL, England), pointed out this aspect in the following words:

"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 Judges and the 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."

16. In the above case, their Lordships, House of Lords, observed that the bodily injury is to be treated as a deprivation which entitles plaintiff to the damage and that the amount of damages varies according to the gravity of the injury. Their Lordships emphasised that in personal injury cases the courts should not award merely token damages but they should grant substantial amount as compensation.

17. In *Ward v. James* (1965) 1 All ER 563, speaking for the Court of Appeal in England, Lord Denning while dealing with the question of awarding compensation for personal injury laid down three basic principles:

"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."

18. In deciding the quantum of damages to be paid to a person for the personal injury suffered by him, the court is bound to ascertain all considerations which will make good to the sufferer of the injuries, as far as money can do, the loss

which he has suffered as a natural consequence of the wrong done to him. In *Basavaraj Vs. Shekhar and Others*, a Division Bench of this court held that "if the original position cannot be restored--as indeed in personal injury or fatal accident cases it cannot obviously be--the law must endeavour to give a fair equivalent in money, so far as money can be an equivalent and so make good the damage". In other words, the general principle which should govern the assessment of damages in personal injury cases is that the court should award to the injured person such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries. The principle is sometimes also referred to as restitution in integrum", but it is manifest and universally realised that no award of money can possibly compensate a man and renew a shattered human frame. Lord Morris of Borth-y-Gest in *Perry v. Cleaver* 1969 ACJ 363 (HL, England), said:

"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."

19. Damages must be full and adequate. Field, J. in *Phillips v. South Western Railway Co.* (1874) 4 QBD 406, held:

"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, fair compensation for that which he has suffered."

20. Though, undoubtedly there are difficulties and uncertainties in assessing damages for personal injury case, that fact should not preclude an assessment as best as can, in the circumstances be made. Lord Halsbury in *In re: Mediana* (1900) AC 113, said:

"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."

21. It is well settled position in law that in granting compensation for personal injury, the injured has to be compensated (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss

of earning capacity or in some cases for both; and (5) medical treatment and other special damages. In personal injury actions the two main elements are the personal loss and pecuniary loss. Chief Justice Cockburn in *Fair v. London and North Western Railway Co.* (1869) 21 LT 326, distinguished the above two aspects thus:

"In assessing (the compensation) the jury should take into account two things, first, the pecuniary loss (the plaintiff) sustains by the accident: secondly, the injury he sustains on his person, or his physical capacity of enjoying life. When they come to the consideration of the pecuniary loss they have to take into account not only his present loss, but his incapacity to earn a future improved income."

22. *McGregor on Damages*, 14th Edn., para 1157, referring to the 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."

23. Besides, the court is well advised to 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 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", is quite apposite and is to be kept in mind by the court in determining compensation in personal injury cases.

24. In the premise of the above noticed well settled principles/norms governing the determination of damages in personal injury cases, let us proceed to critically examine the compensation awarded by the Tribunal under various heads in this case. In awarding only a sum of Rs. 15,000 for pain and suffering, in our considered opinion, the Tribunal oversimplified the injuries suffered by the appellant. Injuries 3 and 5 are undoubtedly grievous in kind and permanent in nature. This position is reinforced by the evidence of the doctors. Rs. 15,000 cannot be a reasonable and fair compensation to be awarded under the head "pain and suffering", if we keep the grave nature of injuries and the time spent by appellant as inpatient in the hospital and later as outpatient. Therefore, we award a sum of Rs. 30,000 for pain and suffering.

25. The Tribunal has awarded a total compensation of Rs. 23,920 under the head "expenses of treatment" which include cost of medical treatment, nutrition, transportation. The compensation awarded towards nutrition/diet and

transportation are on the lower side. Therefore, we award a sum of Rs. 5,000 towards nutrition and Rs. 3,000 towards transportation. Apart from the medical bills produced by appellant, the appellant must have incurred some other expenses in getting treatment. Taking into account all the facts and circumstances of the case, we award a sum of Rs. 30,000 under the head "expenses of treatment".

26. The Tribunal has awarded a sum of Rs. 10,000 towards loss of income. The Tribunal has arrived at this sum taking into account the salary of Rs. 10,000 paid by the appellant to Nagaraj, PW 4. PW 4, in his evidence, has stated that since March, 1996 he has been serving in the appellant's firm and has been paid monthly salary of Rs. 5,000. PW 4 has stated that even as on the date of deposition he was working in appellant's firm. Nothing is elicited in the cross-examination of PW 4 which could destroy the credibility of his evidence. If that is so, it is totally unreasonable for the Tribunal to award Rs. 10,000 only under the head "loss of income". The services of PW 4 were engaged by the appellant to do the service which otherwise the appellant would have done for himself. In that view of the matter, award of Rs. 10,000 is very meagre and should be regarded as a token compensation. At the rate of Rs. 5,000 per month, the appellant must, have paid a sum of Rs. 2,30,000 for the period from March, 1996 to the end of December, 1999. But, there is no concrete evidence that services of PW 4 had been utilised exclusively to compensate the deprivation of the services available to the firm from the appellant. In that view of the matter, we think that compensation of Rs. 1,50,000 towards loss of income would be a reasonable and fair compensation.

27. The Claims Tribunal has awarded Rs. 20,000 under the head "loss of amenities". Here again, we are of the considered opinion that sum of Rs. 20,000 is a meagre compensation to be awarded under head "loss of amenities" if we keep in mind the grievous injuries 3 and 5 and the medical evidence produced by the appellant. The Tribunal has not properly appreciated the evidence of the doctors and other medical evidence adduced in the case and has oversimplified the injuries. Keeping in mind the grave nature of injuries suffered by the appellant and also the principles to which reference has been made supra governing the determination of compensation under the head "loss of amenities", we think that a sum of Rs. 50,000 would be a just and reasonable compensation under the said head and accordingly we award a sum of Rs. 50,000. For the very same reasons, we increase compensation for shortening of life from Rs. 10,000 to Rs. 25,000. Even the rate of interest awarded by the Tribunal at 6 per cent having regard to the recent trends of judicial pronouncements is on lower side. The Tribunal therefore, ought to have awarded interest at least at the rate of 8 per cent. Accordingly, we enhance the rate of interest from 6 per cent to 8 per cent.

28. Thus, the appellant is entitled to total compensation of Rs. 2,85,000 under the following heads;

(1) Pain and suffering Rs. 30,000 (2) Expenses of treatment Rs. 30,000 (3) Loss of income Rs. 1,50,000 (4) Loss of amenities Rs. 50,000 (5) Compensation for shortening of life Rs. 25,000 ----- Total Rs. 2,85,000 -----

29. In the result and for the foregoing reasons, we allow the appeal in part and the respondent Nos. 1 and 2 are directed to deposit a sum of Rs. 2,85,000 minus any money already deposited and/or paid, if any, with costs throughout and interest on the said amount at 8 per cent from 17.6.1996 up to the date of payment.