
(1996) 09 AP CK 0007

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 688 of 1990

Kadali Satyanarayanaamma and Others

APPELLANT

Vs

Sayyapu Raju Ramakrishna Raju and Another

RESPONDENT

Date of Decision : 24-09-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1997) 1 ALT 345

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : Sadasiva Reddy, for the Appellant; Vivekananda Swamy, for the Respondent

Final Decision : Allowed

Judgement

B.K. Somasekhara, J.—The first appellant's right leg was amputated upto the knee level due to the injuries suffered by her in a motor accident which occurred on 16-1-1988 when the bicycle, on which she was going with her husband, was hit by an RTC Bus AAZ 6030 by its driver R-1 and the bus belonging to R-2. She laid a claim u/s 110-A of the Motor Vehicles Act in O.P.241/1988 in M.V.A.T., East Godavari, Rajamundry to recover a compensation of Rs. 1,00,000/- and after an inquiry, the Tribunal awarded Rs. 20,000/- towards loss of income or contribution to the family due to the permanent disability suffered by her; Rs. 5,000/- towards mental and physical suffering; Rs. 7,000/- as a whole towards loss of support to her children and altogether granted Rs. 32,000/-. The date of the award is 12-2-1990. Aggrieved by that regarding the quantum of adequacy of compensation, this appeal is filed.

2. The learned Advocate for the appellants contended that he is not very particular about the amount of Rs. 20,000/- towards contribution by way of loss of income due to the injuries and disability but is concerned only about the amount of Rs. 5,000/- awarded towards pain and suffering of the claimant as a result of the injuries and amputation of the right leg and Rs. 7,000/-awarded

towards loss of support to other claimants.

3. The learned Advocate for the respondents has with all efforts to support the award, contended that strictly speaking, it was a case of contributory negligence wherein the rider of the vehicle viz., the husband of the claimant must have fallen on the road with lot of traffic whereby the accident was inevitable and not due to the negligence of the first respondent, the driver of the vehicle. He also contends that the compensation so awarded has been supported by reasons and requires no interference by this Court in the appeal.

4. The award of the Tribunal is so stingy and opposed to the fundamental principles in assessing the compensation. The items of compensation in a personal injury claim case are not adverted to or considered. The right leg of the first claimant, the victim of the accident, was crushed under the wheels of the bus, the muscles beneath were exposed, in addition to the compound fracture of the leg bones were mixed with dust and muck in the wound and amputated ultimately. Ex.A-5 wound certificate bears testimony to this. Exs.A-3 and A-4 bear support to the case of the first claimant that her right leg above the knee was amputated. She was treated in the hospital for a long time. She suffered permanent disability having lost her right leg above knee level. This is the positive finding of the Court based on evidence therein. The claimant, in such a situation, must have suffered shock at the time of the accident apart from excruciating pain at the time of amputation of the leg physically, thereafter during the healing process and thereafter the mental pain due to loss of a major portion of the right lower limb during her prime age of 30 years. It cannot be forgotten that she was going with her husband on a bicycle after witnessing a film and her emotions upset in addition to future dreams were totally shattered due to such an accident. Her loss of amenities of life for a considerable period during treatment which could have not been less than 4 to 6 months in addition to the future loss of amenities like normal walk, normal posture, normal pleasure, normal marital life in addition to social disability during the remaining span of life must be taken into consideration. His Lordship Justice Jagannadha Rao (as he then was) in K. Sapana v. B. Appa Rao and Ors. 1988 ACJ 113 : 1987 (2) ALT 349 has illustrated in paragraph 66 number of precedents extending to 16 cases wherein compensation was awarded for the item of pain etc. starting from Rs. 10,000/- extending upto Rs. 1,72,000/- under the heading of non-pecuniary damages. As rightly depending upon by the learned Advocate for the appellants, that case involved the amputation of the right leg above knee level of a girl aged 12 years wherein the Tribunal has awarded only Rs. 8,000/- and it was escalated to Rs. 35,000/- under the relevant head. When we deal with the item of compensation for shock, pain and loss of earnings of life as one of the main heads as per settled law Harjinder Kaur Vs. Shahni Devi and Others,) and similar cases, a substantial sum in a case like this deserves to be awarded. This is a case of both physical and mental and social disability, suffering due to such pain etc., nothing less than Rs. 15,000/- can meet the degree of the justness in the award. In fact, coming to the injury and disability, Sapana's case 1988 ACJ

113 : 1987 (2) ALT 349 itself is a very good guide to award substantial sum of Rs. 35,000/- under this item. The date of the accident in Sapana's case 1988 ACJ 113 : 1987 (2) ALT 349 was 24-4-1978 whereas 16-1-1988 is the date of accident in the present case. In the passage of time of a decade, due to the loss of money value, Rs. 35,000/- awarded in pre-1970 ought to be atleast twice in post-1970's if not more. The precedents of many High Courts have always awarded higher compensation under this item and to illustrate a few of them Rs. 33,000/- (Nasibdar Suba Fakir v. Adhia & Company 1983 ACJ 264); Rs. 48,000/- (Vellayya Gounder v. N. Ramanatham 1982 ACJ 251); Rs. 90,000/- (New India Assurance Co. Ltd. v. Charan Kaur 1986 ACJ 243); Rs. 50,000/- (United India Fire & General Insurance Company Ltd. v. Varghese and Ors. 1988 ACJ 152); Rs. 1,00,000/- (Hardev Singh v. Sharnarthi Co-operative Transport Society Ltd. 1988 ACJ 192); Rs. 1,00,000/- Pushpa Thakur Vs. Union of India (UOI) and Another, . In substance, it can be safely concluded that for the amputation of the right leg above knee level, the compensation for the injury and the disability, which should be permanent and not otherwise, should be between Rs. 30,000/- to Rs. 1,00,000/-. This cannot be an invariable rule. In the present case, having due regard to the claimant being a lady aged 30 years and being the labourer having suffered a consequence as above, Rs. 45,000/- appears to be a reasonable sum.

5. It is true that no positive evidence was adduced regarding the medical expenses as fairly conceded by the learned Advocate for the appellants that the claimant was treated in a General Hospital. It cannot be forgotten that even for a treatment in Government Hospital, incidental expenses are to be incurred, which may be difficult either to support with documentary evidence or with accounts. In the nature of the injuries suffered by the claimant and the duration of treatment, a fixed sum of Rs. 2,000/- deserved to be awarded. The claimant-victim was an illiterate and at the relevant time working as a masonry cooly. Her income is Rs. 10/- per day or Rs. 300/- per annum (sic. mensem). Adopting the multiplier, multiplied as in the case of death to assess the loss of income, with the multiplicand of Rs. 3,600/- and multiplier of 14, the loss of income should be Rs. 50,400/-. Although the right lower limb above knee level is cut, the remaining limbs are still in tact. The body being a wholesome entity, even if the entire limb is lost, that will be a portion of the entire body and even making it 100% of the limb, it should be 1/6th as a whole with reference to the body. 1/6th of the above amount comes to Rs. 8,400/- and that is the loss of income which can be awarded in this case, as the claimant is expected to mitigate the damages by seeking some employment which is possible or permissible in the present situation.

6. The claimant being a lady in her thresh-hold of middle age, has lost a major portion of her right leg and exposed to social disability. There is a permanent exposed deformity to the claimant due to the injury. Loss of item of compensation for disfigurement is one of the awardable compensatory legal measure and to borrow the guideline from Shivangowda v. Muttayya 1982 AC 224. Rs. 10,000/- may be a reasonable sum to ameliorate to some extent the

consequences of the accident.

7. The Tribunal has assessed the compensation as if it is a death case while fixing the amount of loss of income to support the other claimants who are her children. That is not one of the items in a case like this. Whatever income she has lost due to the disability, when compensated, has to be used for supporting the other members of the family or herself. Therefore, Rs. 20,000/- awarded under such an item cannot be sustained to be merged in the item of loss of future income, which is fixed at Rs. 8,400/-. Thus, the claimant would be entitled to recover the compensation in this case as under:

(1) shock, pain and loss of amenities: Rs. 15,000/- (2) injury and the permanent disability: Rs. 45,000/- (3) medical and incidental expenses: Rs. 2,000/- (4) loss of future income: Rs. 8,400/- (5) loss of disfigurement: Rs. 10,000/- Total Rs. 80,400/-

This would be quite less when compared to what was awarded in Sapana's case (1 supra) but reasonable.

8. The appeal succeeds and is allowed. The award of the Tribunal is set aside to substitute it with the following:

The first claimant shall be entitled to recover Rs. 80,400/- with costs of the proceedings throughout and interest at the rate of 12% per annum from the 15 date of the petition till the date of payment. Regarding the liability of the respondents, it shall be joint and several. The amount if any already paid, shall be deducted. The Tribunal shall also act according to the directions of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and in similar case viz., U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors. 1996 (4) SC 479 : ALT 36 to deposit the amount and to release the same.