
(2018) 01 DEL CK 0161
In the Delhi High Court
Case No : MAC.APP. No. 507 Of 2016

New India Assurance Co. Ltd

APPELLANT

Vs

Priyanshu & Ors

RESPONDENT

Date of Decision : 03-01-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Order 21 Rule 1

Citation : (2018) 01 DEL CK 0161

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Mridul Jain, Kavita Tyagi, Navneet Goyal

Final Decision : Dismissed

Judgement

J.R. Midha, J

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.16,93,899/- have been awarded to respondent No.1.

2. On 15th January, 2011, Master Priyanshu, aged 3 years at that time, was walking on the footpath near his house when he was hit by bus bearing No. UP-12T-3194 driven by respondent No.2 which resulted in fracture in right shaft of femur of left leg of respondent No.1. The left leg of respondent No.1 was amputated. The permanent disability of respondent No.1 was assessed as 76% in respect of both lower limbs.

3. The Claims Tribunal awarded Rs.12,679/- towards expenditure on treatment, Rs.5,000/- towards expenditure of conveyance, Rs.5,000/-towards special diet, Rs.25,000/- towards nursing/attendant. The Claims Tribunal awarded Rs.5,93,780/- towards cost of the artificial limb. The Claims Tribunal awarded Rs.6,22,400/- towards the loss of earning capacity by taking the income of Rs.2,916.67 per month, adding 30% towards inflation, applying the multiplier of 18 and taking the loss of earning capacity as 76%. The Claims Tribunal awarded Rs.1,00,000/- towards pain and suffering, Rs.1,00,000/- towards disfiguration,

Rs.50,000/- towards loss of amenities of life and Rs.1,50,000/- towards loss of matrimonial prospects. The total compensation of Rs.16,93,899/- was awarded by the Claims Tribunal to respondent No.1.

4. Learned counsel for the appellant urged at the time of the hearing that the compensation awarded under the non-pecuniary heads is on higher side. Reliance is placed on Master Mallikarjun v. Divisional Manager, The National Insurance Co. Ltd., AIR 2014 SC 736. It is further submitted that the functional disability of 76% taken by the Claims Tribunal is on a higher side. It is further submitted that the notional income of Rs.2,916.67 per month is on higher side. It is further submitted that future prospects should not be added for computing the loss of earning capacity. It is further submitted that the interest should not have been awarded on the cost of artificial limbs.

Law with respect to Grant of Compensation in Injury cases

5. The law with respect to the grant of compensation in injury cases is well-settled. The injured is entitled to pecuniary as well as non-pecuniary damages. Pecuniary damages also known as special damages are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money whereas non-pecuniary damages are incapable of being assessed by arithmetical calculations. The pecuniary or special damages, generally include the expenses incurred by the claimants on his treatment, special diet, conveyance, cost of nursing/attending, loss of income, loss of earning capacity and other material loss, which may require any special treatment or aid to the insured for the rest of his life. The general damages or the non-pecuniary loss include the compensation for mental or physical shock, pain, suffering, loss of amenities of life, disfiguration, loss of marriage prospects, loss of expected or earning of life, inconvenience, hardship, disappointment, frustration, mental stress, dejection and unhappiness in future life, etc. The above list is not exhaustive and there may be special or additional circumstances depending on the facts in each case.

6. In R.D. Hattangadi v. Pest Control (India) Pvt. Ltd., (1995) 1 SCC 551, a road accident resulted in 100% disability due to paraplegia below waist to a lawyer (retired Judge). The Supreme Court observed that no amount of compensation can restore the physical frame of the appellant. That is why it has been said by Courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame. 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 guess work, 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. When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age,

the unusual deprivation he has suffered, the effect thereof on his future life.

7. In *Common Cause, A Registered Society v. Union of India*, (1999) 6 SCC 667, the Supreme Court held that the object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The Court further held that the elements of damage recognized by law are divisible into two main groups: pecuniary and non-pecuniary loss. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do.

8. In *Nagappa v. Gurudayal Singh*, (2003) 2 SCC 274, the Supreme Court held that if a collection of cases on the quantum of damages is to be useful, it must necessarily be classified in such a way that comparable cases can be grouped together. No doubt, no two cases are alike but still, it is possible to make a broad classification which enables one to bring comparable awards together. Inflation should be taken into account while calculating damages.

9. In *Divisional Controller, KSRTC v. Mahadeva Shetty*, (2003) 7 SCC 197, the road accident resulted in paraplegia due to serious injury to the spinal cord. The Supreme Court held that the object of providing compensation is to mitigate the hardship and place the claimant as far as possible in the same position financially as he was before the accident. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. The compensation awarded has to be "just" and not a bonanza. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrariness. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. The Supreme Court further held that while fixing compensation, suffering of the mind, shortening of life expectancy, loss of earning capacity, permanence of the disability, loss of amenities of life etc. are to be considered against the backdrop of age, marital status, unusual deprivation one has undertaken in one's life etc.

10. In *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka*, (2009) 6 SCC 1, the Supreme Court held that adequate compensation must 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. The Supreme Court further held that 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 not only on the victim but even more so on the injured's family and attendants and the stress saps their energy and destroys their equanimity. The Apex Court further held that compensation has been computed keeping in mind that the brilliant career of the claimant has been cut short and there is, as of now, no possibility of improvement in the claimant's condition, the compensation will ensure a steady and reasonable income to the claimant for a time when the claimant is unable to earn for himself.

11. In *Arvind Kumar Mishra v. New India Assurance Co. Ltd.*, (2010) 10 SCC 254, the road accident resulted in 100% permanent disability to a final year engineering student. The Supreme Court held the functional disability to be 70% to compute the loss of earning capacity according to the multiplier method. The Supreme Court further held that the whole idea of compensation 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 what he had suffered.

12. In *Raj Kumar v. Ajay Kumar*, (2011) 1 SCC 343, the Supreme Court considered a large number of precedents and laid down the following principles for computation of compensation in injury cases:-

"General principles relating to compensation in injury cases

4. The provision of the Motor Vehicles Act, 1988 ('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 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. (See *C. K. Subramonia Iyer v. T. Kunhikuttan Nair* - AIR 1970 SC 376, *R. D. Hattangadi v. Pest Control (India) Ltd.* - 1995 (1) SCC 551 and *Baker v. Willoughby* - 1970 AC 467).

5. The heads under which compensation is awarded in personal injury cases are

the following:-

Pecuniary damages (Special Damages)

- (i) Expenses relating to treatment, hospitalization, 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.
 - (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. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) - depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) - involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case.

13. In the present case, the Claims Tribunal has awarded non-pecuniary compensation of Rs.4,00,000/- under the four heads namely Rs.1,00,000/- towards pain and suffering, Rs.50,000/- towards loss of amenities of life, Rs.1,00,000/- towards disfiguration and Rs.1,50,000/- towards loss of marriage prospects. The appellant has relied upon *Master Mallikarjun v. Divisional Manager, The National Insurance Co. Ltd.* (Supra) in which the Supreme Court has held that non-pecuniary compensation in respect of 76% permanent disability should be Rs.5,00,000/-. In that view of the matter, *Master Mallikarjun v. Divisional Manager, The National Insurance Co. Ltd.* (Supra) does not support

the petitioner.

14. Master Priyanshu is present in Court along with his mother and his condition has been seen. He is aged about 7 years now and his left leg amputated. The artificial limb has been fixed by M/s Endolite India Limited in terms of the order dated 11th August, 2016 passed by this Court. This Court is of the view that the compensation of Rs.6,22,440/- awarded by the Claims Tribunal under the head of loss of earning capacity by taking the income of Rs.2,916.67 per month along with future prospects of 30% and multiplier of 18 on the loss of functional disability as 76% is fair and reasonable and does not warrant any interference considering the present condition of the child. The Claims Tribunal has awarded compensation of Rs.5,000/- under the head of conveyance which is grossly inadequate considering that the left leg of respondent No.1 has been amputated and the child will have to incur expenditure on the conveyance for the whole of his life.

15. There is merit in the last contention of the appellant that the Claims Tribunal should not have awarded the interest on the cost of artificial limb. However, the interference in this direction is not warranted considering that the Claims Tribunal has awarded grossly inadequate compensation under the head of conveyance as well as lower amount of compensation under the non-pecuniary heads. It is also noted that the Claims Tribunal has awarded Rs.5,93,780/- towards artificial limb whereas the M/s Endolite India Limited have charged the cost of Rs.6,25,0000/- towards the artificial limb as per the quotation placed on record by M/s Endolite India Limited recorded in the order dated 11th August, 2016. This Court is of the view that the interest on the cost of artificial limb be treated as additional compensation under the heads of conveyance and other heads mentioned above.

16. In view of the above, the amount awarded by the Claims Tribunal is upheld. The appeal is dismissed.

17. The appellant has deposited Rs.21,90,032/- with UCO Bank, Delhi High Court Branch in terms of the order dated 21st July, 2016. The appellant is directed to deposit the balance compensation amount with the Registrar General of this Court within four weeks. The amount already deposited by the appellant shall be first adjusted to the interest and thereafter towards the principal in terms of the principles laid down in Order XXI Rule 1 of Code of Civil Procedure. The computation of interest be placed on record on affidavit. The mother of respondent No.1 present in Court submits that she will furnish Form 15-G to the appellant so that no TDS is deducted to the amount to be deposited.

18. List for disbursement of the compensation amount on 21st February, 2018.

19. Respondent No.1 has savings bank account No.15530110113233 with UCO Bank, Delhi High Court Branch. The mother and natural guardian is directed to transfer the said savings bank account to the branch of UCO Bank near the place of their residence. The concerned bank is directed not to issue any cheque book and/or debit card to respondent No. and if the same has already been issued, the

concerned bank is directed to cancel the same and make an endorsement on the passbook that no cheque book or debit card shall be issued to respondent No.1 without the permission of this Court. Respondents No.1 shall produce the copy of this order before the concerned bank whereupon the bank shall make an endorsement on the passbook. Respondent No.1 shall produce the original passbook with the necessary endorsement on the next date of hearing.

20. UCO Bank is directed to place on record the particulars of the FDRs issued in terms of the order dated 11th August, 2016 along with the balance in the said FDRs on the next date of hearing.

21. Copy of this judgment be given dasti to learned counsels for the parties under signature of Court Master.