
(2007) 01 MP CK 0074
In the Madhya Pradesh High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Vibha Sood and Another

RESPONDENT

Date of Decision : 15-01-2007

Acts Referred:

Motor Vehicles Act, 1939 — Section 166, 170

Citation : (2008) ACJ 1464

Hon'ble Judges : S.C. Sinho, J;Dipak Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dipak Misra, J.—The Supreme Court while advertng to the concept of grant of compensation under the provisions of the Motor Vehicles Act, 1939 (for brevity "the Act") in the case of R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , referred to the decision rendered in the case of Ward v. James (1965) 1 All ER 563, wherein it had been expressed as under:

Although you cannot give a man so gravely injured much for his "lost years", you can, however, compensate him for his loss during his shortened span, that is, during his expected "years of survival". You can compensate him for his loss of earnings during that time and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to the brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well-nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern and they keep it in line with the changes in the value of money.

2. Be it placed on record that in cases relating to grant of damages in accidental

death or injury, some kind of guesswork, sympathy juxtaposed with the totality of factual matrix, empathy by hypothetical disposition by putting oneself in the position of the victim are to be taken into consideration amongst other things. But, an eloquent one, while computing damages for the loss sustained, no one can expect the sympathy to be metamorphosed into total emotionalism and the empathy to be transformed into sentiments or for that matter converted to expanse of substituted neo-syllogism. It has to be determined on the rationale objective acceptable and presentable logistics and the compensation has to be awarded in terms of pound, penny and pence. One must bear in mind while determining the compensation that one is called upon to calculate the incalculable, compute that is difficult to determine and award damages, which, in a way, have to be in the realm of just and fair compensation.

3. We have stated so in the beginning as the present factual matrix exposits a sad-sad scenario and frescoes the agony, anguish and the trauma of a 19 years young colleen who on the unfortunate date of 22.8.2003 about 12.15 p.m. while proceeding from Nutan College to her residence by a Kinetic Honda bearing registration No. MP 04-HS 4201 met with an accident as the offending Maruti car bearing registration No. MP 04-HA 4749 driven by the owner of the vehicle dashed against her vehicle, as a consequence of which she fell down and sustained grievous injuries on her head and legs. She also sustained certain internal injuries. She was carried to the Fracture Hospital and she remained there up to 23.8.2003. On X-ray being conducted it was found that both legs of the claimant had sustained fractures. CT scan was conducted in the Bhopal Memorial Hospital for head injury. She remained admitted in Kasturba Bai Hospital for 23 days. In the process of treatment, operations were carried out, screws were fitted, bone grafting was done and she was pursuing her studies in commerce as an undergraduate student. Because of the injuries sustained she initiated an action u/s 166 of the Act before the Motor Accidents Claims Tribunal, Bhopal in M.V.C. No. 1 of 2004 for grant of compensation of Rs. 21,37,000 from the respondents on the ground that the vehicle in question was owned by the respondent No. 2 and insured with the present appellant.

4. The owner of the vehicle filed its written statement and thereafter chose to remain absent which entailed in an ex parte proceeding. In the written statement, he had denied the allegations made in the petition but admitted the factum of insurance with the insurer.

5. The insurer combated the claim of the claimant on the foundation that the owner who was driving the vehicle did not have a valid and effective driving licence at the time of the accident; that there was contributory negligence on the part of the victim injured; and that the claimant who was driving Kinetic Honda did not possess any driving licence.

6. On the basis of the aforesaid pleadings the Tribunal framed as many as nine issues and came to hold that the vehicle that caused the accident was driven rashly and negligently by the owner and it had caused the accident; that accident

did not occur due to rash and negligent driving of the claimant and thereby she had not contributed in the causation of the accident; that there had been no breach of terms and conditions of the policy; and that the claimant has sustained grievous injuries on head and both legs inasmuch as both legs were fractured and she had availed treatment at Kasturba Bai Hospital, Bhopal Memorial Hospital and in Fracture Hospital and she was discharged after availing treatment for almost four weeks; that to cure the fracture, nailing was done and screws were fitted and bone grafting was carried out; that her flexion movement of left hip has lessened by 20 degrees and movement of the right hip has reduced by 30 degrees; that due to the injuries suffered by her she would face difficulty to walk, to sit and to climb throughout her life; that her efficiency in the future, as far as professional field is concerned, would be affected due to her physical disability; that Rs. 1,28,000 was spent on her treatment; that she would be required to spend further amount in future; that she is entitled for Rs. 4,00,000 towards permanent disability in the right leg; that she is entitled for Rs. 1,00,000 towards mental shock, agony, physical pain and suffering and psychological depression, and Rs. 2,00,000 for the past, present and future medical expenses and nutritious diet, etc. and thus, she was entitled to a sum of Rs. 7,00,000 in toto, towards compensation along with interest at the rate of 9 per cent per annum from the date of presentation of the claim petition before the Tribunal till the date of realisation of the awarded sum.

7. At the very outset it is seemly to state that as the owner remained ex parte the insurer filed an application u/s 170 of the Act for grant of leave to contest the claim from all spectrums and the Tribunal on consideration of the factual matrix accorded the leave by order dated 12.4.2004.

8. Questioning the presentability of the award it is submitted by Mr. Rakesh Jain, learned Counsel for the insurer that the Tribunal has grossly erred in computation of compensation inasmuch as the claimant had suffered hardly 21.2 per cent permanent disablement on the right leg and 23.4 per cent on the left leg. Learned Counsel further submitted that the Tribunal without any rhyme or reason has awarded a sum of Rs. 2,00,000 for the past, present and future medical expenses inclusive of nutritious diet. Mr. Jain has propounded that grant of Rs. 1,00,000 for mental agony is exorbitant and has really no nexus with the trauma suffered. In essence, submission of Mr. Jain is that the amount awarded by the Tribunal has to be treated as a windfall which does not withstand prudential view or conception of just compensation.

9. Mr. Amit Verma, learned Counsel appearing for the claimant, has contended that the award passed by the Tribunal is just and proper and does not warrant interference by this Court. The learned Counsel urged that there has been shortening of the right leg by 2 cm and there can be no shadow of doubt that the same has entailed in limping of the young girl which would affect her marital prospects. It is urged by him that the methodology adopted by the Tribunal though, in a way, appears to be quite gross yet on proper appreciation of the

factual scenario, conclusion would be the same and hence, there is no justification for reduction of the amount awarded by the Tribunal. Learned Counsel has commended us to the decisions rendered in the cases of Shashendra Lahri Vs. UNICEF and Others, and Muthaiah Sekhar Vs. Nesamony Tpt. Corporation Ltd. and Another, .

10. To appreciate the rival submissions raised at the Bar, we have bestowed our anxious consideration on the material brought on record. We have also perused the award passed by the Tribunal. Mr. Rakesh Jain, learned Counsel appearing for the insurer does not dispute the findings recorded by the Tribunal as far as injuries and the amount expended on treatment are concerned. However, submits Mr. Jain that computation has been made on emotional basis without any kind of corresponding methodology which makes the award sensitively susceptible. Mr. Verma remained embedded in his submission that the award passed by the Tribunal if viewed from any angle would not invite the wrath of interference of appeal by this Court as the same meets the requirement of just compensation, if the social strata to which she belongs, her future prospects, deterioration of quality of life, regression in the prospects of her marriage and all other concomitant factors are cumulatively viewed.

11. In Shashendra Lahri Vs. UNICEF and Others, , a two-Judge Bench of the Apex Court while considering the injuries caused by several fractures, bone grafting and long treatment of a student of B.Com., aged about 17 years awarded compensation to the tune of Rs. 4,58,000. In the aforesaid case there was shortening of right leg of the injured-claimant by 3 inches.

12. In Muthaiah Sekhar Vs. Nesamony Tpt. Corporation Ltd. and Another, , the Supreme Court while dealing with the injuries suffered by the injured who sustained permanent dislocation of right hip, loss of 60 per cent vision in the left eye and 50 per cent hearing in the left ear awarded a sum of Rs. 4,76,000. It is worth noting that the injured was 25 years of age and had joined M.L. Course.

13. We have already reproduced the concept of pecuniary and non-pecuniary damages as have been enumerated in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, . In the case at hand, as is evincible, the claimant had suffered fractures on femur bone of both the legs for which operations were carried out, an iron rod was inserted in the left leg, screws were fitted, bone grafting was done and as is demonstrable there has been shortening of leg by 2 cm. The Tribunal has recorded a finding that she has suffered permanent disability of 21.2 per cent on the right leg and 23.4 per cent on the left leg. As is vivid, flexion movement of left hip is reduced by 20 degrees and that of the right hip by 30 degrees. The Claims Tribunal has awarded a sum of Rs. 4,00,000 for permanent disability for the injuries sustained on both legs. In our considered opinion, if the entire factual matrix is taken into consideration compensation of Rs. 3,50,000 would meet the ends of justice. As far as the amount spent by the claimant, the Tribunal has recorded a finding that Rs. 1,28,000 was spent on her treatment. The said conclusion has been arrived at by the Tribunal as she had

availed treatment at various hospitals and remained hospitalised for almost a month. If the transportation, expenses on attendant, special diet and other ancillary factors are taken into consideration, ignoring the future medical expenses, we are of the considered opinion that the amount of Rs. 2,00,000 awarded on this score by the Tribunal cannot be found fault with. Accordingly, we concur with the same.

14. The next facet to which we shall advert to pertains to grant of compensation for hardship, mental pain and agony and physical suffering. The Apex Court in *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, , has taken note of the damages for mental and physical shock, pain and suffering, loss of amenities of life, inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life. Mr. Verma has contended that when there has been shortening of the right leg by 2 cm limping is inevitable. The said submission cannot be totally brushed aside. Injured-claimant was 19 years of age and she has suffered enormously by the accident. Movement of hips have been deteriorated to some extent. This will cause discomfort, mental stress and inconvenience. The marital prospects of the claimant is also likely to be affected. The Claims Tribunal has awarded a sum of Rs. 1,00,000. In our considered opinion, a sum of Rs. 75,000 would meet the ends of justice and connotative facet of just compensation.

15. In view of the aforesaid premises, we reduce the amount of compensation to Rs. 6,25,000 (rupees six lakh twenty-five thousand). At this juncture, Mr. Rakesh Jain, the learned Counsel appearing for the insurer contended that the Tribunal has granted interest at the rate of 9 per cent per annum though there has been fall in the rate of interest. Regard being had to the aforesaid aspect, we direct that the amount awarded by the Tribunal would carry interest at the rate of 6 per cent per annum from the date of presentation of the application before the Tribunal till the date of deposition before it. We would like to clarify, if any amount has been deposited, the same shall be taken note of by the Tribunal while computing the quantum of interest. Consequently, the appeal is allowed in part. There shall be no order as to costs.