
(2001) 04 KAR CK 0017

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2975 of 2000

New India Assurance Company

APPELLANT

Vs

K. Tamil Selvi and Others

RESPONDENT

Date of Decision : 19-04-2001

Acts Referred:

Citation : (2001) 4 KCCR 2260

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : R. Jaiprakash, for the Appellant; J.G. Chandramohan, for the Respondent

Judgement

T.N. Vallinayagam, J.—This appeal was admitted by my brother justice N.S. Veerabhadraiah after passing the following order:

Heard. It is seen that the Claims Tribunal has indiscriminately awarded the compensation without applying its mind. Therefore, the Registry is directed to take note of the fact and make an entry in the confidential record.

I am in entire agreement with the views expressed by my brother and I have no reason to differ from it. It is a case where a sum of Rs. 5,00,000/- was granted to a person who has lost her right hand, as if it is compensation payable on the death of the victim the formula is applied. It is unfortunate that the liberality in awarding compensation has been wrongly spelled and understood by the Tribunal. It is true that even a loss of nail is not replaceable and it can never be compensated by any amount of money. But unfortunately, we are governed by rules and regulations which are now more or less formed into formulas and even as schedule to the Amended Act.

2. That is why, the Supreme Court has rightly taken the view in AIR 1995 SCW 2423 and observed that it is very difficult to assess the damages by arithmetical calculations, but involves some guess work, some hypothetical consideration, some amount of sympathy for the nature of disability caused. Following the

above dictum while deciding the quantum, we have to embark upon some guess work; we have to run after imagination; we have to go and take into some hypothetical considerations apart from that and on the top of it a sympathy should be conferred on the nature of the disability caused.

3. Applying the above formula and the principles laid down by the Apex Court, I find in this case a lady who was aged about 30 years on the date of accident lost her right hand above the elbow in the accident that has taken place on 31.10.1995 involving a KSRTC bus bearing No. KA-07 F-182 and a lorry bearing No. KA-08 693. It is true that in the accident she suffered the following injuries:

i) Right hand was cut off at 1/3rd middle of humerus, muscles had come out hanging and it was profusely bleeding.

4. She was admitted immediately in the hospital and an emergency operation was conducted. Her separated hand was said to be fixed, but it could not be fixed because, the doctor was not able to perform that kind of operation. The medico legal register and Ex.P-1 have been produced. The police had brought the separated hand for opinion as to say whether the said hand was of the injured. Of course, the Tribunal has given the finding of negligence and the finding has become final. It is claimed by the claimant that she has lost a main organ of the body viz., the right hand without which it is difficult for a person to attend to her work. The doctor who had examined has deposed that the percentage of the disability is cent percent. She was working as a Garment Supervisor in Johnson Exports and Garments (Private) Limited. It was the evidence of her employer that she was working as a Garment Supervisor in the company from 1.6.1993 to 28.10.1995 and since she has lost her right hand, the company did not agree to continue her. She deposed that she is working as Garment Supervisor and she was doing model stitching. There were 75 persons working in the company. The Trial Court found fault on the Respondent that she was giving contra evidence. But the evidence given by the doctor and the employer has to be taken with a pinch of salt. It is unfortunate that the doctor spoke about 100% disability of the whole body when the hand alone has been cut off. There has been several cases come before various High Court, wherein the amputation of forearm from the point of elbow which reads as under:

In respect of amputation of forearm from the point of elbow joint which was thrown out into the road, the Gujarat High Court in Chaturji Amarji and Ors. v. Ahmad Rahimbux and Ors. reported in 1980 ACJ 368, has granted a sum of Rs. 43,200/- for economic loss and Rs. 15,000/- for shock.

In another case reported in Ramesh Kumar Awasthi Vs. The Collector, Saharanpur and Others, for the amputation of forearm consequently mental shock and pain of 26 years old claimant who had passed M. Sc., the Court has granted Rs. 40,000/-.

In the case where there is a compound fracture of the radius and ulna of right hand and the right ulna was also fractured, the Punjab Haryana High Court has

granted Rs. 40,000/- as compensation for a fracture of forearm, rib and the claimant has to undergo five operations and functioning of the right hand has been diminished to the extent of 90% of the permanent disability, the Court has granted only Rs. 40,000/- in the case reported in 1984 ACJ 435 (Om Prakash Sekhri v. Pritam Singh and Ors.) in respect of left knee which is thrown into pieces. A sum of Rs. 36,000/- was granted by the Orissa High Court in 1976 ACJ 21, when the left hand was amputated. A sum of Rs. 32,300/- was granted by Madras High Court in a case reported in Abdul Jabbar Vs. Muniammal, , a boy was 9 years sustained injuries in his left hand, as a result of which he suffered fracture of the humerus ulna in left hand of the boy was paralysed and it is a permanent disability. The Karnataka High Court in 1981 Mad 112, a boy was 9 years sustained injuries in his left hand, as a result of which he suffered fracture of the humerus ulna in left hand of the boy was paralysed and it is a permanent disability. The Karnataka High Court in 1981 ACJ 138, has granted Rs. 36,000/- as global compensation, the claimant was left hander and as a result of accident he suffered fracture of scapula and collar bone and the movement of the hand was affected. The Tribunal has awarded a sum of Rs. 20,000/- as general damages on the expenses incurred as Special Damages. In fact it was found that his wife was also suffered fracture of scapula and collar bone which affect the movement of her left leg. Therefore, she could not lift the things with her left hand was awarded Rs. 20,000/- for injuries of bone and the award was granted by this Court in 1984 ACJ 351.

5. In fact, in a case of death of a student in the Supreme Court decision in 1989 ACJ 961 in while enhancing the compensation a sum of Rs. 1,30,800/- was awarded considering the deceased as a student without considering whether he was earning or not. Now applying the above principles and even taking the case of the Petitioner as it is, her income is shown as Rs. 2,500/- per month. It is not in dispute that her husband is also employed. Though normally in such cases only 50% shall be taken as personal contribution we will even take 1/3rd as personal expenses and take 2/3rd as her contribution. It comes to Rs. 1,700/- per month i.e., Rs. 20,400/- per annum. The multiplier applicable for the age of the lady who was aged 30 years on the date of the accident is 16 as per the ruling of the Division Bench of this Court in Gulam Khader and Another Vs. United India Insurance Company Limited and Another, Applying the multiplier as 16 it comes to Rs. 3,26,400/- that will be normally payable in case of death. Now we are calculating the disability aspect of it. Though I have taken disability on the lesser percentage Mr. Jayaprakash appearing for the Insurance Company fairly submitted that it can be taken as 60% as is held in Workmen Compensation Act. Though the principle is not applicable directly, we can take it as credence. Applying 60% of the disability it comes to Rs. 1,95,840/-. I would like to recollect the case as found by the Court below applying the correct formula. Therefore, I hold that the Petitioner shall be entitled to only Rs. 1,95,840/- and not more. The learned Counsel for the Respondent would however rely upon the ruling of the Supreme Court reported in 1976 ACJ 141 in

the case of Pratap Narain Singh Deo v. Shrinivas Sabat and Anr. and it contained that when a carpenter lost his arm the disablement is total and not partial. That case was coming under the provisions of Workmen's Compensation Act. But this settled law of principles of Workmen's Compensation Act is not applicable for assessing compensation in the Motor Vehicles Act. Of course, I have taken 60% disability much against my opinion, whereas the learned Counsel for the appellant pointed out that the disability at 60% is fair and reasonable.

6. Here also it should be noted that she was only a Supervisor in the Company. The job of Supervisor is evident that she has to go around and manage 75 persons who were working there. In these days alternative arms being available no attempts are made for fixation of another arm. What is forgotten in this case is the medical opinion of a doctor which is essential and basic part of loss of damages.

7. The Trial Court has chosen to believe the evidence of the proprietor as in toto who applied mind with a lesser salary and experience. A Supervisor can merely go around supervising the work and sit on the machine and stitch. I feel that it is just, proper and reasonable to grant a sum of Rs. 1,95,840/- rounding off to Rs. 2,00,000/- and the award shall stand reduced to Rs. 2,00,000/- and the conditions regarding interest and deposit shall continue.

8. Before parting with the case, I again reiterate that in my opinion, I would not have granted so much money for the injury sustained as the settled law referred by me supra of various High Courts decision do not apply to this case. But taking into consideration a sum of Rs. 5,00,000/- was granted and it is fair not to disappoint the claimant even to reduction. The reduction should be made on a formula available in law. Thus the appeal is allowed and the award of the Tribunal is modified to Rs. 2,00,000/-.

9. The amount deposited shall be paid to the Counsel Mr. J.G. Chandramohan by issuing a cheque in his favour on filing a memo to that effect. That amount shall be accounted at the time of final payment by the third Respondent.