
(2006) 02 GAU CK 0027
In the Gauhati High Court

Sadhana Saha and Another

APPELLANT

Vs

Commandant Provisioning, M.T. Pool and Others

RESPONDENT

Date of Decision : 13-02-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2006) 3 ACC 736 : (2007) ACJ 822 : (2006) GLT 298 Supp

Hon'ble Judges : T. Vaiphei, J;A.B. Pal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

T. Vaiphei, J.—This appeal is directed against the judgment and award dated 1.7.1998 passed by the learned Member, Motor Accidents Claims Tribunal, South Tripura, Udaipur (hereinafter referred to as "the Tribunal" for short) in T.S. (M.A.C.) No. 158 of 1997 by which a compensation of Rs. 50,000 with interest at the rate of 12 per cent per annum from the date of filing the claim petition was awarded to the appellants for the injuries sustained by their son in a vehicular accident. Dissatisfied with the award, the appellants claimed enhancement of the compensation amount in this appeal.

2. Heard Mr. P. Roy Barman, learned Counsel for the appellants. We have also heard Mr. A. Ghosh, the learned Counsel for the respondents.

3. The material facts of the case are no longer in dispute. The appellants are the parents of a minor boy, namely, Raki Saha. The victim boy was about 8 years old at the time of the accident in question and was a student of class I. On 1.6.1997, at about 5 p.m., the victim was suddenly hit by the vehicle bearing No. TRP 359 (jeep) belonging to the respondent Nos. 1 and 2 while escorting Hon'ble Minister Ranjit Debnath in front of their house situated by the side of Melagarh-Sagarmahal Road when the driver of the vehicle lost control due to rash and negligent driving. Due to the accident, the victim sustained injuries and was immediately taken to Melagarh Hospital, from where, on reference, was taken to

G.B. Hospital, Agartala for medical treatment. The victim boy underwent operation in his left leg then and there and after two-three months underwent another operation of his leg and in the process. his left leg was shortened by 2.5 cm. The victim was in the hospital for 24 days, whereafter he was discharged but was continued to be treated at his house. The police registered a regular case being Melagarh P.S. Case No. 30 of 1997 under Sections 279/338 of Indian Penal Code in connection with the said accident. During the treatment of their son, the appellants used to visit G.B. Hospital regularly and had to stay in hotel. They, accordingly, claimed Rs. 2,80,000 as compensation.

4. The Tribunal awarded Rs. 30,000 for the injury and suffering of the victim and Rs. 10,000 as expenses for medical treatment and a sum of Rs. 10,000 for incidental cost. The total amount of compensation so awarded was Rs. 50,000. Holding that the vehicle, which was responsible for the accident, was owned by the Commandant Provisioning, M.T. Pool, Agartala, the Tribunal directed him to pay the compensation amount.

5. The sole question, which falls for consideration in this appeal, is whether the compensation amount awarded by the Tribunal is just and adequate on the facts and circumstances of the case. As noticed earlier, there is no dispute that the victim boy was 8 years at the time of accident and was a student of class I and that due to the accident, his left leg was shortened by 2.5 cm, thereby making him permanently disabled. The principles and norms governing the determination of compensation in bodily injury cases have been elaborately discussed by Karnataka High Court in *K. Jagannath Rai Vs. Gangarathna C. Bai and Others*, with which we are in respectful agreement and the same are reproduced herein below:

(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 v. Shekhar* 1987 ACJ 1022 (Karnataka), 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 *restitutio 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).

6. At the outset, we cannot but observe that even though the law is well settled now, the difficulty always lies in applying the law to the particular facts of a case.

In such circumstances, it is inevitable that compensation is to be assessed by some guesswork, hypothetical considerations and some amount of sympathy linked with the nature of disability caused which is required to be observed with objective standards. The damaged frame of the body cannot be restored to its original position. In the instant case, the claimant at a very young age had suffered grievous injuries resulting in permanent disability which he will have to bear for the rest of his life. As a result, the victim boy will be subjected to frustration, disappointment, discomfort and inconvenience, which concededly needs to be compensated in a just and reasonable manner. One cannot also overlook the fact that the marriage prospects of the victim would be substantially affected and he will have to live with this disability throughout his life. Undoubtedly, the victim boy has certainly been deprived of the natural pleasures of walking, running, playing, climbing, etc.

7. While granting compensation for the personal injury, the injured has to be necessarily 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 the case at hand, since the victim boy was 8 years old at the time of the accident (he may now be 17 years), he may not be entitled to the compensation under the head of loss of earnings or loss of earning capacity. But then, it cannot be denied that he is entitled to compensation for pain and suffering, for loss of amenities and medical expenses. In our considered view, the award of Rs. 30,000 made by the Tribunal under the head of injury and suffering is too inadequate. Taking all the facts and circumstances into consideration, which are noted earlier, under the head of pain and suffering, the victim boy is entitled to Rs. 60,000 and another Rs. 1,00,000 for loss of amenities/disabilities. Therefore, in addition to Rs. 10,000 for incidental cost and Rs. 10,000 towards medical expenses awarded by the Claims Tribunal, the ends of justice will be met if a further sum of Rs. 1,60,000 for pain and suffering and loss of amenities/disabilities are awarded to the victim. However, the rate of interest made by Tribunal at the rate of 12 per cent per annum is on the higher side considering the prevailing commercial bank rates. The same needs to be reduced to 8 per cent per annum on the enhanced amount only, which is payable from the date of passing this judgment.

8. In the result, the appeal is allowed. The respondent Nos. 1 and 2 are directed to pay a sum of Rs. 1,80,000 to the victim boy through the appellants together with interest at the rate of 8 per cent per annum on the enhanced amount of Rs. 1,30,000 from the date of passing this judgment. It is made clear that any

amount already paid to the appellants shall be adjusted accordingly.