

(2014) 01 SC CK 0086

In the Supreme Court Of India

Case No : Civil Appeal No. 896 of 2014 (Arising out of SLP (C) No. 21303 of 2013)

Sanjay Kumar

APPELLANT

Vs

Ashok Kumar and Another

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Citation : (2014) 1 ACC 372 : (2014) ACJ 653 : (2014) 2 AD (SC) 9 : (2014) 104 ALR 236 : (2014) 2 AWC 1893 : (2014) 1 CG.L.R.W. 81 : (2014) 3 JT 237 : (2014) 1 RCR(Civil) 875 : (2014) 1 SCALE 584 : (2014) 5 SCC 330 : (2014) 2 SCJ 753 : (2014) 2 WBLR 133

Hon'ble Judges : V. Gopala Gowda, J;Sudhansu Jyoti Mukhopadhyaya, J

Bench : Division Bench

Advocate : R.K. Bachchan and Nitin Kumar Thakur, for the Appellant; Bankay Bihari, JPN Shahi and Neeraj Shekhar, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—Leave granted.

2. This appeal has been filed against the final impugned judgment and order dated 21.03.2013 passed by the High Court of Delhi at New Delhi in MAC Appeal No. 549 of 2007, urging various legal grounds and contentions for further enhancement of compensation in the case of a motor accident involving the Appellant whereby the High Court enhanced the compensation awarded by the Motor Accident Claims Tribunal, Delhi (in short 'the Tribunal') by 1,52,336/- to a total sum of Rs. 6,35,808/-. The Tribunal had awarded compensation of Rs. 4,83,472/- under various heads along with 7% interest per annum from the date of filing of the petition till the date of realization of payment.

3. The brief facts of the case are given hereunder:

The Appellant, Sanjay Kumar received injuries in a roadside accident on 28.09.2005 due to the rash and negligent driving of the Truck No. HR-38D-9546,

the offending vehicle. The Appellant remained under treatment from 26.10.2005 to 10.12.2005 and due to injuries sustained, his right leg above the knee had to be amputated. As per Entry 18 in Part II of Schedule I of the Workmen's Compensation Act, 1923, the loss of earning capacity was assessed at 70% due to the permanent disability suffered by the Appellant on account of post-traumatic amputation of his right leg above the knee. The Appellant was employed as an embroidery worker and claimed compensation of Rs. 15 lakhs from the Respondents. Respondent No. 1 is the owner and Respondent No. 2 is the insurer of the offending vehicle. The Appellant examined two witnesses in support of his claim and documents were taken on record as evidence. PW-1 Sushil Kumar, the record clerk who filed treatment record and MLC as Ex. PW-1/A and Ex. PW-1/B respectively, and, PW-2 Sanjay Kumar, the Appellant himself, and he filed his treatment record and bills as Exs. PW-2/1 to PW-2/19, his permanent disability certificate Ex. PW-2/20 and concession certificate Ex. PW-2/21. The Respondents did not lead any evidence.

4. The Tribunal held that the accident took place due to the rash and negligent driving of the offending vehicle as a result of which the Appellant sustained injuries and awarded pecuniary as well as non-pecuniary damages. The compensation was calculated by assigning minimum wages at Rs. 3166/- per month, of which loss of earning capacity was calculated at 70% which comes to Rs. 2216/- per month, i.e. Rs. 26,592/- per annum. Multiplier of 16 was taken. A lump sum compensation of Rs. 8000/- was given to the Appellant under the head of 'medical expenses'. Hence, the total pecuniary compensation given was 4,33,472/-. A sum of Rs. 50,000/- was given as non-pecuniary damages on account of mental pain and agony and loss of future enjoyment of life suffered by him. Thus, a total compensation of Rs. 4,83,472/- was awarded to the Appellant with interest @ 7% per annum from the date of filing of the petition till the date of realization. Both the Respondents were held to be jointly and severally liable to pay the compensation but Respondent No. 2 being the insurer was held to have the primary obligation to pay compensation on behalf of the insured and was directed to deposit the award amount within one month from the date of the order.

5. Aggrieved by the order of the Tribunal, the Appellant filed an appeal in the High Court asking for enhancement of the compensation on the ground that the Tribunal ought to have awarded enhanced compensation on the basis of evidence adduced. The contentions of the Appellant will be taken up in detail at a later stage. The High Court enhanced the compensation to Rs. 6,35,808/- by awarding Rs. 5,42,808/- under the head 'loss of future earning capacity' by taking a multiplier of 18. Further, Rs. 25,000/- as conveyance charges and Rs. 10,000/- as Attendant charges were also awarded. The compensation of Rs. 50,000/- awarded under the head 'Mental pain and agony' and Rs. 8,000/- for medical bills as awarded by the Tribunal was maintained as it is. Therefore, the High Court awarded a sum of Rs. 1,52,336/- over and above the compensation awarded by the Tribunal at the same rate of interest i.e. 7% per annum and the Respondent

No. 2 was directed to pay this enhanced amount with interest in favour of the Appellant within four weeks from the date of receipt of copy of the order.

6. Not satisfied with the compensation awarded by the High Court, the Appellant has appealed to this Court, urging various legal contentions in support of further enhancement of the compensation.

7. The learned Counsel for the Appellant has argued that the Appellant was employed as an embroiderer and that it is a skilled job and he used to earn Rs. 4500/- per month. Further, he is entitled to compensation against loss of future prospects in income and that the compensation under the head of 'pain and suffering' should not be less than Rs. 2 lacs as the permanent disability is 70% and that his marriage prospects have been greatly diminished because of the accident and he should be awarded compensation under the head, 'loss of marriage prospects' as well. It was also contended that the High Court was not justified in not awarding compensation for the loss of earning for at least 3 months during the Appellant's treatment period. Further, on the point of interest, it was contended that the High Court should have enhanced the rate of interest from 7% to 9% per annum.

8. We have heard the rival legal contentions advanced on behalf of the parties. In our considered view, the Appellant is entitled to be awarded compensation based on the wages for a skilled worker, as he is an embroiderer and the same cannot be considered as an unskilled work. The minimum wages in Delhi for a skilled worker as on 01.08.2005 was Rs. 3589.90/- per month. The Appellant has claimed that he was earning Rs. 4,500/- per month from his work as an embroiderer. We will accept his claim as it is not practical to expect a worker in the unorganized sector to provide documentary evidence of his monthly income as per decision of this Court in the case of Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Limited, wherein it was held as under:

13. In the instant case, it is not in dispute that the Appellant was aged about 35 years and was working as a coolie and was earning Rs. 4500/- per month at the time of the accident. This claim is reduced by the Tribunal to a sum of Rs. 3000/- only on the assumption that the wages of a labourer during the relevant period viz. in the year 2004, was Rs. 100/- per day. This assumption in our view has no basis. Before the Tribunal, though the Insurance Company was served, it did not choose to appear before the court nor did it repudiate the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning to be a sum of Rs. 3000/- per month. Secondly, the Appellant was working as a coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork, which may include the ground realities prevailing at the relevant point of time.

15. In the present case, the Appellant was working as a coolie and in and around the date of the accident, the wage of a labourer was between Rs. 100/- to Rs. 150/- per day or Rs. 4500/- per month. In our view, the claim was honest and bona fide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the Appellant from Rs. 4500/- to Rs. 3000/- per month. We, therefore, accept his statement that his monthly earning was Rs. 4500/-.

Thus, in the present case, a monthly income of Rs. 4,500/- as claimed by the Appellant for his work as an embroiderer is reflective of ground realities and is not exorbitant by any standard and in the interest of justice, we should accept his claim. Further, he was also not cross-examined on the aspect of the nature of his work as an embroiderer and both the Tribunal and the High Court have erred in holding that the Appellant's work was of an unskilled nature.

9. 'Loss of future prospects' should be added to this amount as it cannot be accepted that an embroiderer will not have a future increment in income. As per the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , keeping in mind the young age of the Appellant, he is entitled to 50% of his income as future increase in income (Rs. 4,500/- + 2250/- = Rs. 6750/-). We will apply a multiplier of 18 as taken by the High Court in the impugned judgment and as per Sarla Verma's case (supra). The Appellant's permanent disability and loss of earning capacity was assessed at 70% and we will not interfere with that. Hence, the total amount of compensation due to loss of earning capacity along with future prospects in income will come to Rs. 10,20,600/- [Rs. 6,750 x 70/100 x 12 x 18].

10. Further, in the case of Raj Kumar Vs. Ajay Kumar and Another, this Court has succinctly explained the guidelines and heads for awarding compensation in cases of disability due to a motor accident. The relevant paragraphs are extracted below:

6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, 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.

Non-pecuniary damages (General damages)

- (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 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.

7. 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. Decisions of this Court and the 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).le 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. Decisions of this Court and the 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).

11. The Appellant has further contended that he should be awarded compensation for loss of income suffered during the period of treatment i.e. 26.10.2005 to 10.12.2005. As the accident took place on 28.09.2005, this comes to a period of around 3 months. Keeping in view the principles espoused in the aforesaid judgment, we hereby award an amount of Rs. 13,500/- for this period

(Rs. 4,500 x 3) taking the monthly income of Rs. 4,500/-, thus, bringing the total compensation under the broad head of loss of income to 10,34,100/-.

12. Now, we will assess the compensation awarded under the other heads. With respect to medical expenses, attendant charges and conveyance charges, as well as possible future medical costs, we will award a total sum of Rs. 75,000/- as he has suffered permanent disability due to amputation of his right leg. The Appellant will need assistance in order to travel and move around, and regular check-ups and will most likely use a crutch to walk, all of which will incur expenses. On the point of loss of marriage prospects, we feel that it is a major loss, keeping in mind the young age of the Appellant and the High Court has gravely erred in not awarding adequate compensation separately under this head and instead clubbed it under 'loss of future enjoyment of life' and 'pain and suffering'. We thereby award Rs. 75,000/- towards loss of marriage prospects. Further, as per the case of Govind Yadav Vs. The New India Insurance Company Limited, wherein the Appellant suffered amputation of the leg, this Court awarded a sum of 1,50,000/- towards 'pain and suffering' caused due to amputation of the leg. Therefore, towards 'mental agony and pain and suffering', we award a sum of Rs. 1,50,000/- as the Appellant has suffered tremendously due to the accident in terms of the pain and suffering involved in the amputation. Loss of a limb causes a profusion of distress and the Appellant has to deal with the same for the rest of his life. We feel it is justified to award the aforesaid amount under this head as he might have to deal with discrimination and stigma in society due to the fact that he is an amputee.

13. Further, it is necessary to award an amount under the head of 'loss of amenities' also as the Appellant will definitely deal with loss of future amenities as he has lost a leg due to the accident. The injury has permanently disabled the Appellant, thereby reducing his enjoyment of life and the full pursuit of all the activities he engaged in prior to the accident. We thereby award a sum of Rs. 1,00,000/- towards 'loss of amenities'. Along with the compensation under conventional heads, the Appellant is also entitled to costs of litigation as per the legal principle laid down in the case of Dr. Balram Prasad Vs. Dr. Kunal Saha and Others, Therefore, under this head, we find it just and proper to award Rs. 25,000/- towards costs of litigation.

14. Thus, the total compensation, the Appellant is entitled to is given hereunder:

15. Further, as per the case of Municipal Corporation of Delhi v. Uphaar Tragedy Victims Association and Ors. (2011) 14 SCC 481, we find it just and proper to increase the interest awarded from 7% to 9% per annum. Hence, the total compensation the Appellant is entitled to is Rs. 14,59,100/- along with 9% interest per annum from the date of the accident till the date of realization.

16. The Insurance Company is directed to deposit 50% of the awarded amount with proportionate interest within four weeks from the date of receipt of a copy of this order, after deducting the amount if already paid, in any of the

Nationalized Bank of the choice of the Appellant for a period of 3 years. During the said period, if he wants to withdraw a portion or entire deposited amount for his personal or any other expenses, including development of his asset, then he is at liberty to file application before the Tribunal for release of the deposited amount, which may be considered by it and pass appropriate order in this regard.

The rest of 50% amount awarded with proportionate interest shall be paid to the Appellant/claimant by way of a demand draft within four weeks. The Insurance Company is further directed to submit compliance report before this Court within six weeks.

17. The appeal is accordingly allowed. No costs.