

(2014) 02 TP CK 0066
In the Tripura High Court
Case No : MAC App. 105 of 2006

**Sri Bimal Debnath Vs Sri Gobinda Chandra Saha, Sri Haradhan Biswas
and The Branch Manager, The Oriental Insurance Company Limited**

Date of Decision : 19-02-2014

Acts Referred:

Citation : (2014) 02 TP CK 0066

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : P. Ghatak, for the Appellant; S.M. Ali, for the Respondent

Judgement

Deepak Gupta, C.J.—This appeal by the claimant is directed against the award of the learned Motor Accident Claims Tribunal, South Tripura, Udaipur, dated 21.08.2006 whereby an amount of Rs. 68,988/- was awarded to the claimant under the following heads:

Aggrieved by the award, the petitioner has filed the present petition for enhancement of compensation. Ms. Pratima Ghatak, learned counsel appearing for the petitioner has very competently argued the matter and submits that the amount awarded for pain and suffering and medical expenses is extremely low. She also submits that the claimant being a labourer, his earning capacity has been affected by more than 5% and, therefore, the compensation should be suitably enhanced. On the other hand Mr. S.M. Ali, learned counsel appearing on behalf of the insurance company submits that the award is reasonable calling for no enhancement.

2. Since the only issue involved in this appeal is the amount of compensation to which the claimant is entitled to. I am only discussing that portion of the amount. The claimant was earning Rs. 2,700/- per month and this fact is proved on record. He was aged about 30 years. It is also not disputed that he remained hospitalized from the date of accident i.e. from 27.03.2002 to 10.04.2002 i.e. for a period of 14 days. The claimant remained under treatment for a long period thereafter. The learned Tribunal has held that the claimant remained under treatment upto 3rd May, 2004 as an outpatient.

3. I am constrained to observe that the learned Tribunal did not at all understand the principles with regard to quantification of damages in motor accident claim's case and, therefore, I am constrained to assess the compensation afresh.

4. The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act are well settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as, (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. The damages can be pecuniary as well as non-pecuniary, but all have to be assessed in Rupees and Paise.

5. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Motor Vehicles Act enjoins upon the Courts to do. The Court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by him. Such compensation is what is termed as just compensation. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The Court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. The compensation or damages assessed for the personal injuries should be substantial damages to compensate the injured for the deprivation suffered by him throughout his life. They should not be just token damages. There are numerous cases where the principles for grant of compensation have been enunciated. It would be relevant to quote pertinent observations from a few.

6. The following observations of Lord Morris in his speech in *H. West and Son Ltd. v. Shephard*, 1964 AC 326, (1963) 2 WLR 1359, (1963, 2 All ER 625 (HL) : (Shephard case, All ER p. 631 D-G) are very pertinent:

Money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavor to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards.

7. Lord Denning while speaking for the Court of Appeal in the case of *Ward v. James*, (1965) 1 All ER 563, laid down the following three basic principles to be

followed in such like cases:

Firstly, accessibility: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases; otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good.

8. The assessment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guess work and conjecture. An assessment, as best as can, in the circumstances, should be made.

9. In the case of *Mediana*, (1900) AC 113, Lord Halsbury held: "Of course the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. But, nevertheless, the law recognizes that as a topic upon which damages may be given."

10. In *Lord Morris in Parry v. Cleaver*, 1969 (1) All.E.R 555 Lord Morris of Borth-y-Gest held thus: "To compensate in money for pain and for physical consequences is invariably difficult but no other process can be devised than that of making a monetary assessment."

11. In *Phillips versus Western Railway Co.*, (1874) 4 QBD 406, Field, J., while emphasizing that damages must be full and adequate, held thus: "You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all. He has done no wrong, he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered." Besides, the Tribunals should always remember that the measures of damages in all these cases "should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure". The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what

contemporary society would deem to be a fair sum, such as would allow the wrongdoer to "hold up his head among his neighbours and say with their approval that he has done the fair thing", should be kept in mind by the court in determining compensation in personal injury cases.

12. McGregor on Damages, 14th Edn., para. 1157, referring to heads of damages in personal injury actions states: "The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the courts have sub-divided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life."

13. In Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, the Apex Court held: "The determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales."

14. In R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, speaking about the heads of compensation, the Apex Court held thus: "Broadly speaking, while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they shall include:

(i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in the future;

(ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, un or sit;

(iii) damages for loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened;

(iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

15. In Raj Kumar Vs. Ajay Kumar and Another, the Apex Court laid down the heads for which compensation is to be awarded for personal injuries.

6. 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.

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 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.

16. Applying the aforesaid principles, now, I proceed to assess the damages under the different heads,-

1. Non-Pecuniary Damages:-

Medical Expenses: The claimant had placed on record documents to show that he spent Rs. 2,068/- on medicines. However, there are other expenses for which the claimant may not have kept the vouchers. This court cannot lose sight of the fact that a labourer does not know that he can file a claim petition and that after he files a claim petition he shall have to prove the bills of the medicines. Most of the bills which have been produced relate to the period after the discharge from the hospital. There is hardly any document of the period when the petitioner remained in hospital. Keeping in view the nature of treatment I am of the considered view that the petitioner must have spent at least Rs. 5,000/- for his treatment in hospital and in addition to the amount spent after becoming an OPD patient it would be just and reasonable to award him Rs. 10,000/- for medicines alone.

Attendant Charges: The claimant remained in hospital for 14 days. He would have been attended upon by at least two attendants. The accident took place in the year 2002 and the cost of one attendant is assessed at Rs. 150/- per day and cost of two attendants is Rs. 300/- per day and for 14 days the cost is assessed

at Rs. 5,000/-.

Loss of Income: The claimant has been awarded loss of income for 52 weeks @ Rs. 90/- per day. I am not at all in agreement with this because there is no evidence worthy to show that the claimant was unable to work. However the claimant remain admitted in hospital for 14 days and it can reasonably be assumed that for at least for one month thereafter he may not have been able to work. And therefore the loss of income is assessed for two months only and is accordingly assessed at Rs. 6,000/-.

Future Loss of Income: The learned Tribunal has assessed the loss of income at only 5% which is equal to the percentage of disability. This court has repeatedly held that the percentage of disability cannot be translated to the same percentage of that of the earning capacity. Each case has to be decided on its own facts. In the case of a person doing a desk job or any other person like a teacher, advocate, judge etc., the physical disability may not even affect the earning capacity. However in the case of a labourer the earning capacity is bound to be adversely affected to a much greater extent. Unfortunately the claimant led no evidence of a doctor to show how the disability affected his earning capacity. Therefore, only on the basis of the evidence led before the learned Tribunal, I am of the considered opinion that since the petitioner was a labourer the 5% disability will affect his earning capacity to a larger extent and, therefore, the loss of disability is assessed at 10% or Rs. 270/- per month i.e. Rs. 3,240/- per year. Since the claimant was aged between 30 to 35 years, the relevant multiplier would be "16" and the compensation works out to Rs. 51,840/- which is rounded of to Rs. 52,000/-.

2. Non-Pecuniary Damages:-

The claimant has not been awarded any amount for pain and suffering. The claimant remained in hospital for 15 days and has been getting treatment as an outpatient for almost two years. Keeping in view all these factors he is awarded Rs. 15,000/- for pain and suffering.

The claimant has not been awarded any for loss of amenities in life and future discomfort. The claimant had suffered a permanent disability and, therefore, I am of the considered opinion that he should be awarded at least Rs. 10,000/- for loss of amenities.

In view of the above discussion, the total compensation works out to Rs. 98,000/-.

17. The appeal is accordingly allowed and the compensation is enhanced from Rs. 68,988/- to Rs. 98,000/-. The claimant on this enhanced amount of Rs. 29,012/- shall also be entitled to interest @ 6% interest per annum from the date of filing of the claim petition till deposit of the amount. The insurance company has already satisfied the award of the learned Tribunal and is, therefore, directed to deposit the entire enhanced amount of Rs. 39,012/- along

with interest, as aforesaid, in the Registry of this Court within four months from today. The appeal is thus disposed of in the aforesaid terms.

Send back the LCRs forthwith.