

(2011) 04 SC CK 0051

In the Supreme Court Of India

Case No : Civil Appeal No. 3784 of 2011 (Arising out of Special Leave Petition (C) No. 5454 of 2010)

Sri Kumaresh

APPELLANT

Vs

The Divl. Manager National Insurance Company Ltd. and
Another

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) ACJ 1975 : (2011) 4 AWC 3601 : (2011) 6 JT 35 : (2011) 164 PLR 110 : (2011) 2 RCR(Civil) 913 : (2012) 1 RLW 505 : (2011) 12 SCC 488 : (2011) 4 TAC 28

Hon'ble Judges : G. S. Singhvi, J;Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : V. N. Raghupathy, for the Appellant; S.L. Gupta, Rakesh Ranjan Mishra, Atulesh Kumar and Vibhu S. Mishra, for the Respondent

Final Decision : Allowed

Judgement

Asok Kumar Ganguly, J.—Leave granted.

2. On 1.11.2006, at about 7.15 p.m., the Appellant was proceeding on a motorcycle (No. KA-04-X-4576) as a pillion rider on T.C. Palya Miand Road, near Raghawendranagar, when a lorry (No. KA-22-A-6772) came from behind at a high speed and dashed against the motorcycle. The left wheel of the lorry ran over the right leg of the Appellant, due to which he sustained grievous injuries. The right leg of the Appellant had to be amputated as a result of the accident.

3. The Appellant filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 claiming Rs. 15 lacs as compensation. At the time of the accident, the Appellant was aged 20 years and claimed to be earning Rs. 6000/- per month as salary as a building centering worker.

4. The Motor Accident Claims Tribunal (MACT) held that in motor accidents cases,

strict proof of rash and negligence need not be established as was required in criminal cases, and accordingly concluded that it was clearly established that the Appellant sustained injuries as a result of the accident. The Appellant had sustained fracture to both bones of lower 1/3 tibia and fibula, and the right leg below knee was amputated. Thus, the MACT awarded Rs. 50,000/- for pain and suffering. Due to the accident, the Appellant was treated as both an in-patient and out-patient, and considering the nature of injuries, MACT awarded Rs. 15,000/- under the head of loss of income during treatment period. MACT also awarded Rs. 5,000/- for medical expenses to the Appellant even though no medical bills or prescriptions were produced. MACT assessed disability of the whole body at 20%, and took monthly salary to be Rs. 3,500/- and hence assessed loss of future income at Rs. 1,51,200/- (Rs. 3500 X 12 X 18 X 20/100). MACT also awarded Rs. 10,000/- towards loss of marriage prospects and Rs. 10,000/- towards frustration, unhappiness and discomfort, Rs. 10,000/- towards transport and conveyance and Rs. 15,000/- towards loss of amenities of life, Rs. 5000/- towards attendant charges and Rs. 10,000/- towards food and nourishment. Accordingly, total compensation payable to the Appellant amounted to Rs. 2,81,200/- with costs and simple interest at 6% p.a. It was payable jointly and severally by the owner and Insurance Company respectively. However, in view of the insurance policy only the Insurance Company was liable to pay the entire compensation.

5. Aggrieved, the Appellant preferred an appeal to the High Court of Karnataka. The High Court partly allowed the appeal and modified the compensation awarded by the MACT as follows: Rs. 50,000/- for pain and suffering, Rs. 15,000/- for loss of income during period of treatment, Rs. 5,000/- for medical expenses, Rs. 3,78,000/- (Rs. 3500 X 12 X 18 X 50%) for loss of earning capacity and loss of future earnings, Rs. 75,000/- for loss of amenities and enjoyment of life, including loss of marital prospects, Rs. 10,000/- for conveyance charges, Rs. 5,000/- towards attendant charges and Rs. 10,000/- towards food and nourishment. Thus, total compensation was enhanced to Rs. 5,48,000/- with 6% interest p.a. payable from date of the claim petition till realization.

6. Being still aggrieved, the Appellant preferred the present appeal for further enhancement of compensation. Having gone through the material on record and after hearing the parties, we are of the opinion that the compensation amount deserves to be enhanced.

7. We note that before the MACT, the Appellant contended that he was earning a monthly salary of Rs. 6000/- as a centering worker. He produced a salary certificate to that effect. Further, his employer also stated that the Appellant was working under him as a building centering worker for the last two years and was drawing a salary of Rs. 6,000/- per month. The Appellant was also getting boarding and lodging in the house of his employer. However, from the cross-examination of his employer, it does not appear that the Appellant was earning

Rs. 6,000/- per month. We accept that the monthly income of the Appellant cannot exceed Rs. 4,000/-.

8. High Court arrived at a disability of 50% by looking into Schedule-I to the Workmen Compensation Act, 1923, where percentage of loss of earning capacity due to amputation below knee with stump exceeding 12.70 cms. was determined at 50%. In the present case, the doctor had assessed permanent residual physical disability of about 70% of right lower limb, which is about 35% of the whole body.

9. It is clear that the Appellant is a manual laborer and loss of his leg below the knee will drastically affect his ability to perform building centering work, or even any other manual labor. Hence, we sustain the disability assessment by the High Court. As the Appellant is aged 20 years, a multiplier of 18 has been correctly selected.

10. Accordingly, compensation for loss of future earnings amounts to Rs. 4,32,000/- (Rs. 4000 X 12 X 18 X 50%).

11. The Appellant is aged just 20 years and one of his legs has been amputated below the knee. It will not only severely affect his future prospects of earning, but he will also have to be permanently disabled for life and suffer the necessary discomforts accompanying living without a leg. It greatly minimizes his chances of getting married. In light of all this, we enhance amount awarded for loss of amenities and enjoyment of life, including loss of marital prospects, to Rs. 3,00,000/-. We also enhance the amount awarded for medical expenses for his whole life to Rs. 1,00,000/-, conveyance charges to Rs. 50,000/- and for food and nourishment to Rs. 50,000/- considering the nature of injuries sustained by the Appellant. Compensation awarded by the High Court under the other heads is sustained.

12. Accordingly, the break-up of compensation is as follows:

Pain and suffering

-Rs. 50,000/-

Loss of income during treatment

-Rs. 15,000/-

Medical expenses for whole life

-Rs. 1,00,000/-

Loss of future earnings

-Rs. 4,32,000/-

Loss of amenities & enjoyment of Life Including loss of marital Prospects

-Rs. 3,00,000/-

Conveyance charges

-Rs. 50,000/-

Food and nourishment

-Rs. 50,000/-

TOTAL

-Rs. 9,97,000/-

13. Accordingly, compensation is enhanced to Rs. 9,97,000/-, which we round off to Rs. 10,00,000/- (Rupees Ten Lacs). Interest shall be payable on the enhanced amount at 9% p.a.

14. It appears that by an order of this Court dated 30.3.2011, the name of the driver of the offending vehicle was deleted from the array of parties. Thus, compensation shall be paid to the Appellant jointly and severally by the Respondents.

15. The appeal is partly allowed.

16. No order as to costs.