

(2011) 04 SC CK 0083

In the Supreme Court Of India

Case No : Civil Appeal No. 3203 of 2011 (Arising out of Special Leave Petition (C) No. 6128 of 2010)

Sri Nagarajappa

APPELLANT

Vs

The Divisional Manager, The Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168, 169

Citation : (2011) ACJ 1434 : AIR 2011 SC 1785 : (2011) AIRSCW 2609 : (2011) 3 ALLMR 415 : (2011) 4 AWC 3613 : (2011) 3 JCR 35 : (2011) 4 JT 211 : (2011) 2 KLJ 14 : (2011) 163 PLR 186 : (2011) 2 RCR(Civil) 720 : (2011) 2 RLW 1490 : (2011) 4 SCALE 515 : (2011) 13 SCC

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

Bench : Division Bench

Advocate : V.N. Raghupathy, for the Appellant; Neerja Sachdeva, for the Respondent

Final Decision : Allowed

Judgement

Asok Kumar Ganguly, J.—Leave granted.

2. On 13.08.2004 at about 6 p.m., the Appellant was crossing the road carefully when a BMTC bus (bearing registration No. KA-05-B-5245) came in a rash and negligent manner and dashed against the Appellant whereupon he was admitted in hospital for treatment as he had sustained multiple injuries.

3. The Appellant filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs. 5,00,000/-. The Appellant was working as a coolie and claimed that he was earning a monthly income of Rs. 4,500/- p.m.

4. The Tribunal concluded that the accident occurred for the rash and negligent driving of the bus driver as a result of which the Appellant had sustained injuries in the accident. On perusal of evidence it was found that the Appellant had sustained injuries of compound fracture of lunar styloid process of the left hand

and subluxation of the left wrist. The doctor assessed disability at 23% of the whole body. Therefore, it awarded Rs. 20,000/- for loss of amenities, Rs. 30,000/- for pain and suffering, Rs. 30,000/- for medical expenses and conveyance and Rs. 2,000/- for future medical treatment. For loss of income during the period of treatment, the Tribunal found that due to the nature of the disability the Appellant was unable to work as a coolie or do other manual work. It also added that only the left hand was injured, so the right hand was free to work. The Appellant was an indoor patient for 55 days. Thus, the Tribunal presumed that the Appellant was unable to work for 3 months. Further, though the Appellant claimed to be earning Rs. 4,500/- p.m., it was not supported by documentary evidence. Hence, the Tribunal presumed his income to be Rs. 3000/- p.m. and awarded Rs. 9,000/- for loss of income during the period of treatment. For computation of loss of future income due to disability, the Tribunal took into consideration that disability of the whole body of the Appellant had been assessed at 23%, however, his right hand was still free to work. Thus, it assessed disability at 20%. Medical evidence showed that the Appellant was around 55 years at the time of the accident, for which a multiplier of 11 was adopted. Accordingly, loss of future income was calculated to be Rs. 79,200/- (Rs. 3000 X 12 X 11 X 20/100). The Tribunal fastened liability on the insurance company. Thus, total compensation was Rs. 1,70,200/- payable to the Appellant jointly and severally, with interest @ 6% from date of the claim petition till realization.

5. On appeal, the High Court enhanced compensation for pain and suffering, medical expenses, future medical expenses, loss of amenities and loss of future income as against the amount awarded by the Tribunal. For loss of future income, the High Court concluded that from material on record, the age of the claimant was between 45 to 55 years. Thus, it took 50 years as the safe age and adopted a multiplier of 13, income was taken as Rs. 3000/- p.m. and disability @ 20%. Accordingly, loss of future income was calculated at Rs. 93,600/- (Rs. 3000 X 12 X 13 X 20/100). Compensation was thus enhanced and awarded as follows:

Pain and suffering -Rs.40,000/- Medical expenses, nourishment, attendant Charges and other incidental expenses -Rs.40,000/- Loss of income during treatment -Rs.9,000/- Loss of future income -Rs.93,600/- Loss of amenities - Rs.30,000/- Future medical expenses -Rs.10,000/-

TOTAL -Rs.2,22,600/-

6. Being still aggrieved by the compensation awarded, the Appellant approached this Court by filing an SLP praying for further enhancement of compensation.

7. Having gone through the records, we are of the opinion that Rs. 2,22,600/- awarded by the High Court is inadequate considering the nature of injuries suffered by the Appellant and the consequent adverse effect it has on the performance of his avocation.

8. In reaching our decision, we are drawn to, if we may so, a very well-

considered judgment of this Court in Raj Kumar Vs. Ajay Kumar and Another, , wherein the Bench, comprising of Hon'ble Raveendran and Gokhale, JJ., has propounded the law on compensation in motor accidents claims cases resulting in disability in a comprehensive manner. The relevant portions of the judgment are extracted below:

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability...."

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (See for example, the decisions of this Court in Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another, and Yadava Kumar Vs. The Divisional Manager, National Insurance Co. Ltd. and Another,

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13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant

was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

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16. ...Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to "hold an enquiry into the claim" for determining the "just compensation". The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the "just compensation". While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment....

9. We are in complete agreement with the abovementioned judgment.

10. On perusal of the doctor's evidence with respect to the nature of injuries suffered by the Appellant, the Appellant was found, inter alia, to be suffering from the following disabilities as a result of the accident- "gross deformity of the left forearm, wrist and hand, wasting and weakness of the muscles of the left upper limb and shortening of the left upper limb by 1 c.m." As a result, the doctor stated that the Appellant could not work as a coolie and could not also do any other manual work. The doctor assessed permanent residual physical disability of the upper limb at 68; and 22-23% of the whole body.

11. The Appellant is working as a manual labourer, for which he requires the use of both his hands. The fact that the accident has left him with one useless hand will severely affect his ability to perform his work as a coolie or any other manual work, and this has also been certified by the doctor. Thus, while awarding compensation it has to be kept in mind that the Appellant is to do manual work for the rest of his life without full use of his left hand, and this is bound to affect the quality of his work and also his ability to find work considering his disability. Hence, while computing loss of future income, disability should be taken to be

68% and not 20%, as was done by the Tribunal and the High Court. Our view is supported from the ratio in Raj Kumar (supra) and from the fact that the Appellant is severely hampered and perhaps forever handicapped from performing his occupation as a coolie.

12. Thus, loss of future income will amount to Rs. 3,18,240/- (Rs. 3000 X 12 X 13 X 68/100). We also enhance the amount awarded for loss of amenities to Rs. 40,000/-, as against Rs. 30,000/- awarded by the High Court. We also enhance the amount awarded for future medical expenses to Rs. 30,000/-, as against Rs. 10,000/- awarded by the High Court. We are satisfied by the amount awarded under the remaining heads awarded by the High Court and sustain the same.

13. The break-up of compensation is as follows:

Loss of future income - Rs. 3,18,240/- Loss of amenities - Rs. 40,000/- Pain and suffering - Rs. 40,000/- Future medical expenses - Rs. 30,000/- Medical expenses, nourishment, attendant Charges and other incidental expenses - Rs.40,000/- Loss of income during treatment -Rs.9,000/-

TOTAL -Rs.4,77,240/-

14. Accordingly, total compensation payable to the Appellant amounts to Rs. 4,77,640/-, which we round off to Rs. 4,77,000/-. The same shall be payable at an interest of 6% from the date of claim petition till realization. We direct the Respondent to calculate the amount and deposit the same by way of bank or demand draft in the Motor Accident Claims Tribunal, Bangalore and the Presiding Officer of the Tribunal will deposit the same in the bank account of the Appellant. If there is no such bank account one shall be opened in a nationalized bank and the demand draft will be deposited there.

15. Accordingly, the appeal is allowed.

16. No order as to costs.