

(1971) 09 DEL CK 0020

In the Delhi High Court

Case No : F.A.O. No. 6-D of 1965, from order of G.C. Jain, Motor Accidents
Claims Tribunals, Delhi, D/- 1-10-1964

Subhash Chander

APPELLANT

Vs

Ram Singh and Others

RESPONDENT

Date of Decision : 23-09-1971

Acts Referred:

Citation : (1972) ACJ 58 : AIR 1972 Delhi 189

Hon'ble Judges : V.D. Misra, J

Bench : Single Bench

Advocate : G.R. Chopra, for the Appellant; Anoop Singh, for the Respondent

Judgement

1. Subhash Chander has come up in appeal under S.110-D of the Motor Vehicles Act against the order of the Motor Accidents Claims Tribunal, asking for enhancement of compensation. The respondents have also filed cross-objections praying for the dismissal of the application for grant of compensation.

2. Subhash Chander, aged about 7 years, was going on Corporation Road at about 7.30 A.M. on 10-6-1962 when bus No. Png 2291, belonging to the State of Punjab and driven by Ram Singh, respondent came from behind and hit him. Subhash Chander suffered various injuries and was admitted to the hospital. He made an application for compensation claiming Rs.55,000/- as compensation for the injuries suffered by him because of the accident resulting from negligence and rash and reckless driving by Ram Singh, respondent. This application was contested by the respondents and they alleged that Subhash Chander was injured due to his own fault.

3. The Tribunal found that it was the rash and negligent driving of Ram Singh, respondent that had caused the injuries and awarded compensation of Rs.4,090/-.

4. In order to prove the negligence of the driver, the appellant had produced Ramji Das A.W. 1 and Ishar Das A.W.2. Both these persons are the eye

witnesses. Ramji Das has stated that he had seen Subhash Chander coming towards him. From his back the bus in question came and hit him. At the time of the accident Subhash Chander was about one foot from the pavement. He also stated that the bus came to a stop after 8 to 10 steps. Nothing material was suggested in cross-examination. Similar was the case of Ishar Das who had corroborated Ramji Das A.W.1 Both these witnesses were present at the spot when the police came and their statements were recorded by the police.

5. The witnesses produced by the respondents stated that the pavement on the side of the road is "kachha". On one side it had been dug and the earth had been stacked. There was a bus on one side and the child had suddenly appeared from the back of the stationary bus and came up in front of the bus in question. It was for that reason that the accident took place. I cannot believe these witnesses since no such suggestion was made by the respondents to the witnesses produced by the appellant, nor was this fact stated by the respondents in their written statements. I also find that Sardar Singh R.W.3 does not support the respondents' case and according to him the accident had taken place in the manner in which the appellant alleged. This witness was not got declared hostile by the respondents. In the light of the evidence discussed above, the Tribunal was correct in holding that the accident had taken place because of the rash and negligent driving of Ram Singh, respondent No.1.

6. Where a person is going just next to the pavement and a vehicle comes from the back and knocks him down, the facts themselves show the negligence of the driver. It is true that ordinarily the burden of proving negligence is on the person who alleges it. However, the circumstances of a particular case may speak for themselves and show negligence on the part of the driver of a vehicle. In these circumstances it will be the duty of the driver and owners of the vehicle to disprove negligence Halsbury's Laws of England (2nd Edition Vol.23 at page 671) reads thus:-

"An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference immediately arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence "tells its own story" of negligence on the part of the defendant, the story so told being clear and unambiguous. To these cases the maxim *res ipsa loquitur* applies. Where the doctrine applies, a presumption of fault is raised against the defendant, which if he is to succeed in his defense, must be overcome by contrary evidence, the burden on the defendant being to show how the act complained of could reasonably happen without negligence on his part".

Their Lordships of the Supreme Court in *Municipal Corpn., Delhi v. Subhagwanti* 1966 Sc 1750 while discussing this principle observed thus:-

"It is true that the normal rule is that it is for the plaintiff to prove negligence

and not for the defendant to disprove it. But there is an exception to this rule which applied where the circumstances surrounding the thing which caused the damage are at the material time exclusively under the control or management of the defendant or his servant and the happening is such as does not occur in the ordinary course of things without negligence on the defendant's part."

7. Dr. Mrs. S.B.Kolhi, Reader in Orthopedics, Maulana Azad Medical College, appeared as A.W.6 and has described the injuries sustained by the appellant. The appellant was admitted in the hospital on 10th June, 1962, and was discharged on 27th August, 1962. At the time of injury it was found that his left leg had a compound lacerated wound muscle deep 7"x4", left great toe partially amputated; right leg medial side of the foot and heel full thickness skin lost; and abrasion on the right eye. X-Ray revealed chip fracture at the base of the distal part of the great toe with displacement of epiphysis, Distal Phalanx of the big toe was amputated. Operation for skin grafting was done on the left leg. According to this Doctor, the appellant will have a permanent disability due to the loss of tissue under the heel. There was no possibility of the appellant developing tissue under the heel because of his youth. He will be required to wear a surgical shoe to relieve him of the pain in walking any distance. In case he walks without any surgical shoe it is likely that scar adherent to the heel bone may give way. The Tribunal found that the appellant has got a permanent disability inasmuch as he cannot put his right leg heel on the ground without a use of surgical shoe. It was also found that he cannot get an active job like an employment of police or military. It thus awarded Rs.3,000/- for probable future loss by reason of diminished capacity to work. Rs.1,000/- were allowed on account of personal sufferings and loss of enjoyment of life, while Rs.290/- were allowed on account of expenses incurred by the petitioner. Thus, a total sum of Rs.4,290/- was allowed. After deducting Rs.200/-, which had been awarded to the appellant by the Magistrate trying Ram Singh, respondent u/s 279/338, I.P.C., the Tribunal granted an award of Rs.4,090/-.

8. Mr. G.K. Chopra, learned counsel for the appellant, contends that the amount awarded by the Tribunal under heading "probable future loss of income by reason of incapacity and diminished capacity of work" is unreasonably low and should be enhanced.

9. The Court of Appeal in England in *Fletcher v. Autocar and Transporters Ltd.* 1969 Acc 99 observed that it was well settled that in actions for personal injuries it was wrong to attempt to give an equivalent compensation for the injury sustained. Perfect compensation was hardly possible and would be unjust. What was required was that fair compensation, should be awarded. Lord Denning, M.R. quoted the following passage of Cockburn, C.J. with approval, (*Philips v. London & South Western Rly.* (1879) 4 Qbp 406:

"The compensation should be commensurate to the injury sustained. But there are personal injuries for which no amount of pecuniary damages would afford adequate compensation, while on the other hand, the attempt to award full

compensation in damages might be attended with ruinous consequences to defendants Generally speaking, we agree with the rule as laid down by Brett, J., in *Rowley v. London and North Western Ry, Co.*, ((1873) 8 Ex. 231) that a jury in these cases must not attempt to give damages to the full amount of a perfect compensation for the pecuniary injury, but must take a reasonable view of the case, and give what they consider under all the circumstances a fair compensation."

It was further observed that after determining the loss under the various accepted heads, namely, (I) special damages, (ii) loss of future earnings, (iii) additional expenses incurred as a result of the injuries (iv) damages for pain and suffering and loss of amenities of life, the Courts should consider whether the total thus worked out is a fair compensation, and reduce or increase the amount accordingly. These items are not separate heads of compensation but are only aids to arrive at a fair and reasonable compensation. It was wrong to deal with each item separately and then add them up since there was a risk of overlapping and duplication. Lord Denning, M.R. observed thus:-

"I think that the Judge was wrong to take each of the items separately and then just add them up at the end. The items are not separate heads of compensation. That was made clear by the decision of this Court in *Watson v. Powles*, given after the Judge had given his judgment.

"There is only one cause of action for personal injuries, not several causes of action for the several items. The award of damages is, Therefore, an award of one figure only, a composite figure, made up of several parts At the end all the parts must be brought together to give fair compensation for the injuries".

There is, to my mind, a considerable risk of error in just adding up the items. It is the risk of overlapping".

10. Their Lordships of the Supreme Court in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, observed:-

"The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error".

11. A Bench decision of the Madhya Pradesh High Court in *Vinod Kumar Shrivastava Vs. Ved Mitra Vohra and Others*, while dealing with the question of assessment of compensation observed thus:-

"Now the task of assessment of damage for non-pecuniary damage in personal injury actions is a difficult one, for human suffering be valued in terms of money. But as the injured can be awarded only monetary compensation, the Courts make an endeavor as best as they can to quantify non-pecuniary damage in terms of money having regard to the injury and the damage resulting from it. In the process of application, the wide discretion that the Courts exercise in making

awarding of compensation like any other judicial discretion, has canalized itself into a set of rules. These rules are. (1) The amount of compensation awarded must be reasonable and must be assessed with moderation; (2) Regard must be had to awards made in comparable cases; and (3) The sums awarded should to a considerable extent be conventional. It is only by adherence to these self imposed rules that the Courts can decide like cases in like manner and bring about a measure of predictability of their awards. These considerations are of great importance if administration of justice in this field is to command the respect of the community".

12. The learned counsel for the appellant has drawn my attention to various cases in order to show compensation awarded to the injured in some similar circumstances. In *Vinod Kumar Shrivastava Vs. Ved Mitra Vohra and Others*, , the claimant was a student, aged 17 years and had received compound fracture of Tibia and Fibula bones with the result that the leg was immobilized for three months. Though there was no appreciable permanent disability, he was awarded Rs. 5,000/-.

13. The Bench decision of the High Court of Mysore in *Govt. of India v. Jeevaraja Alva*, 1970 Acc Cj 221AIR 1970 Mys 13 quoted with approval their earlier decision in *Ganapathi Bhatta v. State of Mysore* 38 Mys Lj 323 AIR 1960 Mys 222 wherein Somnath Iyer, J. Observed thus:-

"In an action for damages for personal injuries caused to the plaintiff in an accident the plaintiff is entitled to be compensated for the pain and suffering undergone by him as a result of the accident as also in respect of the general impairment of his health, if there has been any such impairment. and reduced capacity for work, if there has been lowering of his endurance of stamina in that regard besides the special damages awardable to him for the expenses which he has to incur for his treatment during the period he was an inpatient in the hospital".

After applying the above mentioned observations, they found that Jeevaraja Alva, aged 12 years, who was a student, had received a compound fracture or lower end of his right forearm, a fracture on the upper part of the ulna, a lacerated wound in the same region with bone fragments protruding out of the wound, fractures of both bones of left leg at the middle with overriding deformity and lacerated injury over the lateral part of the upper portion of the right forearm. He had remained in the hospital from 18.7.1958 to 22.10.1958. The injuries had left the claimant with a little difficulty in the movement of the right hand and right elbow and weakness of the left leg. These were considered as handicaps for the body, and the boy had to be careful in using the fractured leg and arm while playing games. It was further found that he was not able to write fast and that he could not lift any book or article in his right hand without causing pain. In these circumstances the claimant was given compensation of Rs, 25,000/-.

14. The injuries received by the claimant in Jeevaraja Alva's case have no reasonable comparison to the injuries received in the instant case, and cannot be any helpful guide. However, Vinod Kumar Shrivastava Vs. Ved Mitra Vohra and Others, is somewhat similar to the instant case. In that case there was no appreciable permanent disability in spite of the compound fracture of Tibia and Fibula resulting in immobilisation of the leg for 3 months. The claimant was aged 17 years and was a student. In the instant case, the appellant is admittedly not in a position to walk comfortably without a surgical shoe and if he would walk without that shoe he is bound to get pain. He would not be able to take part in any activity without that shoe. He will be debarred from taking employment, because of the permanent defect, in certain avenues of life. In these circumstances, in my opinion, the award of Rs. 3,000/- by the Tribunal under the heading "probable future loss by reason of incapacity and diminished capacity of work" is quite on the low side. It should be higher than the amount awarded in Shrivastava's case. I would thus heading from Rs. 3,000/- to Rs. 7,500/-. I would maintain the award of Rs. 1,000/- and Rupees 290/- allowed under the other two headings. The total would thus come to Rs. 8790/-. Deducting Rs.200/- allowed to the appellant by the Magistrate, the amount of compensation would come to Rs. 8,590/-.

15. The result is that while the cross-objections filed by the respondents are dismissed, the appeal is allowed and the compensation awarded to the appellant is enhanced to Rs.8590/-. the appellant will also be entitled to costs.

16. Appeal allowed; cross objections dismissed.