

(2008) 02 KAR CK 0077

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 11678 of 2005

Subodh Subhash Kakade

APPELLANT

Vs

Appasabad Jinnappa Chougule and The Divisional Manager,
New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Citation : (2009) ACJ 406 : (2008) ILR (Kar) 2399 : (2008) 6 KarLJ 318 :
(2008) 3 KCCR 1319

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : L. Raja, for the Appellant; B.C. Seetharama Rao, for the Respondent

Judgement

Ram Mohan Reddy, J.—The claimant - injured, dissatisfied with the quantum of compensation awarded in MVC No. 532/2004 by common judgment and award dated 22.10.2005 in MVC No. 532 and 533/2004 of the III Addl. District Judge and Member, IV MACT, Belgium (for short "MACT"), has preferred this appeal for enhancement of compensation.

2. The appellant, along with his parents was travelling in a maruti car bearing registration No. KA-22/MA-1919 from Davanagere to Belgaum on 19.2.2004 when the motor vehicle bearing registration No. KA-22/6158 belonging to the 1st respondent and insured by the 2nd respondent, came from the opposite direction, at a high speed and in a rash and negligent manner and clashed against the maruti car causing grievous injuries to the occupants, including the appellant, and the death of Smt. Sushma - mother of the appellant. While the appellant instituted a claim petition numbered as MVC No. 532/2004, joined his father in filing MVC No 533/2004 for compensation due to the death of Smt. Sushma. In both the petitions, the respondents herein were arraigned as respondents 1 and 2. The 1st respondent despite service of notice, being absent was placed ex-parte, the 2nd respondent filed its written statement denying all material averments.

3. In the premise of the pleadings of the parties, the MACT framed issues in each of the petitions, thereafter dubbed the petitions, held a common trial, recorded the evidence of 3 witnesses as PW-1 to PW-3 and marked 53 documents as Ex.F-1 to P-53 for the claimants, while for the respondents, no oral evidence was tendered, except producing the copy of the policy of insurance of the offending vehicle. The MACT, having regard to the material on record and the evidence both oral and documentary, attributed actionable negligence to the driver of the motor vehicle bearing registration No. KA-22/6158 while answering issue No. 1 and awarded compensation of Rs. 78,500/- with interest at 6% p.a., by the impugned judgment and award.

4. The fact that the accident took place due to the rash and negligent driving of the offending motor vehicle, to not in controversy. Therefore, there is no need to review the finding recorded by the MACT with regard to the actionable negligence.

5. Learned Counsel for the appellant, while contending that the quantum of compensation awarded by the MACT is unreasonable and inadequate, would highlight that having regard to the fact that the elbow joint of the right hand of the appellant was grievously injured, the MACT was not justified in awarding Rs. 10,000/- towards pain, shock and sufferings; Rs. 20,000/- towards grievous injuries; Rs. 4,000/- towards conveyance and attendant charges; Rs. 36,500/- towards medical expenses and Rs. 8,000/- towards loss of earnings for 2 months totalling to Rs. 78,300/-. Learned Counsel contends that the compensation awarded under other heads is very much on the lower side. It is further contended that the MACT ought to have awarded reasonable compensation for loss of future earnings due to disability; disability occasioned due to the injuries; loss of amenities of life and loss of marriage prospects. Lastly, it is contended that the interest awarded at the rate of 6% p.a. is not in accordance with the recent trend reflected by the judgments of the apex court and those of this Court

6. Learned Counsel for the respondents - Insurance Company seeks to sustain the impugned judgment and award as being well merited, fully justified and not calling for interference.

7. Having heard the learned Counsel for the parties the only question that arise for decision making is whether Rs. 78,500/- awarded by the MACT at compensation in the facts and circumstances of the case and evidence on record, could be regarded as just and reasonable? If not, what shall be the just and reasonable compensation to which the claimant/appellants entitled to?

8. Before answering the above points, it is useful to briefly note the principles and norms governing determination of compensation.

9. Bodily injury is to be treated as deprivation entitling the claimant to damages, the amount of which varies according to the gravity of the injury. Deprivation due to injuries brings with it three consequences, viz. (i) loss of earning and earning capacity, (ii) expenses to pay others for what otherwise he would do for himself

and (iii) loss or diminution in full pleasures and joys of living. Although it is not possible to equate money with human suffering or personal deprivation, the Court has a duty to make an attempt to award damages so far as money can compensate the loss. While considering deprivation, the Court should have regard to the gravity and degree of deprivation as well as degree of awareness of the deprivation. In awarding damages in personal injury cases, the compensation awarded by the Court should be substantial and it should not be merely a token. The necessity that damages should be full and adequate was impressed upon in *Fair v. London and North Western Ry. Co.* (1869) 21 LT 326. Lord Blackburn in *Livingstone v. Rawyards Coal Co.* (1880) 5 A.C 25 observed thus:

Where an injury is to be compensated by damages, in settling the sum of money to be given you should as nearly as possible get at the sum of money which will put the person who has been injured...in the same position as he would have been in if he had not sustained the wrong.

Lord Morris in his memorable speech in *H. West & Sons* (1963) 2 All ER 625 pointed out thus:

Money may be awarded so that something tangible may be procured to replace of like nature which has been destroyed or lost. But the money cannot review a physical frame that has been battered and shattered. All the Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour 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 comparative injuries should be compensated by comparable awards.

In *Wards* (1965) 1 All ER 563 speaking for the Court of appeal in England, Lord Denning while dealing with the question of awarding compensation for personal injury laid down the following three basic principles:

Firstly, assessability; 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, Courts 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.

10. While deciding the quantum of compensation to be paid to a person for personal injury suffered by him, the Court is bound to ascertain all considerations which will make good to the sufferer of the injuries as far as money can do, the loss which he has suffered as a natural consequence of the wrong done to him.

In Basavaraj Vs. Shekhar and Others, , a Division Bench of this Court held thus:

If the original position cannot be restored - am indeed in personal injury or fatal accident cases it cannot obviously be - the law must endeavour to give a fair equivalent in money, so far as money can be an equivalent and so make good the damage.

This principle is sometimes referred to as restitution in integrum but it is manifest and universally relies on money as can possibly compensate a man and renew a shattered human frame.

11. Though, undoubtedly there are difficulties and uncertainties in assessing damages in personal injury cases, that fact should not preclude an assessment as best as can, in the circumstances be made.

12. It is well settled position in law that in granting compensation for personal injury, the injured has to be compensated for (i) pain and suffering; (ii) loss of amentias (iii) shortened expectation of life, if any; (iv) loss of earnings or loss of earning capacity or in some cases for both; and (v) medical treatment and other special damages. In personal injury actions, the two main elements are the personal loss and pecuniary loss. The personal loss has a number of elements or aspects where there is permanent injury, the damage to be assessed may include any or all of the following elements:

(1) total loss, or impairment of a limb or other specific part of the body or impairment of the body as a whole

(2) the short of the injury, sometimes followed by muros

(3) physical pain at the time of injury, during surgical operation and during the rest of life

(4) mental distress

(5) inability to look after the bodily needs of life

(6) disfigurement by scars

(7) loss of joys of life such as sports, recreation, music or the mere ability to walk about.

13. In the premise of the above well settled principles and norms governing payment of compensation under various heads, let me look at the facts of this case. The claimant aged 25 years on the date of accident and injury, was a businessman. Due to the injuries, he was hospitalised and was an inpatient for a period of six days, whence, after securing an X-ray, the radiological report disclosed fracture of the right ulna of the fore arm and fracture of right olecranon process (tip of the elbow joint). The fractures were set right by implants after surgical intervention. Even after discharge, the appellant took follow up treatment and rectification. The Doctor who examined the appellant, assessed the permanent disability at 35% to the right upper limb. Doctor's evidence also

disclosed an operative scar, deformity of fixed flexion of the elbow by 20° despite the fracture having been united in 5° volar angulation with implants in situ. In addition, the elbow joint showed osteoarthritis changes. With this kind of impairment to the right elbow joint it would make the appellant, a young man, totally frustrated. With a broken upper right limb diminished flexion at the elbow joint, undoubtedly, diminishes his marriage prospects and denies him joy and happiness of life which a normal human being can have. In bodily injury cases, it is always laid and reiterated that the compensation awarded to the injured by the tribunal or court in comparison with the compensation awarded to the deceased would be on a higher side, obviously because the compensation would go to the injured and not to the dependants. It is universally realised that no quantum of compensation would in real sense restore a person who has suffered injury, particularly grievous injuries resulting in disability of the use of the limbs to his pre-injury status. Therefore, it for the Court to decide and award just and adequate compensation applying permissible empirical formulas.

14. Keeping these principles in mind, I am constrained to observe that the MACT practiced miserliness in awarding compensation of Rs. 78,500/- under various heads, and the non-award of compensation towards disability, amenities of life, loss of future earning due to disability; marriage prospects tantamounts to denial of justice. The joys of life will have gone from the appellant, he cannot perhaps ride a bicycle and if he can kick a football, cannot catch one and deprived of the usual form of recreation which appeal to the ordinary healthy man. The impairment to the right upper arm causing disability of 35% naturally interferes with normal conduct of life or prevents sexual relation, warranting substantial damage on that ground. In fact, the appellant, young and energetic with great ambitions and expectations in life wanting to earn more money, due to the impairment, has occasioned loss of an enjoyable or interesting career too. The disfigurement in the form of a scar as noticed by the doctor in his testimony is more serious when the appellant becomes very conscious of the disfigurement and avoids social occasions. The elbow joint in the upper limb in a human frame is of utmost importance, not that the other bones constituting the frame are not. With the partial permanent injury to the upper limb of the appellant, he will have to endure the disability for the rest of his life. I think that the appellant, in the least, is entitled to Rs. 50,000/- towards loss of amenities of life, happiness, frustration and is accordingly awarded. It need not be said that with the 33% of the disability to the right upper limb, undoubtedly diminishes the marriage prospects. Courts have been awarding compensation towards loss of marriage prospects and therefore, I do not find any reason to deny compensation under the said head and accordingly award Rs. 35,000/- towards loss of marriage prospects. The MACT has awarded Rs. 4,000/- towards conveyance, diet, attendants, etc. The appellant was hospitalised and an inpatient for a period of 6 days and with the kind of impairment, the appellant would have had the assistance of an attendant to take care of him in the hospital and thereafter, more so having lost his mother in the accident. Having regard to the length of

treatment, it is reasonable that the appellant must have spent considerable sums of money towards medical treatment, conveyance, special food, nourishment, etc. Therefore, the award of Rs. 15,000/- towards conveyance, attendant charges, food and nourishment is just and reasonable.

16. The MACT awarded Rs. 10,000/- towards pain and suffering and Rs. 20,000/- towards two grievous injuries which is inadequate. As noticed supra, the grievous injuries were fracture of the ulna and olacrana process (tip of the elbow joint) resulting in surgical intervention and fixing of implants to restore as much as possible the movement of the elbow. In awarding Rs. 30,000/- together towards pain, shock, suffering and grievous injuries, in my opinion is a travesty in the reasoning of the MACT. Award of Rs. 50,000/- towards pain, shock, suffering and two fractures to the right upper arm, in my opinion constitutes just compensation.

17. It is no doubt true that the appellant did not place relevant material constituting substantial legal evidence of the factum of income, but nevertheless produced two documents viz. the memorandum of agreement - Ex.P-53 and the letter dated 27.7.2004 of J.L. Morison (India) Ltd. Ex.P-4 terminating the agency w.e.f. 1.8.2004. Ex.P-53 is an agreement entered into between M/s. Maratha LIRC, Belgaum and the appellant, for the period from 1.1.2002 to 31.12.2002, Ex.P-4 discloses that since the appellant did not reach the sale target in the past 3 to 4 months i.e. immediately after the accident and injury, despite warning over unsatisfactory Miles, decided to terminate the agency w.e.f 1.8.2004. These documents are not seriously disputed, as is obvious from the cross-examination of the appellant examined as PW-1. The documents therefore clearly demonstrate that the appellant at young age had taken to business and due to the accident that occurred on 19.2.2004, was unable to discharge his business obligations, more particularly J.L. Morison (India) Ltd. resulting in unsatisfactory sales of the products leading to termination of the agency. In other words, the appellant lost his source of income due to the injuries occasioned in the accident. Merely because the appellant had not produced relevant material to establish the quantum of income, it does not mean that the appellant did not have any income. Having regard to the business obligations under Ex.F-4 and P-53, it is reasonable to infer that the appellant had, in the least, income of Rs. 4,000/- per month, allowing guess work to play.

18. In the light of the partial permanent disability occasioned to the right arm and there being no contra evidence to establish that the appellant was not a right hander,, the whole body disability could be reckoned as 1/3 of the disability to the upper arm i.e. approximately 12%. The appellant having partially lost the capability of future earning to the extent of disability, is therefore entitled to compensation for loss of future earning due to disability, Reckoning Rs. 4,000/- as the monthly income and 12% as the disability and applying multiplier 17, the appellant 1B entitled to Rs. 97,920/- under the said head and it accordingly awarded, This leads me to the next head of compensation i.e. loss of earning during laid up period. The MACT reckoned two months as the period for

recuperation, which in the circumstances as unsustainable. Having regard to the nature of injuries, the surgical intervention, it is reasonable to infer that the appellant must have been off duty for at least four months and reckoning Income at Rs. 4,000/- per month is entitled to Rs. 16,000/- under the said head of damage.

19. It is in the evidence of the doctor that the X-ray discloses implants fixed after surgical intervention to rectify the broken bones and therefore, requires to be removed, obviously by a surgical intervention, entitling the appellant to compensation under the head of future medical expenses. Though there is no material to establish the exact amount required for future surgical intervention, nevertheless, in the fact situation, it is reasonable to award Rs. 15,000/- towards future medical expenses.

20. The MACT fell in error in not awarding compensation towards loss of expectation of life. Keeping in mind the critical impairment to the body frame, the appellant deserves to be compensated reasonably. In my opinion, award of Rs. 25,000/- towards loss of expectation of life is not only just but reasonable and is accordingly awarded.

21. The award of Rs. 36,500/- by the MACT towards medical expenses, in the fact situation, does not call for interference, so also the award of interest at 6% p.a. from the date of petition.

22. In the result and for the foregoing reasons, the appeal is allowed in part with costs. In substitution of the impugned award, I award a sum of Rs. 3,40,420/- under the following heads with interest at 6% p.a. from the date of petition till payment, excluding Rs. 13,000/- towards future medical expenses.

- (i) Loss of amenities of life, happiness, frustration - Rs. 50,000/-
- (ii) Loss of marriage prospects - Rs. 35,000/-
- (iii) Conveyance, attendant charges, food and nourishment - Rs. 15,000/-
- (iv) Pain, shock, suffering and two fractures to the right upper arm - Rs. 50,000/-
- (v) Loss of future earning due to disability - Rs. 97,920/-
- (vi) Loss of earning during laid off period - Rs. 16,000/-
- (vii) Future medical expenses - Rs. 15,000/-
- (viii) Loss of expectation of life - Rs. 25,000/-
- (ix) Medical expenses - Rs. 36,500/- ----- Total Rs. 3,40,420/-
----- Advocates fee is fixed at Rs. 2,000/-.