

(2012) 11 SC CK 0045

In the Supreme Court Of India

Case No : Civil Appeal No. 7750 of 2012 (Arising out of S.L.P. (Civil) No. 479 of 2012)

Subulaxmi

APPELLANT

Vs

M.D., Tamil Nadu State Transport Corporation and Another

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 171

Citation : (2013) 1 ALD 68 : (2012) 6 ALLMR 954 : (2013) 1 AWC 3 : (2012) 4 CGLJ 607 : (2013) 2 LW 325 : (2013) 2 MhLj 20 : (2012) 8 MLJ 363 : (2013) 1 MPLJ 536 : (2012) 4 RCR(Civil) 945 : (2013) 1 RLW 128 : (2012) 10 SCALE 617 : (2012) 10 SCC 177 : (2013) 2 WBLR 38

Hon'ble Judges : K.S. Panicker Radhakrishnan, J; Dipak Misra, J

Bench : Division Bench

Advocate : Prachi Bajpai, for the Appellant; C. Paramasivam and B. Balaji, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—Delay condoned. Leave granted.

2. The Appellant as claimant filed an application u/s 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act') before the Motor Accidents Claims Tribunal, Srivilliputtur (for short 'the tribunal') forming the subject matter of MCOP No. 244 of 1999, putting forth a claim of Rs. 6,50,000/- as compensation for the injuries sustained by her in a motor vehicle accident. Her claim petition was tried along with the petition preferred by one Mrs. Muthammal, the applicant in MCOP No. 245 of 1999.

3. The facts which are essential to be expounded are that on 13th March, 1998, the claimant-Appellant, aged about 30 years, a match industry worker while travelling in a bus bearing registration number TN 59-N0912 belonging to the Tamil Nadu State Transport Corporation, Madurai Division (V), the Respondent No. 2 before the tribunal, met with an accident with another bus bearing

registration number TN 59-N0912 belonging to the Madurai Division (I) of the said Corporation, the Respondent No. 1 therein. The accident occurred because of careless and negligent driving of the drivers of both the vehicles. In the accident, the claimant suffered grievous injuries which eventually resulted in the amputation of left leg below knee and abrasion in right shoulder and later amputation of right foot. It was averred that she was earning a sum of Rs. 1,500/- per month at the time of accident and remained in the hospital for a period of five and half months. Computing the amount expended, pain and suffering, incapacity to have any future income and the deprivation of other amenities of life and future comforts she claimed a sum of Rs. 6,50,000/- as compensation. The tribunal granted Rs. 2,00,000/- as compensation by award dated 22.10.2002 and fastened the liability on both the Respondents. It is necessary to state here that the tribunal had awarded Rs. 86,000/- towards permanent disability assessing the same at 86%, Rs. 14,000/- towards pain and suffering, Rs. 66,000/- on the head of loss of future income, Rs. 10,000/- for medical expenses, Rs. 15,000/- towards extra nourishment, Rs. 5,000/- for loss of income during the treatment period and Rs. 4,000/- towards transport charges.

4. Being grieved by the award, the Corporation preferred C.M.A. No. 2964 of 2003 and the claimant preferred Cross Objection (MD) No. 45 of 2008 for enhancement of the quantum. The High Court, while computing the amount of compensation, did not grant any amount for permanent disability but enhanced the future income to Rs. 1,15,000/- and added Rs. 75,000/- for replacement of artificial limb and for future medical expenses. It also granted Rs. 10,000/- for loss of amenities and Rs. 10,000/- towards attendant charges. On certain heads it also marginally enhanced the amount as a consequence of which the amounts stood enhanced to Rs. 2,75,000/-. It is apt to mention here that the High Court came to the conclusion that the claimant was entitled for compensation for loss of earning capacity due to disability and both were to be in compartment. It also did not grant interest on the enhanced sum. In the ultimate eventuate the High Court vide its judgment dated 14.7.2010 rejected the appeal filed by Respondent No. 1 and allowed the cross-objection in part. Being dissatisfied, the claimant has preferred the present appeal for enhancement of the amount of compensation.

5. At the outset, it is requisite to be stated that the facts as have been adumbrated are not in dispute. Therefore, first we shall advert to the issue whether the High Court was justified in awarding compensation on a singular head relating to permanent disability and loss of future earning. In *K. Suresh Vs. New India Assurance Company Ltd. and Another*, after referring to *Ramesh Chandra Vs. Randhir Singh and Others*, and *B. Kothandapani Vs. Tamil Nadu State Transport Corporation Ltd.*, this Court expressed the view that compensation can be granted towards permanent disability as well as loss of future earnings, for one head relates to the impairment of person's capacity and the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself. The Bench also relied upon *Sri Laxman @ Laxman Mourya Vs. Divisional Manager, Oritl. Ins. Company Ltd. and Another*, wherein it has been

laid down thus:

The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

Thus, the view expressed by the High Court on this score is not sustainable.

6. Be it noted, the High Court has granted Rs. 20,000/- for pain and suffering and Rs. 10,000/- for loss of amenities. In this context, we may profitably refer to *Govind Yadav v. New India Insurance Co. Limited* (2011) 10 SCC 683, wherein this Court after referring to the pronouncements in *R.D. Hattangadi v. Pest Control (India) (P) Limited* (1951) 1 SCC 551, *Nizam Institute of Medical Sciences Vs. Prasanth S. Dhananka and Others*, *Reshma Kumari and Others Vs. Madan Mohan and Another*, *Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another*, and *Raj Kumar Vs. Ajay Kumar and Another*, has laid down as under:

In our view, the principles laid down in *Arvind Kumar Mishra v. New India Assurance Co. Limited* and *Raj Kumar v. Ajay Kumar* must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

Thereafter, the Bench proceeded to state whether in the said case, the compensation awarded to the claimant-victim was just and reasonable or he was entitled to enhanced compensation under certain heads, namely, (i) Loss of earning and other gains due to the amputation of leg; (ii) Loss of future earnings on account of permanent disability; (iii) Future medical expenses; (iv) Compensation for pain, suffering and trauma caused due to the amputation of leg; (v) Loss of amenities including loss of the prospects of marriage; and (vi) Loss of expectation of life.

7. It is seemly to state that in the said case, the tribunal had awarded Rs. 2,56,800/- and the High Court had enhanced the same to Rs. 3,06,000/-. This Court considering various aspects granted Rs. 4,53,600/- in lieu of loss of earning, Rs. 2,00,000/- towards future treatment, Rs. 1,50,000/- for pain, suffering and trauma and Rs. 1,50,000/- towards loss of amenity and enjoyment of life and thereby determined the total amount to Rs. 9,53,600/-. While determining the said sum, the Bench observed as follows:

25. The compensation awarded by the Tribunal for pain, suffering and trauma caused due to the amputation of leg was meager. It is not in dispute that the Appellant had remained in the hospital for a period of over three months. It is not possible for the tribunals and the courts to make a precise assessment of the pain and trauma suffered by a person whose limb is amputated as a result of accident. Even if the victim of accident gets artificial limb, he will suffer from different kinds of handicaps and social stigma throughout his life. Therefore, in all such cases, the tribunals and the courts should make a broad guess for the purpose of fixing the amount of compensation.

26. Admittedly, at the time of accident, the Appellant was a young man of 24 years. For the remaining life, he will suffer the trauma of not being able to do his normal work. Therefore, we feel that ends of justice will be met by awarding him a sum of Rs. 1,50,000 in lieu of pain, suffering and trauma caused due to the amputation of leg.

27. The compensation awarded by the Tribunal for the loss of amenities was also meager. It can only be a matter of imagination as to how the Appellant will have to live for the rest of his life with one artificial leg. The Appellant can be expected to live for at least 50 years. During this period he will not be able to live like a normal human being and will not be able to enjoy life. The prospects of his marriage have considerably reduced. Therefore, it would be just and reasonable to award him a sum of Rs. 1,50,000 for the loss of amenities and enjoyment of life.

8. We have reproduced from the said decision in extenso, as the Court has dwelled upon the fundamental concept of just compensation regard being had to the value of life and limb in our country. Needless to say, the approach in such matters has to be liberal as well as a balanced one.

9. In the case at hand, the tribunal had awarded a sum of Rs. 86,000/- towards the permanent disability. The High Court has deleted it. The said deletion as per our above discussion is impermissible. In our considered opinion regard being had to the nature of injury suffered and further taking note of the date of accident, a sum of Rs. 1,00,000/- on this head would be appropriate and, accordingly, we so determine.

10. Presently, we shall proceed to compute the loss of earning capacity. The claimant was earning Rs. 1,500/- per month and thereby Rs. 18,000/- per annum. As she has suffered 86% permanent disability, the future earning may be computed at 14% less and accordingly it is estimated that the multiplicand should be Rs. 15,480/- per annum. At the time of accident, she was 30 years of age, and hence, the multiplier of 18 would be applicable, as has been held in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Thus, the loss of future earning by multiplying the multiplicand of Rs. 15,480/- by multiplier of 18, the amount would come to Rs. 2,78,640/-.

11. As far as the pain and suffering and loss of amenities are concerned, we

think it is appropriate to grant a sum of Rs. 1,00,000/-. In respect of other heads, namely, medical expenses, extra nourishment, transport charges and loss of earning during treatment, the amount awarded by the High Court is allowed to remain as such. Thus, the amount on the aforesaid scores would come to Rs. 45,000/-. As far as the future replacement of artificial limbs and other medical expenses are concerned, keeping in view the escalation of price, we think it seemly to enhance it Rs. 1,25,000/-.

12. Presently to the grant of interest. The High Court has declined to award interest on the enhanced sum. No reason has been ascribed therefore. Section 171 of the Act deals with award of interest. It reads as follows:

171. Award of interest where any claim is allowed. - Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

13. In *Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another*, S.B. Sinha, J. in his opinion after referring to the earlier decisions opined that the question as to what should be the rate of interest would depend upon the facts and circumstances of each case and award of interest would normally depend on the bank rate prevailing at that time. A.R. Laxmanan, J. in his concurring opinion stated as follows:

The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering loss of future income, loss of enjoyment of life etc., into consideration.

14. In *Tamil Nadu State Transport Corporation, Tanjore, rep. by its MD Vs. Natarajan and Others*, this Court awarded interest at the rate of 9% per annum from the date of filing of claim petition on the amount of compensation.

15. Thus analysed, we are disposed to think that the High Court has erred in not granting interest on the enhanced sum. As is evincible, the tribunal had granted payment of interest at the rate of 9% per annum. Considering the totality of facts and circumstances, we find that the interest awarded by the tribunal is just and proper and accordingly we direct that the interest on the differential enhanced sum shall carry interest at the rate 9% per annum from the date of filing of the claim petition till the date of deposit of the same before the tribunal. The Respondent corporation is directed to deposit the differential amount before the tribunal within a period of eight weeks from today.

16. Consequently, the appeal is allowed to the extent indicated above. In the facts and circumstances of the case, there shall be no order as to costs.