

(1995) 09 DEL CK 0057

In the Delhi High Court

The New India Assurance Co. Ltd.

APPELLANT

Vs

Manohar Khushalani and Others

RESPONDENT

Date of Decision : 11-09-1995

Acts Referred:

Citation : (1995) 2 ACC 573

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Judgement

C.M. Nayar, J.—This judgment will dispose of the present appeal and cross-objections (CM. No. 3538/1981) filed by the respondent-claimant.

The respondent filed a petition u/s 110-A of the Motor Vehicles Act, 1939 on account of grievous injuries sustained by him in an accident that took place at the crossing of Bahadur Shah Zafar Marg on April 27, 1973 at about 1.30 p.m. It was alleged in the petition that the accident was caused due to rash and negligent driving of vehicle No. DLP 4870 (Mini bus) on the part of respondent No. 3 Mir Chand. The respondent-claimant was traveling on his motor cycle No. DHS 7250 from his office at R.K. Puram towards Delhi Railway Station. He sustained compound fracture of left femur and immediately after the accident was removed to Irwin Hospital where he remained under treatment of Dr. Kohli till April 28, 1973 and then he was transferred on April 29, 1973 to Safdarjung Hospital. The respondent since the time of accident has undergone six operations and his leg still has not been cured. He remained on leave from the office for 686 days, out of which 40 days were on half pay, 37 days on earned leave and 609 days were without pay. The respondent-claimant thereafter also took leave for operation and medical check up. It was averred in the claim petition that he was in the Hospital since April 27, 1973. He was operated upon and a nail had been inserted in the cavity of bone which resulted in fever etc. The expenditure incurred at the time of filing the claim petition was Rs. one lakh, which was likely to increase further with passage of time. It was further alleged that the respondent was aged about 26 years and was working as Civil Engineer earning

Rs. 600/- per month and was due to get his promotion in the month of August, 1973 but missed the same due to the accident. He could not appear for Indian Engineering Service Examination conducted by Union Public Service Commission. He was unable to travel by bus and other cheap mode of transport as he could not drive himself and had to engage a full time driver. He claimed compensation of Rs. 4 lakhs from respondent No. 2 who was the employer of respondent No. 3, as he was vicariously liable. The appellant was the insurer of the vehicle and liable to meet the claim of the respondent-claimant.

2. Respondents 2 and 3 filed joint written statement and have denied all the allegations with regard to their liability. However, the date, time and place of accident were not denied but it was submitted that the accident did not occur due to rash and negligent driving of respondent No. 3. It was admitted that respondent No. 2 was owner of the vehicle and respondent No. 3 was driving the same at the time of accident. The fact that the vehicle was insured with the appellant was also not denied. The version of accident by respondents 2 and 3, which is reproduced by the learned Judge, reads as follows:

Mini Bus No. DLP-4870 was going from Lajpat Nagar to Railway Station, Delhi. After crossing Tilak Bridge, there is a crossing and due to red light Mini Bus stopped on the stop line. There were another row of vehicle on the left and right side when the respondent No. 1 got green signal, Mini bus moved and the vehicle on the left of the mini bus also moved. The mini bus moved in a very slow speed and a DTC bus on the left overtook the mini bus but the petitioner on motor-cycle tried to overtake in between the DTC and the Mini Bus. Since the applicant was in hurry his motor-cycle became unbalanced and the handle of the motor cycle of the applicant dashed against the left side of the Mini bus and in this process the applicant's motor cycle fell down and his motor cycle fell over him resulting injuries to him.

The appellant-Insurance Company has took similar pleas, as referred to above. It was pleaded that respondent No. 2 had no insurable interest at the time of issuing of insurance policy and, Therefore, the appellant was not liable. It was further contended that respondent No. 2 was not the owner of the vehicle, alleged to be involved in the accident and the same was under Hire Purchase Agreement with M/s. Installment Supply Co. Pvt. Ltd. 46, Janpath, New Delhi, who was the owner and, as such, was necessary party to the proceedings. The petition, Therefore, was bad for non-joinder of parties. The maximum liability of the appellant was pleaded to the extent of Rs. 50.000/- only.

3. The following issues were framed on the pleadings of the parties:

1. Whether the petitioner received injuries as mentioned in para 11 of the petition due to rash and negligent driving on the part of respondent No. 1?
2. Whether petition is bad for non-joinder of necessary party M/s. Installment Supply Co. Pvt. Ltd.?

3. Whether the Insurance Company is not liable for the preliminary objection No. 1 as mentioned in the written statement?

4. To what amount of compensation, if any, is the petitioner entitled to and from whom?

4. The learned Judge considered the evidence on record including the testimony of the respondent-claimant who filed certified copy of the judgment of the criminal case in which respondent No. 3 Mir Chand was accused. The said respondent in his statement u/s 313 of the Code of Criminal Procedure admitted the version of the prosecution to be correct. The appellant as well as respondents 2 and 3 did not examine any witness to prove that respondent-claimant was negligent in driving. The said respondent deposed that on April 27, 1973 at about 1.30 p.m. he was proceeding from R.K. Puram towards Railway Station viz. ITO crossing on Moped DHS-7250. When he reached ITO crossing and stopped his vehicle on the lane meant for traffic going straight i.e. towards Delhi Gate side when a Mini bus bearing No. DLP-470 came at a rash speed in a lane meant for going to the right from behind and rashly tried to come into the lane in which vehicle of the respondent-claimant was standing. The bumper of the bus hit the vehicle with a great impact at its rear and the Mini bus did not stop until the front wheel of the bus drove over his left leg and still continued going. The driver of the bus did not blow any horn. The vehicle was badly damaged and his left leg suffered fracture of shaft femur. The bus was being driven by respondent No. 3. The respondent-claimant denied the suggestion in cross-examination that on getting the green signal the other traffic started and another bus as well as mini bus were going parallel to each other and that he went in between and caused the accident. He further denied the suggestion that the accident was caused due to his negligent and rash driving. The Tribunal referred to the statement of the driver Mir Chand in the Criminal Court wherein it was conceded that he had caused the accident by coming from behind the motor-cycle of the respondent-claimant in order to go to the lane meant for the traffic going to the right without blowing any horn. The offending bus hit the rear of the motor-cycle with great impact causing injuries to the respondent claimant, as alleged. In this background, the learned Judge did not commit any illegality in appreciating the evidence and holding respondent No. 3 guilty of rash and negligent driving of the offending vehicle. The finding is accordingly affirmed.

5. The Tribunal disposed of issues 2 and 3 by holding that the appellant Insurance Company could not get rid of its liability on the ground of lack of insurable interest as a person under Hire Purchase Agreement was supposed to be the owner under Motor Vehicles Act. The said owner was paying Installments. Therefore, M/s. Installment Supply Pvt. Ltd. was not considered as necessary party to the claim petition as the said company was not in possession of the vehicle and, as such, could not be held vicariously liable for the act and of negligent driving on the part of respondent No. 3. There is no challenge to this finding and the same is, Therefore, affirmed.

6. The question of quantum of compensation was next considered by the Tribunal. The appellant claimed an amount of Rs. 4 lakhs as consolidated compensation. It was admitted that he did not specify the amounts payable under different heads, such as, loss of future prospects, loss on account of absence from duty, loss on account of delayed promotion as well as enjoyment of life and on account of physical pain and agony etc. The injuries sustained by the appellant have been referred to by the Tribunal. The respondent was admitted on April 29, 1973 in Safdarjung Hospital with a fracture of shaft of left femur and operation of nailing was done and he was discharged from the Hospital on October 13, 1973. Following the operation, the respondent had infection of the wounds and he was again admitted in Hospital on March 11, 1974 for the operation of nail removal. After removal of nail, he was put under plaster and was discharged on April 22, 1974. He was admitted again on 23rd November, 1976, and after operation of dead bone was discharged on 25th November, 1976. It was contended that the respondent was suffering 25 per cent disability taking body as a whole, considering stiffness of the leg and its restrictive movements. According to the record there was shortening of the leg. The respondent stated that he remained in Irwin Hospital as well from April 27, 1973 to April 28, 1973 and transferred to Safdarjung Hospital on April 29, 1973. He underwent at least four operations and he was put under plaster from foot to chest and remained bed ridden at home. He was advised to visit the Hospital after every six weeks in Ambulance and a window was opened each time in his plaster for draining out puss. The respondent was again admitted to Hospital on November 23, 1976 to November 25, 1976 for removal of infected sequester from his thigh. The averment was also made by the respondent that he did not take medicines from the Hospital but purchased the best quality from the market. The injections were also supplied by him and he continued to take these drugs both at home and in the Hospital.

7. In conclusion, the respondent stated the following information in the claim petition with regard to the loss incurred by him as a result of the accident:

(a) He was working as Design Assistant earning Rs. 600/- per month. Due to accident he had not been able to join the duty and since it would take two or three years to recover completely, he would not be in a position to retain his job.

(b) The respondent suffered mentally as well as physically and was still in agony at the time of filing the petition.

(c) The respondent was a young man of 26 years of age and he enjoyed sound health prior to the date of accident. He was very energetic, progressive and bright and was highly placed in life. He was working as Civil Engineer and was about to get promotion in the month of August, 1973 but due to the unfortunate accident, he missed the same. He could also not appear for Indian Engineering Service Examination conducted by Union Public Service Commission though he was called for an interview by the Commission for the post of Assistant Engineer in August, 1973 and he could not appear as he was admitted in Hospital.

(d) He suffered very heavily as he was unmarried young man and was expected to marry in a respectable family and since he suffered injuries which were grievous in nature and caused permanent disability, his chances of getting married and of progress in life diminished.

(e) He was on leave from the office for 686 days out of which 40 days were on half pay, 37 days on earned leave and 609 days leave without pay and he had to take further leave for operations and medical check up.

(f) The respondent was talented in studies as well as in extra-curricular activities, such as, he was co-author of the book "Irrigation Practice and Design," two volumes of which have already been published by the reputed publishers of Oxford and the remaining three volumes were ready for publication at the time of accident. He was proficient in literary writing art, cartoonist photography, debating, magazine editing and even participated in TV plays. All these activities were lost to the appellant as a result of the accident which caused mental agony, emotional depression and frustration.

(g) He was unable to travel by bus and other cheap means of transport. He had to go to his office and other places of recreation in car. He could not drive the car himself and he had to engage a full time driver. The cost of maintenance of car and driver was said to be exorbitant.

The respondent/claimant, in view of the above, claimed damages to the tune of Rs. 4 lakhs though he did not specify the amount claimed for pecuniary damages and non-pecuniary damages.

8. The following amounts were awarded by the Tribunal under the respective heads:

1. Loss of salary Rs. 16,875/- 2. Loss of increments and delayed promotion Rs. 3,000/- 3. Extra expenditure incurred for traveling in view of physical disability Rs. 10,000/- 4. Special Diet etc. Rs. 5,000/- 5. General damages Rs. 15,000/- Rs. 49,870/-

The Tribunal awarded the said amount rounded off to Rs. 50,000/- and rejected the claim for expenses incurred for treatment as well as for medicines and for future treatment. The claim for expenses incurred for physiotherapy by engagement of Dr. Arora and Dr. Surhesh Katyal was similarly rejected as it was found to be highly exaggerated.

9. The injuries suffered by the respondent have been referred to in detail in the earlier part of this judgment. It will be sufficient at this stage to broadly outline in brief the injuries, the nature of treatment and permanent disability suffered by the respondent. The respondent remained in Irwin Hospital from April 27, 1973 to April 28, 1973 and on April 29, 1973 he was shifted to Safdarjung Hospital and remained there up to October 13, 1973. Therefore, he was admitted in Hospital for treatment for a long time and during that period he underwent at least four operations. The nail was inserted from his thigh through the cavity of the bone

by one Dr. Arya and plaster was applied. The infection to the leg and hips spread and he had to be treated for the same and two more operations were done before the discharge on October 13, 1973 from the Hospital. The respondent was admitted again on March 11, 1974 and remained there up to March 22, 1974 when his nail was removed because it did not agree with his body. He was put under plaster extending from his foot to chest and he remained on bed for quite some time. The next admission in Hospital took place on November 23, 1976 for removal of infection from his thigh. The respondent could neither run nor squat nor walk on uneven ground. The medicines were purchased by the respondent from the market as it was advised that Hospital medicines may not be used. The Tribunal did not award any amount for medicines as it was brought in evidence that nothing was charged from the respondent while he remained hospitalised and in view of the fact that not a single receipt of any medicine was produced. The claim for amount spent by the respondent for physiotherapy treatment was also rejected. The learned Judge accepted that the prospects of marriage of the respondent were certainly marred on account of his limp on his leg but no compensation was awarded in this regard for loss of enjoyment of married life. The respondent could not participate in the extracurricular activities, such as, television plays, literary work and other extra-curricular activities. These activities which the respondent could not indulge due to the unfortunate accident would fall under the Head "loss of enjoyment and amenities of life." The Tribunal did not award compensation on these counts but held that this aspect will be kept in mind while deciding the question of general damages on account of pain and agony suffered by the respondent. The ultimate award was made in the sum of Rs. 15,000/- only towards general damages.

10. The question now arises as to whether the compensation awarded by the Tribunal can be held to be just, fair and adequate or it requires to be enhanced in the facts of the present case. There is no doubt that the medical evidence on record indicates that the respondent suffered serious injuries and was hospitalised number of times. He was operated upon at least five times. The evidence clearly establishes the injuries and disability suffered by the respondent. The same are accepted by the Tribunal and no contrary evidence has been brought on record to hold otherwise. The respondent in his own statement as PW 8 reiterated that he was in Hospital for the period as referred to above, operations were performed for treatment and for removal of infection and he was advised to visit Hospital after every six weeks for continuance of the treatment. He further deposed that he did not take medicines from the Hospital but purchased the best quality from the market. The injections were also supplied by the respondent. The treatment continued in "Hospital as well as at home and there is permanent disability inasmuch as the respondent could neither run, nor squat, nor walk on uneven surface. The respondent has also stated that he spent Rs. 3,000/- per year on medicines from the year 1973 till the date when his statement was recorded on February 15, 1980. He needed the help for continuing with his daily activities for a long period of two years and was also advised to

take nutritious diet. Similarly, expenses were incurred on keeping the chauffeur by giving Rs. 300/- per month as well as for petrol and maintenance of the car. The respondent was the author of book known as "Irrigation Practice and Design (Vol. I) and Dams-Part V and was brilliant in extra-curricular activities, such as, photography, theatre etc. All these activities ceased because of physical deficiency and as a consequence, he suffered on this account. The Tribunal has not disbelieved the evidence on record and has clearly concluded that the respondent has suffered physically as well as mentally on account of the accident. The permanent disability to the extent of 25% taking body as a whole due to stiffness of the leg and restrictive movements was not disbelieved either. In the above background, it can be said that the compensation awarded by the Tribunal is not adequate in the facts and circumstances of the present case. The Tribunal has not awarded any amounts for expenses already incurred on medicines as well as future medical expenses merely on the ground that no receipts were produced in this regard. Similarly the expenses incurred for physiotherapy were not awarded. The general damages assessed at Rs. 15,000/- do not co-relate with the pain and suffering and loss of amenities of life, as undergone by the respondent.

11. The learned Counsel for the respondent has vehemently contended that the Tribunal has not awarded the compensation which can be considered just, fair and reasonable. The learned Judge has totally ignored the just claims under different heads, as referred to above and particularly for "pain and sufferings" and "loss of amenities of Life." The life of the respondent suffered immensely on account of the injuries suffered by him as he could not participate in various activities and lost the chance of promotion and his future prospects were adversely affected. The Courts cannot be mathematical on the question of award of compensation in such cases as it involves an element of guesswork. The same, however, has to be viewed with objective considerations. The recognised mode of award of compensation is explained in the judgment of the Supreme Court in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, and reference is made to paragraph 9 which reads as follows:

Broadly speaking while fixing an amount of compensation payable to a victim of in accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant; (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include; (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on

account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

12. The Tribunal on the above basis has to award compensation on the heads, as indicated above. There may not be receipts for each and every expenditure incurred by the respondent but a reasonable view can be taken by looking at the nature of injuries suffered as a result of the accident. The Court in R.D. Hattangadi's case (supra) has clearly accepted that fixation of damages in case of accident involves guess work, some element of hypothetical consideration some amount of sympathy linked with the nature of disability caused. The bills for medicines may not be forthcoming but the nature of injuries and treatment will indicate that reasonable amount has to be allowed under this head as well as for future medical treatment including purchase of medicines. The non-award of physiotherapy expenses in such case can also not be appreciated as Physiotherapy is one of the acknowledged modes of treatment which is required to be pursued for reasonable long duration.

13. The respondent has not given details of the amounts claimed under different heads except those which have been referred to in his statement. The learned Counsel has now placed before this Court statement of the amounts claimed under the respective heads, which includes pecuniary as well as non-pecuniary damages. The claims now raised for loss of salary for future absence from duty and loss of future employment as well as on account of delayed promotion, seem to be highly exaggerated. Similarly, the figures are inflated to some extent for the award of damages in respect of pain and suffering as well as for other incidental expenses. These claims cannot be allowed in toto as they will rest on speculations. This is also not permissible in view of the Judgment of the Supreme Court as reported in C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, S which is noticed in the judgment of Mr. R.D. Hattangadi (supra). Para 13 reads as follows:

13. This Court in the case of C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, in connection with the Fatal Accidents Act has observed:

In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable.

14. Taking an overall view of the facts and circumstances of the present case and the submissions made before me, it will be just fair and reasonable to award the following amounts under the respective heads:

(i) Loss of earnings including future absence from duty as well as loss of increments Rs. 20,053/- (ii) Expenses incurred on the treatment of the respondent on medicines till the date of filing the petition Rs. 7,200/- (iii) Future medical treatment and expenses Rs. 15,000/- (iv) Pain and suffering suffered by the respondent and including permanent disability Rs. 50,000/- (v) Loss of enjoyment and amenities of life Rs. 50,000/- (vi) Conveyance expenses etc. Rs.

20,000/- ----- Total Rs. 1,62,253/-

The respondent is, Therefore held entitled to compensation in the sum of Rs. 1,62,253/-. He shall further be entitled to interest at the rate of 15 per cent per annum from the date of the petition before the Tribunal till realisation. The amount, which has already been disbursed shall be taken into account on computation of the amount, which is now held payable. The interest shall be paid over the amount payable on the date of the award and not which is to be paid for expenditures to be incurred in future.

The appeal, as a consequence, is dismissed and cross-objections are allowed to the extent indicated above. The respondents-claimants shall also be entitled to costs, which are quantified at Rs. 2,500/-.