

(1990) 10 AHC CK 0030
In the Allahabad High Court
Case No : F.A.F.O. No. 155 of 1985

U.P. State Road Transport Corporation, Jhansi	APPELLANT
Vs	
Jagjit Singh and others	RESPONDENT

Date of Decision : 05-10-1990

Acts Referred:

Motor Vehicles Act, 1939 — Section 110

Citation : (1991) ACJ 690 : AIR 1991 All 84

Hon'ble Judges : R.R.K. Trivedi, J;K.P. Singh, J

Bench : Division Bench

Advocate : Mr. R.C. Gupta, for the Appellant; Mr. Vineet Saran and Mr. S.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Singh, J.—These two appeals have been filed against the judgment of Sri Ram Ji Lal, Additional District Judge, Fatehpur, in Motor Accident Claim No. 22 of 1982 Jagjeet Singh v. State of U.P., and others.

2. Brief facts giving rise to the above noted appeals are that on 20-1-1982 when Jagjeet Singh claimant was travelling by bus No. UTB 6637 of Banda Depot from Banda to Lucknow via Kanpur, the bus met with an accident, at about 8.30 a.m. when it had left Banda at about 6.15 a.m. It collided with a Sheesham tree and had fallen in a ditch. According to the claimant the bus was carrying a large number of passengers and was crowded one. The tyres of the bus were worn-out and the same could not bear the load of the over-crowded bus and the tyre got burst leading to the accident which caused severe injuries and fracture to the claimant. The claimant remained confined for more than five months and suffered mental and physical agony for which he claimed a sum of Rs.25,000/- and a sum of Rs. 10,000/- was claimed towards treatment. As the claimant was deprived of doing field work, hence he claimed Rs. 25,000/- for permanent disability and he also claimed a sum of Rs. 50,000/- for future help and a sum of Rs. 37,900/- was claimed for loss of articles and cash etc. The total amounted to

Rs. 1,47,900/-.

3. The claim of the claimant was con- tested by the defendants admitting the accident but alleging that neither the driver nor the conductor were responsible for the accident and it was due to bursting of the tyre which was beyond the control of the driver. According to them, the bus was being driven at normal speed and it did not suffer from any mechanical defect and various other pleas were taken to negative the claim of the claimant.

4. The tribunal after framing necessary issues decided the claims of the parties and awarded a sum of Rs. 84,000/- as compensation to the claimant.

5. Aggrieved by the judgment of the Motor Accident Claims Tribunal, the claimant has filed the above-noted F.A.F.O. No. 195 of 1985 for enhancing of the compensation whereas the U.P. State Road Transport Corporation has filed F.A.F.O. No. 155 of 1985 for setting aside the judgment of the Tribunal and passing such other and further orders as is deemed fit and proper by this Court in the circumstances of the case.

6. According to the learned counsel for the claimant-appellant it has been contended before us that the Tribunal has acted illegally in observing that the claimant was of 57 years on the date of the accident. According to the claimant he was only 55 years, therefore, the amount awarded by the Tribunal to the tune of Rs. 58,752/- was inadequate and it should be enhanced.

7. The learned counsel for the U.P.S. R.T.C. submitted that the Tribunal has wrongly applied the multiplier system in awarding compensation to the claimant in respect of injuries. He has also submitted that the Tribunal has patently erred in not allowing deduction to the tune of 20 to 30 per cent while awarding a lump sum to the claimant. According to the learned counsel, the amount awarded is excessive and it should be reduced. He has emphasized that in cases of personal injury the excessive amount awarded is excessive and it should be reduced. He has emphasized that in cases of personal injury the excessive amount awarded by the Tribunal is not usually awarded, therefore, the amount should be reduced.

8. After hearing the learned counsel for the parties, we granted time to the learned counsel for the claimant to support his contention that the multiplier system is available in the case of personal injury but the learned counsel has not been able to satisfy us that the multiplier system was rightly adhered to by the Tribunal. Since the learned counsel for the claimant has not been able to satisfy us on that score, we are not in agreement with the contention of the learned counsel for the appellant/claimant that the amount awarded by the Tribunal should be enhanced treating the age of the appellant at 55 on the date of the accident and thereafter multiplying the toss by 60 months in place of 36 months as indicated in the impugned judgment.

9. In AIR 1983 All 69 Sushila Pandey v. New India Assurance Co., Ltd. a Division Bench of this Court vide para 8 of the judgment has indicated as below:--

"Damages which are awarded in the form of compensation to a claimant are of two kinds; pecuniary, which are also known as special damages, and non-pecuniary, which are classified as general damages. Pecuniary damages are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money. Non-pecuniary damages are those which are incapable of being assessed by arithmetical calculation. Pecuniary damages generally include four sub-heads, (i) expenses incurred by the claimant in respect of injury which may include medical expenses, special diet, cost of nursing or attendant; (ii) loss of earning or profit up to the date of trial; (iii) loss of earning capacity which may include incapability to earn in future years and also incapability in the labour market, loss of earning on account of termination of service or discontinuance of any trade, business or profession, and (iv) other material loss which may require any special treatment or aid to the injured or claimant for the rest of life. Non-pecuniary loss (general damages) include a number of elements. Generally these include four subheads; (i) damages for mental and physical shock, pain, suffering, already suffered by the claimant or likely to suffer in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters e.g. on account of injury the claimant may not be able to walk, run, sit or loss of marriage prospects, sexual intercourse and loss of other amenities in life; (iii) damages for the loss of expectation of life, e.g. on account of injury the normal longevity of the person concerned is shortened; and (iv) inconvenience, hardship, discomfiture, disappointment, frustration and mental stress in life. While indicating the various sub-heads we have tried to include matters which should be considered by the Tribunal in determining compensation. It is always appropriate to consider the pecuniary and non-pecuniary damages separately having regard to the various sub-heads on the basis of the evidence produced by the parties. The heads and the sub-heads as mentioned above are not exhaustive in nature. There may be special circumstances depending on the facts of a case and it would always be open to the Tribunal in determining the compensation but generally the various sub-heads as discussed earlier should provide guidance for determining the compensation. It is not necessary to allocate specific sums to different heads and subheads, instead it is proper to arrive at a global figure after assessing various factors as contained in the various sub-heads. It is desirable that the Tribunal while considering damages should assess loss in respect of each item separately to which the claimant may be entitled under the various sub-heads as in that event it is easier for the appellate Court to assess the damages in appeal."

"9. In a case where the claimant is paralysed and incapacitated on account of the injuries received at the accident, the Courts in England as well as in India have taken liberal view in awarding compensation. In such cases the amount of damages is comparatively higher than in fatal cases for the reason that compensation goes for the benefit of the person who has suffered the injury, pain, shock and suffering and which is likely to continue for the rest of his life....."

10. In para 12 of the aforesaid ruling it has been observed that "in bodily injury

cases where the injured survives and is disabled, compensation awarded is higher than in cases of death because compensation is to be given to a living victim who is rendered disabled and is not able to lead normal life or to carry on his avocation or enjoy amenities of life. In cases where the injured incurs any disability on account of which the claimant cannot walk or ride a bicycle or attend to his personal needs or if he has to be constantly under medical care, he is entitled to compensation in respect of each of those items in addition to his economic loss. The authorities discussed above further show that in recent years the courts have awarded substantial amounts as general damages."

11. The aforesaid ruling of this Court has been relied upon by a Division Bench of the Bombay High Court in *M/s. Pest Control (India) Pvt. Ltd. and another Vs. Ramanand Devrao Hattangadi and others*, . The learned counsel for the claimant has not been able to satisfy us on the materials of this case that the amount awarded by the Tribunal should be enhanced. The guideline indicated in the aforesaid ruling of this Court has not been followed by the Tribunal while determining the compensation to be awarded to the claimant. The learned counsel for the claimant appellant has suggested that remand of the case to the Tribunal would not meet the ends of justice in the facts and circumstances of this case. The claimant has not been able to get a single pie by now, therefore, the case should not be remanded. We also think that the remand of the- case would not be of any benefit to the claimant appellant.

12. The learned counsel for the U.P.S.R.T.C. has claimed reduction of the amount awarded to the claimant only on two grounds; firstly, that while a lump sum was given to the claimant, the usual deduction of 20 to 30 per cent should have been done by the Tribunal and that the Tribunal has acted illegally in awarding interest at the rate of 8%. We have considered the contention raised on behalf of the U.P.S.R.T.C. The learned counsel has not challenged the award of compensation by the Tribunal on the score of medical treatment and mental and physical pain. For the sake of argument when we accept the submission of the learned counsel for the U.P.S.R.T.C. we find that the difference would be somewhere between Rupees Eleven and Twenty thousands if the deduction on the ground of lump sum is allowed to the opposite party in the claim.

13. According to the ruling of this Court the claimant in this case is entitled to compensation for the amenities of life. If the normal longevity of the claimant is fixed at 65, the claimant would be entitled to some amount on the score of amenities of life for a period of 10 years and also for the inconvenience, hardship, discomfiture, disappointment, frustration and mental stress in life for that period. Since the claimant's left leg has been cut away, therefore, he has become disabled for ever. After retirement he would remain incapacitated to add his income as a normal man and on this count he is entitled to some amount. If we fix an amount between Rupees Eleven and Twenty thousand for compensation to the claimant on various sub-heads indicated in the ruling under non-pecuniary loss, there would not be much difference between the amount claimed by the

counsel for the U.P.S.R.T.C. to be reduced in the compensation awarded by the Tribunal. Viewing from this angle, we do not find much substance in the contention of the learned counsel for the U.P.S.R.T.C. for reducing the amount awarded by the Tribunal in the facts and circumstances of this case. The learned counsel for the claimant had invited our attention to the ruling reported in Pushpa Thakur Vs. Union of India (UOI) and Another, and had emphasized that the award of compensation to the tune of one lakh was sanctioned by the highest Court and the award of interest at the rate of 12% per annum was also emphasized. Since the facts in the aforesaid ruling have not been given, we are unable to accept the contention of the learned counsel for the claimant to raise the compensation awarded by the Tribunal in the facts and circumstances of this case.

14. Perusal of various authorities on the question of rate of interest would indicate that normal rate of interest awarded to claimants had been at the rate of 6%. The award of interest is in the discretion of the Tribunal and in the facts and circumstances of this case we are unable to hold that the award of 8% interest is perverse or unreasonable specially when the interest is being awarded at the rate of 12% per annum these days. We are not inclined to agree with the submission of the learned counsel for the U.P.S.R.T.C. to reduce the rate of interest awarded by the Tribunal.

15. During the course of argument it has been suggested on behalf of U.P.S.R.T.C. that in view of the finding recorded by the Tribunal that there has been no decrease in the pay of the injured and he has also received pension etc. after retirement, therefore, the award of Rs. 58752/- by way of special damages is incorrect and the amount should be reduced. An injured is entitled to pecuniary loss as well as non-pecuniary loss. In the facts and circumstances of this case we do not agree with the learned counsel for the U.P.S.R.T.C. that the award of Rs.58752/- should be reduced. The claimant had claimed a sum of Rs. one lakh for mental and physical pain and loss suffered since during the accident and the treatment days and for the rest of life in future and he has got only Rs. 84,000/-. Therefore, we are not inclined to reduce the amount suggested by the learned counsel for the U.P.S.R.T.C. on this score. Damages award-able to an injured include pecuniary loss as well as non-pecuniary loss. In the present case, we think that the amount awarded by the Tribunal cannot be termed as unreasonable or unjust, therefore, we are not inclined to reduce the amount as suggested by the learned counsel for the U.P.S.R.T.C.

16. The claimant had claimed Rupees 1,47,900/- total amount including the amount for the loss of articles. The Tribunal has not awarded any amount for the loss of articles. If the claim for lost articles is reduced then the claim comes to about Rs. one lakh. As suggested by the counsel for the U.P.S.R.T.C. if 20% deduction for lump sum is given the claim would hardly come to Rs. 80,000/- therefore, when the claimant has got Rs.84,000/- according to the impugned judgment, we do not think that the claimant is entitled to any enhancement of

the amount.

17. In cases of determination of compensation some amount of guess work and element of arbitrariness are bound to occur. Counsel for the parties were not in favour of remand of the case to the Tribunal. We have no option but to decide the appeals on merit.

18. In view of the pleadings of the parties and the rulings on the subject, it is evident that the claimant injured is entitled to the amount on the ground of pecuniary loss as well as non-pecuniary loss. If we award to the claimant a sum of Rs. 10,000/- on the count of treatment, Rs. 15,000/- on the count of mental shock and physical pain; Rs. 20,000/- for the son who would look after the injured for a period of ten years; Rs. 10,000/- on the count of transport charges etc. for a period of ten years to the claimant as well as his son who will look after him as he has been permanently disabled; Rs. 20,000/- for the loss of normal pleasures of life; Rs. 25,000/- for disability and loss of future earning to the claimant after retirement for a period of ten years and Rs. 10,000/- for the mental shock and injury to the members of the injured's family. The total amount in this way comes to Rupees 1,10,000/- and 20% is deducted for the lump sum being awarded it would come to Rs. 88,000/- roughly.

19. For the reasons given above we do not agree with the contention of the learned counsel for the claimant to enhance the compensation awarded by the Tribunal as well as we do not agree with the submission of the learned counsel for the U.P.S.R.T.C. to reduce the compensation awarded by the Tribunal.

20. In the result, both the appeals fail and are accordingly dismissed. Stay order, if any, is hereby discharged. The Tribunal is directed to release the amount deposited with it in pursuance of the stay order passed by this Court and it would be open to the claimant to realise the remaining amount awarded by the Tribunal strictly in accordance with law. Parties are directed to bear their own costs.

21. Appeals dismissed.