Supreme Court of India Mr. R.D. Hattangadi vs M/S Pest Control (India) Pvt. Ltd. ... on 6 January, 1995 Equivalent citations: 1995 AIR 755, 1995 SCC (1) 551 Author: S N.P. Bench: Singh N.P. (J) PETITIONER: MR. R.D. HATTANGADI

Vs.

RESPONDENT: M/S PEST CONTROL (INDIA) PVT. LTD. & ORS

DATE OF JUDGMENT06/01/1995

BENCH: SINGH N.P. (J) BENCH: SINGH N.P. (J) AHMADI A.M. (CJ)

CITATION: 1995 AIR 755 1995 SCC (1) 551 JT 1995 (1) 304 1995 SCALE (1)79

ACT:

HEADNOTE:

JUDGMENT: 1. The appellant met with an accident while travelling in an Ambassador car (Registration No. MEQ 4583) on 20-51980 at about 8.30 A.M. near village Sirur on Karwar-Mangalore Road (National Highway No. 17) within the State of Karnataka. There was a head on collision between the car in which the appellant was travelling and the Motor Lorry (Registration No. MYS 7218). Because of the said collision, the driver of the car in which the appellant was travelling was thrown out and died on the spot, whereas the appellant was trapped between the dashboard and the seat. Mr. Nagarkatti who was also travelling with the appellant in the car was thrown on the road. The impact was so severe that the front left side of the door of the car was jammed and could not be opened. Seeing the accident, the villagers gathered and broke open the left side of the car with the help of crow bar and the appellant was taken out. The appellant was removed to the Kasturba Hospital where he was treated as indoor patient from 20.5.1980 to 27.5.1980. When the relations of the appellant reached the hospital, a decision was taken to remove the appellant to Bombay and accordingly on 27.5.1980 he was brought to Bombay and was admitted in the Sion Hospital. The appellant remained in the said hospital as indoor patient from 27.5.1980 to 2.8.1980. Because of the accident, the appellant suffered serious injuries resulting into 100% disability and a paraplegia below the waist. 2. The car was owned by M/s Pest Control (India) Pvt. Ltd., respondent No. 1 and was insured with New India Assur- ance Company Limited, respondent No.2. The motor lorry was owned by one Madhav Bolar respondent No.3 and was insured by Oriental Fire and General Insurance Company Limited, respondent No.4. According to the appellant, the driver of the car in which the appellant was sitting as well as the driver of the lorry which was coming from the opposite side, both were being driven in a rash and negligent manner which resulted into a head on collision. On 11. 10. 1980 the ap- pellant gave notice to the Insurance Company and other parties who were liable to pay compensation and called upon them to pay compensation of Rs.4,00,000/-. Since there was no response, on 13.11.1980 the appellant filed the claim petition

under Section 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as the 'Act'). Initially, the appellant made a claim for compensation amounting to Rs.4,00,000/-, but on 16.4.1984 he claimed Rs.35,00,000/- as the compensation from the respondents and claim petition was amended. The age of the appellant at the time of accident was 52 years. 3. The appellant was a practicing advocate before the accident. He was also a Judge of the City Civil Court for some time until he resigned in the year 1964. The appellant used to appear in the various courts including the High Court and the Supreme Court of India. Because of the accident, the appellant became disabled and he was unable to resume his practice. 4. The claim made on behalf of the appellant was resisted by the respondents to the said petition on different grounds. The owner of the lorry resisted his liability to pay any amount of compensation on the ground that although he was the owner of the said lorry but since it was insured with respondent No.4, the insurance company was liable to pay compensation, if any, to the appellant. M/s Pest Control (India) Pvt. Ltd., who were the owner of the car resisted the claim made on behalf of the appellant asserting that the driver of the said car was driving the car very cautiously and carefully and the accident took place entirely due to the negligence on the part of the driver of the motor lorry. In any case, according to the said respondent, the compensation claimed on behalf of the ap- pellant was excessive, imaginary and speculative in nature, which according to the said respondent was an attempt to make "a fortune out of misfortune". Respondent No.2, New India Assurance Co. Ltd., with whom the car in question was insured took a plea that their liability was limited to the requirements as per law and terms and conditions of the insurance policy issued by them in favour of Respondent No. 1. The Oriental Fire & General Insurance Co. Ltd., who had insured the motor lorry of Respondent No.3, their stand was also the same that they were bound by the terms and conditions of the insurance policy. 5. The Accident Claim Tribunal on consideration of the materials on record and the evidence adduced on behalf of the parties passed on Award directing respondent Nos. 1 and 2 to pay jointly and severally to the appellant compensation of Rs.26,25,992/- together with interest at the rate of 12% per annum from the date of the application i.e. 13.11.1980 till payment and costs of the said application within three months. The Tribunal was also of the view that respondent No.4 the insurer of the motor lorry belonging to respondent No.3 was liable to pay the compensation to the extent of Rs.50,000/- and interest thereon and proportionate costs. In the award a direction was given to Respondent No.2, the insurer of the car to pay all the compensation along with interest and costs on behalf of respondent No. 1. 6. Against the Award aforesaid, two appeals were filed before the High Court, one on behalf of the appellant for enhancement of the compensation awarded by the Tribunal and the other on behalf of M/s Pest Control (India) Pvt. Ltd., respondent No. 1 and New India Assurance Co. Ltd., respondent No.2 questioning the validity and correctness of the award in question. The High Court by the impugned judg- ment modified the award of the Tribunal and reduced the compensation from Rs.26,25,992/- to Rs.8,57,352/-. The High Court has also reduced the rate of interest from 12% per annum to the rate of 6% per annum. The award

against the insurer of the lorry-respondent No.4 was affirmed and direction was given to make payment with interest at the rate of 6% and the proportionate costs. It was further directed that if the respondents failed and neglected to pay the amount in full or part, such defaulted amount shall carry 12% interest per annum from the date of default till its realisation. On the aforesaid finding the appeal filed on behalf of the appellant was dismissed, whereas the appeal filed on behalf of Respondent Nos. 1 and 2 was allowed by the High Court in part. 7. During the last few decades ques- tion of payment of compensation for accidents has assumed great importance, which is co-related with the accidents which have touched a new height not only in India but in different parts of the world. Initially, the theory of payment of compensation was primarily linked with tort compensation only if the injury or damage was caused by someone's fault, of late the injury or damage being caused by someone's fault is being read as because of someone's negligence or carelessness. That is why any damage caused by negligent conduct is generally actionable irrespective of the kind of activity out of which the damage arose. Even in an action based on the tort, the applicant has to show that the defendant was negligent i.e. there was a failure on his part to take that degree of care which was reasonable in the circumstances of the case. There has never been any doubt that those using the highways are under a duty to be careful and the legal position today is quite plain that any person using the road as a motorist will be liable, if by his action he negligently causes physical injuries to anybody else. 8. The Tribunal as well as the High Court has examined the evidence adduced on behalf of the parties and have recorded clear findings that at the relevant time the car and the lorry were being driven in a rash and negligent manner. Reference has been made to the evidence adduced on that question. The fact that the front left side of the car was entangled with the front middle of the lorry speaks about the rashness on the part of the drivers of the two vehicles. The Tribunal has also pointed out from the materials on record that the motor car had gone to the wrong side of the road at the time of the accident. The High Court after referring to the order of the Tribunal said that after going through the evidence of the witnesses and the circumstances placed, it was of the opinion that the Tribunal was right in holding that there was composite negligence on the part of the drivers of both the vehicles and because of such negligence the appellant had sustained such serious inju- ries. The High Court also said that in view of composite negligence, the appellant was entitled for damages from the owners of both the vehicles and consequently the insurers of the two vehicles shall also be liable subject to the terms and conditions of the insurance policies. The Tribunal as well as the High Court were satisfied that because of the accident aforesaid, the appellant had become paraplegic and it was not easy to assess the exact compensation which is payable' to him. 9. Broadly speaking while fixing an amount of compensation payable to a victim of an 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 appre-

ciate two concepts pecuniary damages may, include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecu- niary 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 va- riety 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. 10. It cannot be disputed that because of the accident the appellant who was an active practicing lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a life long handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame. 11. In the case Ward v. James 1965(1) All E.R.563 it was said: "Although you cannot give a man so gravely injured much for his"lost years", you can, however, compensate him for his loss during his shortened span, that is, during his expected"years of survival ". You can compensate him for his loss of earnings during that time, and for the cost of treatment , nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to back injury, be unable to rise from his bed. He has lost everything that makes life worth- while. Money is no good to him. Yet judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The judges have worked out a pattern, and they keep it in line with the changes in the value of money." 12. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of acci- dent, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid el- ements have to be viewed with objective standards. 13. This Court in the case of C.K. Subramonia Iyer and others v. T. Kunhikuttan Nair and others, AIR 1970 SC 376 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. In Halsbury's Laws of England, 4th Edition, Vol.12 regarding non-pecuniary loss at page 446 it has been said:- "Non-pecuniary loss: the Pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems @ fairness being interpreted by the courts in the

light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the com- parative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases." 15.We are informed that during the pendency of the appeal before the High Court on basis of interim directions Rs.3 lakhs and Rs.9 lakhs, in total Rs.12 lakhs have been directed to be deposited. However, in the final decision, the High Court was of the opinion that the appellant was entitled to Rs.8,57,352/- only as the compensation. 16.During the hearing of the appeal a chart was circulated showing the amounts claimed on behalf of the appellant under different heads and the amounts allowed or rejected by the High Court, under those heads. So far, the amount mentioned against Sl.No. 1 is concerned, the High Court has allowed the whole claim of Rs.47,652/- and there is no dispute on that account. Against Sl.Nos. 2 to 6 the appellant had claimed Rs.37,688/- for Ayurvedic treatment against which an amount of Rs.4,000/- has been allowed by the High Court. According to us, this part of the judgment of the High Court does not require any interference. Against Sl.No.7 the appellant has claimed for Fowler's Bed, Rs.21,000/- for the present and Rs.21,000/ for the future which has not been allowed. Same is the position in respect of electric wheel chair against Sl.No.8 which has been claimed at the rate of Rs.50,000/- for the present and Rs.50,000/ for the future which has been rejected by the High Court. According to us, when admittedly because of the injuries suffered during the accident, the appellant has become paraplegic, the aforesaid amounts should have been allowed by the High Court. Accordingly, we allow the said claim for Rs. 1,42,000/- under Sl.Nos. 7 and 8. So far claim, for Air Inflated Bed at Sl.No.9 is concerned, the appellant has claimed Rs.5,000/- for the present and Rs.5,000/- for the future. The High Court has allowed only Rs.5,000/for the present. According to us, the remaining amount of Rs. 5,000/- also should have been allowed by the High Court. Coming to the claim for Home Attendants against Sl.No.9A. the appellant has claimed Rs.55,450/- for the present and Rs.1,87,200/- for the future. The High Court has allowed Rs.36,000/- and Rs.72,000/- respectively. We feel that there was no occasion for the High Court to be so mathematical on this question. Under the circumstances prevailing in the society in respect of Home Attendants, the High Court should have allowed the amount as claimed by the appellant.We accordingly allow the same. For Drugs and Tablets (Allopathic), claim has been made for Rs.9,000/- for the present and Rs. 18,000/- for the future. The High Court has allowed Rs.5,400/- and Rs.10,800/-respectively under that head as detailed against SI.NO. 10. The claim under this head appears to be reasonable and should have been allowed, we allow the same. Against SI.No.11 the appellant has claimed for Ayurvedic treatment Rs.7,800/- for the present and Rs.37,440/- for the future. The High Court has allowed Rs.7,200/- and Rs. 12,000/- respectively. According to us

this part does not require any interference. Under Sl.No. 12 (i) Bedsore Dressing Charges for the present and future have been claimed respectively at Rs.72,900/ - and Rs.1,29,600/- against which the High Court has allowed Rs.20,000/and Rs.10,000/- respectively. In normal course for Bedsore the claim for Rs.72,900/ - for the present and Rs. 1,29,600/- for the future appears to be exorbitant. The High Court has rightly directed payment of Rs.20,000/- and Rs.10,000/-. As such this part of the finding of the High Court does not require interference. Under Sl.No. 12 (ii) claim has been made for Cathetarisation charges at Rs. 1,29,600/- for the present and Rs.2,59,200/- for the future. The High Court has allowed Rs.10,000/- and Rs.5,000/- respectively. We are of the opinion that the amount awarded by the High Court under this head does not require any interference. So far the order of the High Court in respect of bladder wash charges and enima charges is concerned, it also does not require any interference. Under Sl.No.13 Rs.20,100/- has been claimed as charges for consulting Surgeons for the present and Rs. 14,400/- has been claimed for the future. The High Court has allowed Rs. 5,000/- for the present and the same amount for future. We feel that this part of the finding of the High Court does not require any interference. For Physiotherapy under SI.No. 14, Rs.34,200/ - has been claimed for the present and Rs.1,87,200/- for the future. The High Court has allowed Rs.12,000/- for the present and Rs. 12,000/- for the future. It is well known that for victims of road accidents, Physiotherapy is one of the ac- knowledged mode of treatment which requires to be pursued for a long duration. The High Court should have allowed Rs.34,200/- as claimed by the appellant for the present and at least Rs. 50,000/- for the future. However we allow the same. In respect of loss of earnings under Sl.No.15 claim has been made for Rs. 1,80,000/-, the High Court has allowed Rs. 1,44,000/- The High Court should have allowed the whole claim. We allow the same. For loss of future earnings, claim has been made at Rs.3,60,000/-. The High Court has allowed Rs. 1,62,000/in respect of loss of future earnings. This part of the award does not require any interference because an amount of Rs. 1,62,000/- can be held to be a reasonable amount to be awarded taking all facts and circumstances in respect of the future earnings of the appellant. 17. The claim under SI.No. 16 for pain and suffering and for loss of amenities of life under Sl.No.17 , are claims for Non-Pecuniary Loss. The appellant has claimed lump-sum amount of Rs.3,00,000/- each under the two heads. The High Court has allowed Rs. 1,00,000/- against the claims of Rs.6,00,000/-. When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an Advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheel chair, the High Court should have allowed an amount of Rs. 1,50,000/- in respect of claim for pain and suffering and Rs. 1,50,000/- in respect of loss of amenities of life. We direct payment of Rs.3,00,000/-(Rupees three lakhs only) against the claim of

Rs.6,00,000/- under the heads 'Pain and Suffering' and 'Loss of amenities of life'. 18. So far the direction of the High Court regarding payment of interest at the rate of 6% over the total amount held to be payable to the appellant is concerned, it has to be modified. The High Court should have clarified that the interest shall not be payable over the amount directed to be paid to the appellant in respect of future expenditures under different heads. It need not be pointed out that interest is to be paid over the amount which has become payable on the date of award and not which is to be paid for expenditures to be incurred in future. As such we direct that appellant shall not be entitled to interest over such amount. 19. The appeals of the appellant are allowed to the extent indicated above. No costs. M/s Pest Control (India) Pvt.Ltd.& Anr. v. R.D. Hattangadi & Ors. Special Leave Petition (C) No.4586 of 1989 20. This Special Leave petition has been filed on behalf of M/s Pest Control (India) Pvt. Ltd. and Anr. against the same judgment of the High Court. As the Civil Appeal Nos. 1799-1800 of 1989 have been allowed in part and the amount of compensation awarded to the victim by the High Court has been enhanced, this Special Leave Petition has to be dismissed and it is accordingly dismissed. No costs.