

Delhi High Court Oriental Insurance Co. Ltd. vs Vijay Kumar Mittal And Ors. on 11 May, 2007 Equivalent citations: 2008 ACJ 1300 Author: P Nandrajog Bench: P Nandrajog JUDGMENT Pradeep Nandrajog, J. 1. The appeal under Section 173 of the M.V.Act 1988 is directed against the award dated 01.02.2006. 2. On 13.6.2001, injured Vijay Kumar Mittal, sustained serious injuries in a road accident stated to be caused by the rash and negligent driving of the offending vehicle belonging to the respondent No. 3, Harpreet Singh. 3. Vide award dated 01.02.2006, Tribunal has directed the appellant insurance company to pay compensation of Rs. 9,39,045/- to the injured. Break up of the compensation awarded is as follows: (i) Medical expenses : Rs. 1,00,000/- (ii) Conveyance and Attendant expenses : Rs. 20,000/- (iii) Special Diet : Rs. 10,000/- (iv) Physical Disfigurement & : Rs. 1,00,000/- Loss of amenities of life (v) Pain and agony : Rs. 50,000/- (vi) Loss of marriage prospects : Rs. 1,00,000/- (vii) Loss of earning capacity : Rs. 5,59,045/- Total : Rs. 9,39,045/-
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4. Aggrieved by the amount of compensation awarded by the Tribunal, appellant insurance company has filed the present appeal.
5. Since the only issue involved relates to quantum of compensation, I shall only be noting such facts as are relevant for adjudication of said issue.
6. Injured was aged 23 years as on the date of the accident. He was a scrap dealer.
7. On account of injuries sustained by the injured, his right leg was amputated below the knee and a rod was inserted in his left leg. Permanent disability was assessed at 60%. A Jaipur foot was fitted on his amputated leg.
8. It is an admitted fact that the injured was hospitalized thrice i.e. from 13.6.2001 to 16.6.2001 at Umkal Hospital, from 23.6.2001 to 26.6.2001 at Parnami Orthopedic Hospital and from 26.6.2001 to 26.8.2001 at Safdarjung Hospital.
9. In the light of afore noted backdrop facts, I shall determine the 'fairness' of the compensation assessed by the Tribunal.
10. The possession of one's own body is the first and most valuable of all human rights and while awarding compensation for bodily injuries this primary element is to be kept in mind. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies on account of gravity of bodily injury. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Court and Tribunal should make an honest and serious attempt to award damages so far as money can compensate the loss. Regard must be given to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. Damages awarded in personal injury cases must be substantial and not token damages.
11. The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person

such a sum as will put him in the same position as he would have been in if he had not sustained the injuries.

12. 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 non pecuniary 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.

13. Pecuniary loss may include the following:

- (i) Special damages or pre-trial pecuniary loss.
- (ii) Prospective loss of earnings and profits.
- (iii) Medicinal expenses.
- (iv) Cost of future care and other expenses.

14. Non pecuniary loss may include the following:

- (i) Pain and suffering.
- (ii) Damages for mental and physical shock.
- (iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.
- (iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.
- (v) Disfigurement.
- (vi) Discomfort or inconvenience, hardship, disappointment, frustration and mental stress in life.

15. As noted herein above, damages have to be assessed separately as pecuniary damages and non pecuniary damages. In the instant case, Tribunal has awarded Rs. 6,89,045/- under the head 'pecuniary damages' and Rs. 2,50,000/- under the head 'non-pecuniary damages'. I shall deal with each head separately. Non-pecuniary Damages:

16. Tribunal has Fawarded Rs. 2,50,000/- under this head. Break-up of the compensation awarded under this head is as follows:

- (i) Pain and agony : Rs. 50,000/-
- (ii) Physical Disfigurement & : Rs. 1,00,000/- Loss of amenities of life
- (iii) Loss of marriage prospects : Rs. 1,00,000/-

17. Learned counsel for the appellant contends that compensation awarded by the Tribunal under this head is excessive. He particularly stresses that award of Rs. 1,00,000/- for loss of marriage prospects is excessive.

18. In order to properly appreciate the contentions advanced by the learned Counsel for the appellant, I note the following judgments:

- (i) B.N.Kumar v. D.T.C. . In said case, injured sustained crush injuries on his right leg leading to its amputation above knee in a road accident on 5th November 1987. He suffered a permanent disability of 85%. Noting various judgments wherein Courts had awarded Rs. 3,00,000/- under the head non-pecuniary damages, a Single Judge of this Court awarded Rs. 75,000/- for 'pain and suffering' and Rs. 2,00,000/- for 'continuing disability suffered by him'. Thus, a total of Rs. 2,75,000/- was awarded under this head.
- (ii) Fakirappa v. Yallawwa and Anr. 2004 ACJ 141 In said case, a minor male child sustained grievous injury in a road accident which occurred on 8.5.2000 resulting in amputation of his left leg below knee. Considering the gravity of injury suffered the injured, Division Bench of Karnataka High Court awarded following compensation under the head 'non-pecuniary damages':
- (iii) Pain and suffering : Rs. 50,000/-.
- (iv) Loss of amenities of life : Rs. 1,00,000/-.
- (v) Loss of marriage prospects : Rs. 50,000/-.
- (vi) Damages for amputation of leg: Rs. 1,50,000/- below knee.
- (vii) Loss of expectation of life : Rs. 50,000/-
Total : Rs. 4,00,000/-
- (viii) K. Shankar v. Pallavan Transport Corporation

In said case, injured sustained serious injuries on his right leg in an accident on 14.2.1989. His right leg was amputated and he suffered permanent disability of 80%. A learned Single Judge of Madras High Court awarded the following compensation under the head 'non-pecuniary damages'. (i) For permanent disability : Rs. 80,000/-. (ii) Pain and suffering : Rs. 50,000/-. (iii) Loss of expectation of life and proper marital alliance : Rs. 50,000/-. (iv) For mental agony : Rs. 1,00,000/- Total : Rs. 2,80,000/-

- (iv) M.Jaganathan v. Pallavan Transport Corporation

In said case, injured aged 45 years sustained injuries in an accident on 21.6.1990. The injury sustained by the injured resulted in the amputation of his left leg above the knee. Division Bench of Madras High Court awarded following compensation under the head 'non pecuniary damages': (i) Pain and suffering : Rs. 1,00,000/-. (ii) Compensation for continuing permanent disability. : Rs. 2,00,000/-. (iii) Mental agony, torture and humiliation because of amputation : Rs. 75,000/- Total : Rs. 3,75,000/-

(v) Bhagwan Singh Meena v. Jai Kishan Tiwari

In said case, the injured sustained severe and serious injuries on account of the road accident. His right leg was amputated. A learned Single Judge of Rajasthan High Court awarded a compensation of Rs. 3,00,000/- under the head non-pecuniary damages. (vi) Dr. Gop Ramchandani v. Onkar Singh and Ors. . In said case, in an accident which had occurred on 17.12.1985, injured sustained injuries because of which his left leg was amputated resulting in 50% permanent disability. A Single Judge of Rajasthan High Court awarded a compensation of Rs. 3,00,000/- under the head 'non pecuniary damages'. Break-up of the compensation under the said head is as under: (i) Physical and mental agony : Rs. 1,00,000/-. (ii) Permanent disability : Rs. 1,00,000/-. (iii) Loss of social life and loss in profession : Rs. 1,00,000/- Total : Rs. 3,00,000/-

(vii) Jitendra Singh v. Islam

In said case, in an accident which had occurred on 14.02.1992, injured sustained injuries because of which his left leg was amputated resulting in 55% permanent disability. A Single Judge of Rajasthan High Court awarded a compensation of Rs. 3,00,000/- under the head 'non pecuniary damages'. (viii) Iranna v. Mohammadali Khadarsab Mulla and Anr. In said case, on 19.4.2000, injured aged 7 years met with an accident. Due to the said accident, he sustained grievous injuries resulting in amputation of his left leg below knee. Tribunal awarded following compensation to him under the head 'non pecuniary damages': (i) Pain and suffering : Rs. 50,000 (ii) Loss of amenities, happiness, frustration : Rs. 1,00,000/-. (iii) Loss of marriage prospects : Rs. 50,000/-. (iv) Amputation of leg below knee and knee dis-articulation : Rs. 1,50,000/- Total : Rs. 3,50,000/-

20. From the afore noted judicial decisions, a trend which emerges is that between the years 1985 to 1990, Courts have been awarding about Rs. 3,00,000/- under the head 'non pecuniary damages' for amputation of leg resulting in permanent disability of 50% and above.
21. In the instant case, Tribunal has awarded Rs. 2,50,000/- under the head 'non pecuniary damages'. Thus, award of the Tribunal under the head 'non pecuniary damages' is just, fair and reasonable. Pecuniary damages:
22. Tribunal has awarded Rs. 6,89,045/- under the head 'pecuniary damages'. Learned counsel for the appellant challenges the award under pecuniary damages on two counts. One, compensation of Rs. 1,00,000/- awarded by the Tribunal for medical expenses is excessive. Two, Tribunal has applied incorrect principles of law while determining compensation to the injured for loss of earning capacity.
23. On the issue of medical expenses, learned Counsel contended that injured had placed on record medical bills totaling Rs. 64,805/-. But, counsel

- stated that Tribunal committed an error by awarding Rs. 1,00,000/- to the injured for medical expenses.
24. It is relevant to note that no compensation has been awarded by the Tribunal for future medical expenses.
 25. A Jaipur foot was fitted on the amputated leg. The same would require replacement every 2 to 3 years.
 26. In the decision reported as Nagappa v. Gurudayal Singh , noting that artificial leg implanted on the leg of the injured would have to be changed every two to three years, Supreme Court awarded compensation in sum of Rs. 1,00,000/- to meet the said future expenses.
 27. Thus, Tribunal has erred in not taking into account future medical expenses while awarding compensation.
 28. Therefore, I find no infirmity in Tribunal awarding Rs. 1,00,000/- to the injured for medical expenses.
 29. Tribunal has awarded Rs. 5,59,045/- to the injured for loss of earning capacity.
 30. Tribunal has assessed damages for loss of earning capacity by applying the multiplier method.
 31. Reverting to the claim petition and evidence on record, I note that injured had stated that he was dealing in scrap business and that he was earning Rs. 8,000/- per month at the time of the accident. In absence of any evidence, documentary or otherwise, to establish the earnings of the injured, Tribunal has rightly determined the income of the injured on the basis of the minimum wages notified under the Minimum Wages Act. Tribunal has placed injured in the category of unskilled labour.
 32. Noting that to neutralize increase in cost of living and price index, minimum wages increased from time to time, Tribunal has given benefit of future increase in the income of the injured. Thus, mean average income of the deceased has been determined as Rs. 4,567.35/- per month.
 33. It is now well settled that while estimating future loss of income, the court has to take into account future prospects of the injured (See K.Narsimha Murthi v. The Manager, Oriental Insurance Co. Ltd. and Anr.). Thus, Tribunal has rightly considered future increase in minimum wage while awarding compensation for loss of earning capacity. I note that minimum wage tend to increase by 100% every 10 years.
 34. Considering that the injured was aged 23-24 years at the time of the accident, multiplier of 17 has been applied by the Tribunal.
 35. In the decision reported as U.P. State Road Transport Corporation v. Trilok Chandra and Ors. , Supreme Court has held that the highest multiplier of 18 has to be applied for the age group of 21 years to 25 years.
 36. In the instant case, injured was aged 23-24 years at the time of the accident. Noting the Trilok Chandra's case (Supra), correct multiplier in the instant case is 18. Thus, multiplier of 17 adopted by the Tribunal is on the lower side.
 37. Admittedly, injured had suffered 60% permanent disability. Tribunal has taken functional disability suffered by the injured by 60%. Thus, total

compensation is determined by the Tribunal as Rs. $4,567.35 \times 12 \times 17 \times 60\% = \text{Rs. } 5,59,043.67/-$ (Rounded off to Rs. 5,59,045/-).

38. The question is whether Tribunal is right in assessing functional disability suffered by the appellant as 60%.
39. While estimating future loss of income, the effect of the earning capacity ought to be judged in the light of the importance of the loss of permanently impaired limb in the vocation or profession or employment career of the injured person. The nature of work or business has to be considered and the extent of disablement cannot be indifferent to the nature of the work.
40. In the instant case, injured was a scrap dealer. The nature of business of the injured is such that amputation of left leg will seriously hamper his earning capacity as his movement would be restricted. Thus, the Tribunal has rightly assessed the functional disability suffered by the injured as 60%.
41. Therefore, I see no infirmity in Tribunal awarding Rs. 5,59,045/- for the loss of earning capacity.
42. Thus, the award made by the Tribunal is just, fair and reasonable.
43. Before concluding, I note that Tribunal had directed that 10% of the compensation awarded be released to the injured and balance 90% of the amount be kept in a fixed deposit with any Nationalized Bank for a period of 5 years.
44. As noted above, respondent No. 1 was aged 23 years when the accident took place. The date of accident is 13.6.2001. Thus, as of today, he would be aged 29 years. The award is dated 1.2.2006. This means that the locking period as per the award would come to an end when respondent No. 1 would be aged 34 years.
45. Considering his handicap, it is important to secure the money for a long period, lest it is squandered.
46. Therefore, I direct that 90% of the compensation be kept in a fixed deposit with a Nationalized Bank for a period of 15 years from date of this order. Respondent No. 1 would be permitted to withdraw the interest which would accrued on the deposit.
47. Pursuant to order dated 29.3.2007, sum awarded together with up to date interest was directed to be deposited. 50% of the amount has been disbursed and utilized as directed in the award. Balance 50% sum has, therefore, to be paid to the appellant.
48. The said amount be disbursed to the appellant as per the award and as further invested in terms of direction issued in para 46 above.
49. Needless to state, interest which has accrued on the deposit has to be to the credit of the claimant i.e. respondent No. 1.
50. Appeal is dismissed.
51. No costs.