Lalan D. @ Lal vs The Oriental Insurance Company Ltd. on 17 September, 2020

Equivalent citations: AIR 2020 SUPREME COURT 4508, AIRONLINE 2020 SC 734

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Bench: Aniruddha Bose, Ajay Rastogi, Sanjay Kishan Kaul

[Non-Reportable]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2855 OF 2020
(arising out of Special Leave Petition (Civil) No.2131 of 2018)

Lalan D. @ Lal & Anr. ..…Appellant(s)

Vs.

The Oriental Insurance Company Ltd. …Respondent(s)

JUDGMENT

ANIRUDDHA BOSE, J.

The appellants before us are a victim of a road accident and his wife. The first appellant is the victim. The accident occurred on 31st December 2003 while the victim was riding his bicycle along the side of Alappuzha–Kolam highway. At the time of institution of the claim petition before the Motor Accidents Claims Tribunal, Alappuzha under Section 166 of the Motor Vehicles Act, 1988 (the Act), out of which this appeal arises, the first appellant was unconscious and was represented by his wife as the legal guardian and next friend. She was also a co-applicant before the Tribunal. It was claimed before the forum of first instance that the victim was skilled labourer in a building construction project. His date of birth is 20 th May 1969. Before the Tribunal, his age at the time of accident was found to be above 34 years. He suffered, inter-alia, head injury causing brain concussion, brain stems injury, diffuse axonial injury on left side. He had to undergo extensive treatment in two hospitals, being Medical College Hospital, Vandanam, Alappuzha and thereafter at Medical Trust Hospital, Ernakulam. He had to spend about six weeks in these two hospitals. Thereafter also his treatment continued. The claim was not contested by the first respondent – the owner of the vehicle and was decided ex-parte against him. Before us also, it was only the insurance company who contested the appeal. The first respondent was deleted from the array of the parties by an order of this Court passed on 9 th April, 2019. The Tribunal found involvement of the vehicle registered as KL-2/No.9779. Rash and negligent driving by the driver of that vehicle was also

proved. As regards condition of the first appellant, the Tribunal, in its award, found that the victim had "right aided Hemiparalesis and there is weakness on the other side also. He is completely bed ridden and he could not speak properly and he has some mental problem also. Tube was fitted for the passage of urine……". The Tribunal in its award made on 20th January, 2009 assessed permanent disability of the appellant to be 50%.

2. Compensation was awarded by the Tribunal under following heads, applying the multiplier of 17:

> Compensation for loss of earning Rs.20,000/-Cost of medicine and treatment charges Rs.68,000/-Transportation charges Rs. 6,000/-Bystander expenses Rs. 6,000/-Extra nourishment Rs. 1,500/-Damage to clothing Rs. 500/- Compensation for pain and suffering Rs.30,000/-Compensation for permanent disability And loss of earning power Rs.2,55,500/-Compensation for loss of amenities Rs.10,000/-Compensation for future treatment Rs. 2,500/-□□□□□□□□□□ □□□□□□□□□□□□□Total Rs.4,00,000/-□□□□□□□□□□□□□□□□□□□□□□□□□□

3. The victim and his wife appealed to the High Court of Kerala at Ernakulam seeking enhancement of compensation. The High Court considered certain additional documents. The appellant established before the High Court the need to continue his treatment subsequent to the award of the Tribunal. It was opined in the judgment of the High Court delivered on 16 th March, 2017, that the condition of the appellant was such that it was more than sufficient to arrive at a finding that he was virtually lying as vegetable. The victim had permanent locomotor disability of right hemiplegia sequelae of head injury which was not likely to improve. The High Court found that the victim needed a full-time caregiver as he was not in a position to move around on free will. The High Court assessed the degree of disability to be reckoned as 100% for working out proper compensation and applied the multiplier of 16 considering his age. We shall reproduce the High Court's decision on quantum of compensation in the next paragraph of this judgment.

4. The Medical Board at the Medical College Hospital, Alappuzha had certified the victim's permanent disability to be 50%, which was the basis for assessment of degree of his disability by the Tribunal. The Tribunal's award was made, as we have already indicated, in the year 2009. But considering the position of the victim, while hearing the appeal in the year 2017, the High Court attributed the percentage of his disability to be 100%. The High Court enhanced his notional monthly income to Rs.3500/-per month. In the judgment under appeal, it was observed and held:

> "It is true that the accident was in the year 2003, but it was on the last day of the year and by the dawn of the next day, it was to begin with the year 2004. Evidently, the injured was maintaining a family of his own, consisting of his wife, who is the second appellant/second claimant. By virtue of the present state of affairs, it can be reasonably presumed that the wife will not be in a position to move about for getting some job and she has to be near her husband throughout, to give constant care and attention, even for meeting the calls of nature, for administration of medicines and for food intake. In the said circumstance, we find that the notional monthly income fixed by the Tribunal requires some modification. We enhance the same to

Rs.3500/- per month. The proper multiplier, as rightly pointed out by the learned Sr. counsel appearing for the Insurer is '16'; in view of the date of birth of the injured being 25.9.1969. On re-working the compensation towards disability, it comes to Rs.6,72,000/- (3500 x 12 x 16 x 100/100). After giving credit to the sum of Rs.2,55,000/- awarded by the Tribunal, the balance comes to Rs.4,17,000/-. Since we have awarded compensation for disability, reckoning it as 100%, the compensation of loss of earning awarded by the Tribunal becomes irrelevant and insignificant and hence the said amount of Rs.20000/- is deleted. Hence the balance payable comes to Rs.3,97,000/-.

The compensation under the heads 'pain and suffering' and towards 'loss of amenities and enjoyment in life' also require some modification. Taking into the totality of the facts and circumstances, we award a further sum of Rs.10,000/- under the head 'pain and suffering' and a sum of Rs.40,000/- towards loss of amenities and enjoyment in life. Thus, the total balance compensation comes to Rs.4,47,000/- (Rupees four lakhs forty seven thousand only), which shall be satisfied with interest at the rate of 9% from the date of petition till realisation, within 'one month' from the date of receipt of a copy of the judgment."

5. The appellants have asked for further enhancement of compensation before us. Grievance of the appellants is that the victim has been under-compensated, having regard to the degree of injury suffered by him. He has specifically raised the plea for award of compensation under the head of loss of future prospects. It is also his case that the High Court erred in law in applying the multiplier of 16. It has been urged on behalf of the appellants that the multiplier 17 as per the award of the Tribunal, should have been retained.

6. On behalf of the insurance company, prayer of the appellants for enhancement of compensation has been opposed. It has been argued that there was contributory negligence on the part of the first appellant in that he was under the influence of liquor at the time of accident. On that count, they want reduction of 50% of the compensation from the judgment and order under appeal. Quantification of his monthly income as Rs.3,500/- has also been questioned by the insurance company in their counter-affidavit. The case of Sri Ramachandrappa vs. The Manager, Royal Sundaram Alliance Insurance Company Ltd. [(2011) 13 SCC 236] has been referred to in this regard. On the question as to what would constitute just compensation, the cases of Arvind Kumar Mishra vs. New India Assurance Co. Ltd. & Anr. [(2010) 10 SCC 254] and National Insurance Company Ltd. vs. Kusuma and Anr. [(2011) 13 SCC 306] have been cited on their behalf. It has also been argued that as he was a construction worker, he must have had received compensation under the Building and other Construction Workers Welfare Cess Act, 1966 as also Workmen Compensation Act, 1923. The insurance company's case is that personal expenses of the victim ought to have been taken to be one-fourth of the loss of income assessed. The plea for attendant charges has been resisted on the ground that no service by any bystander had been proved and no bill for expenses for surgery or hospitalisation during the last 17 years had been produced. The insurance company, however, has not come up in appeal questioning the High Court's finding on the heads of compensation and quantum of compensation awarded under these heads. These submissions of the insurance

company we cannot entertain at this stage while dealing with the victim's appeal for enhancement of compensation. Otherwise also, we do not think these submissions have any legal basis in the context of the present appeal. The forum of first instance or the High Court did not return any finding on the first appellant being under influence of alcohol. In the victim's appeal, we cannot permit the insurance company to raise this plea at this stage. Moreover, submission that the appellant must have drawn compensation under different welfare statutes is inferential. The insurance company has not disclosed any evidence to sustain their stand on this count.

7. The High Court has assessed monthly income of the victim to be Rs.3500/□ This was enhanced from the Tribunal's quantification of Rs.2,500/□per month. We do not want to disturb the finding of the High Court on this point. This is essentially a finding on question of fact. The respondent insurance company has cited the case of Mohan Soni vs. Ram Avatar Tomar & Ors. [(2012) 2 SCC 267] to contend that in the context of loss of future earning, physical disability resulting from an accident ought to be judged with reference to the nature of work being performed by the person suffering the disability. The approach of the Tribunal as also the High Court in the case of the victim has been in that line only. The respondents also sought to rely upon the decision of this Court in the case of Priya Vasant Kalgutkar vs. Murad Shaikh & Ors. [(2009) 15 SCC 54]. This case, however, relates to computation of compensation for injuries suffered by a minor. Ratio of this decision has no application in the facts of this case. We are, however, also of the opinion that the High Court went wrong in not awarding any sum under the head of loss of future prospects. In the case of National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680], a Constitution Bench has opined that the standardisation of just compensation is to include addition of future prospects to the income of the victim at the time of occurrence of the accident. This was a case where the victim had succumbed to the injuries. The present appeal relates to a victim, who has survived the accident but his disability has been assessed to be 100% by the High Court. We confirm this finding of the High Court. In the case of Parminder Singh vs. New India Assurance Co. Ltd. & Ors. [(2019) 7 SCC 217], a Bench comprising of two Judges of this Court found 50% of the income of the victim was to be assessed as loss of future prospects. Earlier, this Court broadly took the same view in the case of Sanjay Verma vs. Haryana Roadways [(2014) 3 SCC 210]. The course mandated by this Court in the case of Parminder Singh (supra) is addition to the monthly income of the victim, 50% thereof as loss of future prospects to arrive at compensation for loss of income for the purpose of application of the multiplier. This method of computation is based on sound logic and we choose to apply the same methodology in this appeal also. The loss of earning capacity of the first appellant is 100%. On this basis, his loss of future earning would have to be calculated treating income of the victim to be Rs.3,500/□per month, to which loss of future prospects at the rate of 40% thereof is to be added, which would make it Rs.4900/□per month. This is the computation method directed by the Constitution Bench in the case of Pranay Sethi (supra) so far as self□employed persons are concerned. We direct addition of 40% as there is no material before us to prove that the victim had a permanent job. Evidence before the Tribunal was that he was a skilled labourer in a building construction project. There was no evidence that he was on their permanent roll. The multiplier to be applicable in this case would be 16 following the specification contained in the case of Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]. Accordingly, his loss of future earning would have to be calculated first by multiplying Rs.4,900/□by 12, which would come to Rs.58,800/□This would be his annual income. Once multiplier of 16 is applied, his loss of future

earning would come to Rs.9,40,800/-, considering that degree of his disability is 100%. As the appellant has survived though at present in almost "coma stage" as observed by the High Court, we reject the insurance company's plea for making any deduction towards personal living expenses.

8. We also find that there was no compensation awarded towards expenses for a caregiver barring a paltry sum of Rs.6,000/- as bystander expenses. The defence of the insurance company for keeping the said sum at that negligible level is that no evidence had been led as regards expenses incurred towards any medical attendant. But going by the work the victim was doing and his physical state of being resulting from his injuries, conclusion has to be inevitable that he required and still requires caregiver round-the-clock and round the year to remain barely functional. Judging by the stratum of the society he comes from, it would be irrational to expect that he would have been in a position to directly engage a caregiver after his accident. It would not be an unreasonable assumption that his family members must have had to fit into that role. They could perform the role of caregiver only by diverting their own time from any form of gainful employment which could have generated some income. We proceed on the same assumption on his requirement of continued medical treatment post-discharge from the hospital. There is observation in the judgment of the High Court that he was undergoing treatment in "Aarogya Keralam" Palliative Caring Scheme. We are of the opinion that Rs.7,00,000/- ought to be awarded as lumpsum, composite amount for medical attendant charges and future medical treatment. In the case of Kajal vs. Jagdish Chand & Ors. [(2020) 4 SCC 413] for attendant charges, a Bench of two Judges of this Court has held that the multiplier methodology ought to be applied. On the other hand, in the case of Parminder Singh (supra) a lumpsum amount has been awarded. In the facts of the given case, we are of the opinion that award of lumpsum would be the proper course considering the fact that the first appellant was a daily labourer. In traumatic times after his accident, his family was unlikely to maintain detailed records of the expenses incurred.

9. Under the head pain and suffering the High Court has awarded a sum of Rs.40,000/- The appellants want this sum to be raised to Rs.6,00,000/- relying on a judgment of this Court in the case of Mallikaarjun Vs. Divisional Manager, National Insurance Company Ltd. & Anr. [(2014) 14 SCC 396]. In the case of Kajal (supra), where the victim was a young girl of 12 years having suffered 100% disability, the amount awarded was Rs.15,00,000/- under the heads pain and suffering and loss of amenities. But this judgment qualified such award with a caveat that the sum was awarded in peculiar facts and circumstances of the case. In the case of Raj Kumar vs. Ajay Kumar & Anr. [(2011) 1 SCC 343] it has been observed that when compensation is awarded by treating loss of future earning capacity to be 100% or even anything more than 50% the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear. As a result, only a token or nominal amount may have to be awarded under those heads. It is a fact that in the cases of Kajal (supra) and Mallikaarjun (supra), the victims were minor children. Their loss of income and permanent disability compensation were computed treating their income to be Rs.15,000/- per annum. So far as the present appeal is concerned, the High Court has assessed the annual income to be Rs.42,000/- (Rs.3500x12). But this very fact cannot altogether deprive the victim from compensation under the head pain and suffering. The High Court had awarded Rs.10,000/- only under this head. We assess the same to be Rs.3,00,000/- Considering the observations made in the case of Raj Kumar (supra), to which we have already referred, we reduce

the sum awarded by the High Court under the head loss of amenities from Rs.40,000/☐to Rs.10,000/☐

10. We accordingly modify the award as made by the High Court and direct the respondent☐ insurance company to make payment as compensation under the following heads (which also includes the heads under which sums were awarded by the Tribunal and the High Court) :☐ Compensation Heads Amount (in Rs.) Compensation for permanent disability 9,40,800 and loss of future earning Medical Attendant charges (Bystander 7,00,000 charges) and future Treatment cost Pain and suffering 3,00,000 Medicines & Treatment charges 68,000 Transportation Charges 6,000 Extra Nourishment 1500 Loss of Amenities 10,000 Total 20, 26,800

11. The aforesaid sum will carry interest @ 9% per annum. Upon adjusting the sum already paid, the amount we have awarded shall be released to the appellants. Interest on the differential sum shall be computed from the date of filing of the application under Section 166 of the Act. The said amount shall be invested in an interest bearing fixed deposit account of a Nationalised Bank for a period of one year in the name of the first appellant within eight weeks. The appellants shall be entitled to withdraw the interest therefrom on a regular basis during the tenure of the fixed deposit. Thereafter, the entire sum shall be paid over to the appellants.

12. The appeal is disposed of in the above terms. Pending applications, if any, shall stand disposed of. There shall be no order as to costs.

……J. (Sanjay Kishan Kaul) ……J. (Ajay Rastogi) .....J. (Aniruddha Bose) New Delhi, Dated: 17th September, 2020.