

Jakir Hussein vs Sabir & Ors on 18 February, 2015

Author: V. Gopala Gowda

Bench: R. Banumathi, V.Gopala Gowda

| REPORTABLE |

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2006 OF 2015
(Arising out of SLP(C) NO. 981 OF 2014)

JAKIR HUSSEIN

... APPELLANT

VERSUS

SABIR & ORS.

... RESPONDENTS

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted.

2. This appeal has been filed by the appellant against the judgment and order dated 24.01.2013 passed in M.A. No. 3414 of 2010 by the High Court of Madhya Pradesh at Indore, wherein the High Court partly allowed the appeal of the appellant by modifying the award passed by the MACT, Mandsor, M.P., in claim case No. 3 of 2009 dated 29.07.2010.

3. The relevant facts of the case are stated as under:

On 12.11.2008 at about 6.30 p.m., Jakir Hussein, the appellant herein, was driving a Tempo bearing registration No. MP-14-G-0547 from Krishi Upaj Mandi, Mandsor to Multanpura village, Madhya Pradesh. A few others were also riding along with the appellant, namely, Santosh, Kumari Krishna, Smt. Paipa Bai etc. While the appellant was on the way, a tractor bearing registration No. MP 14-K- 4886 which was driven by Sabir-respondent no.1 herein, in rash and negligent manner hit the appellant's tempo which was coming from the opposite direction with enormous force. Due to the impact of the accident, the appellant sustained grievous injuries. The right arm of the appellant had severe compound fractures preventing him from performing his

regular work as a driver hereafter. At the time of the said accident, the appellant was earning Rs.4,500/- per month by working as a driver.

4. The appellant filed Claim Petition No. 3 of 2009 under Section 166 of the Motor Vehicles Act, 1988 before the Motor Accidents Claim Tribunal/Additional First Member, Mandasor, Madhya Pradesh. The Tribunal determined the permanent disability suffered by the appellant on account of the motor vehicle accident at 30% and his monthly income was taken at Rs.3,000/- for the purpose of assessing annual income of the appellant to compute his loss of future earnings. On the basis of the annual income, his future loss of income due to permanent disability suffered by him was estimated at Rs.1,72,800/- and loss of income at Rs.51,000/-. Medical expenses was estimated at Rs.1,80,000/-. The total compensation of Rs.4,38,000/- with an interest at the rate of 7% p.a. was awarded to the appellant by the Tribunal as against a claim of Rs.8,80,000/- made by him.

5. Aggrieved by the award of the Tribunal regarding inadequate compensation, the appellant filed M.A. No. 3414 of 2010 before the High Court of Madhya Pradesh at Indore. The High Court opined that the income of appellant has been taken on the lower side by the Tribunal and determined the same at Rs.4,000/- per month. The High Court after re-determination of the compensation held that the appellant is entitled to an enhancement of Rs.1,77,200/- towards permanent disability and addition of Rs.5,000/- towards pain and suffering. In addition to that amount, a sum of Rs.20,000/- was awarded towards medical expenses. The High Court has further awarded Rs.40,000/- towards medical expenses during the pendency of the appeal. Further, it has awarded interest at the rate of 8% p.a. on the enhanced compensation. Being unsatisfied with the enhanced compensation by the High Court, the appellant filed this appeal.

The learned counsel on behalf of the appellant, Mr. Parameshwara, who is appointed to assist this Court as amicus curiae has contended that the compensation awarded by both the Tribunal and the High Court is wholly inadequate. It is submitted by him that the High Court has committed a serious error in law in not awarding just and reasonable compensation in favour of the appellant by taking various factual aspects such as permanent disability suffered by him, medical evidence and keeping in view the law on the relevant aspects for quantifying just and reasonable compensation both under the heads of pecuniary and non-pecuniary damages. It is further urged by him that on the motor vehicle accident caused by the respondent-driver on account of rash and negligent driving of the vehicle, the appellant has become permanently disabled due to which he will not be able to get suitable employment and lead a normal life in future. It is further contended by him that the future medical treatment and care of the appellant is very much necessary which will also be on the higher side. In cases where the claimant suffering from either total or partial permanent disablement, the term 'compensation' used under Section 166 of the Motor Vehicles Act, 1988, would not only include the expenses incurred for immediate treatment, but also the amount likely to be incurred by the appellant for future medical treatment/care and necessary assistance on account of permanent disablement caused to him on account of grievous injury of loss of his right arm in the said accident. Reliance was placed by the learned amicus curiae on the decision of this Court in the case of R.D. Hattangadi v. Pest Control (India) Private Limited^[1], wherein it was held as under:-

"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 are 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 and 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."

It is further contended by him that the monthly income of the appellant has been erroneously taken as Rs.3,000/- by the Tribunal and Rs.4,000/- by the High Court when he was actually earning Rs.4,500/- per month while working as the driver. The learned amicus curiae placed reliance upon the case of Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka[2], wherein, the three-Judge Bench of this Court while dealing with a case arising out of the complaint filed under the Consumer Protection Act, 1986, enhanced the compensation awarded by the National Consumer Disputes Redressal Commission from Rs.1.5 lacs to Rs.1 crore. The observations made by the Bench at para 39 can appropriately be applied to the case on hand, wherein it is stated as under:-

"88. We must emphasize that the Court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the Court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of the thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned.

89. It must also be borne in mind that life has its pitfalls and is not smooth sailing all along the way (as a claimant would have us believe) as the hiccups that invariably come about cannot be visualized. Life it is said is akin to a ride on a roller coaster where a meteoric rise is often followed by an equally spectacular fall, and the distance between the two (as in this very case) is a minute or a yard.

90. At the same time we often find that a person injured in an accident leaves his family in greater distress, vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time,

compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity."

(emphasis laid by this Court) Further, with regard to award just and reasonable compensation both under pecuniary and non-pecuniary damages to the victims of motor-vehicle accidents, the learned counsel has placed reliance upon the decision of this Court in the case of *Raj Kumar v. Ajay Kumar & Anr.* [3], wherein it was held as under:-

"5. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned."

(emphasis laid by this Court) It is further contended by the learned Amicus Curiae that the appellant was working as a driver and getting salary of Rs.4,500/- per month. However, the Tribunal proceeded to determine his income at Rs.36,000/- per annum solely on the basis that there was no evidence on record to prove the claim of the appellant that he was earning Rs. 4,500/- per month as a driver of the motor vehicle. Therefore, in the absence of any cogent evidence, the Tribunal and the High Court ought to have taken the appellant's annual income at Rs.54,000/- as he was working as a driver of the motor vehicle till the accident occurred for the purpose of determination of compensation towards the loss of future earnings of the appellant, as he had 100% permanent disablement having regard to the nature of work he was doing at the time of the accident. Accordingly, it should be at Rs.54,000/- per annum for proper quantification of future loss of earnings as he had suffered 100% functional disability.

It is further contended by him that the award passed by the Tribunal for future medical expenses was wholly inadequate. Reliance was placed on the decision of this Court in the case of *Nagappa v. Gurudayal Singh*[4], wherein this Court held that in a case where injury to a victim requires periodical medical expenses, it is not possible for a fresh award to be passed or to review a previous award when the medical expenses are incurred after finalisation of the compensation proceedings. It was further held that the only alternative is that at the time of passing of the final award, the

Tribunal/Court should consider such eventuality and fix the compensation under the above said head accordingly. Therefore, it is submitted by him that it will be just and reasonable for this Court to award a further sum of Rs.2,00,000/- to the appellant for his future treatment. If the said amount is deposited in fixed deposit, the interest accruing on it will take care of future medical treatment and other ancillary expenses.

With regard to the pain, suffering and trauma which have been caused to the appellant due to his crushed hand, it is contended that the compensation awarded by the Tribunal was meagre and insufficient. It is not in dispute that the appellant had remained in the hospital for a period of over three months. It is not possible for the courts to make a precise assessment of the pain and trauma suffered by a person whose arm got crushed and has suffered permanent disability due to the accident that occurred. The appellant will have to struggle and face different challenges as being handicapped permanently. Therefore, in all such cases, the Tribunals and the courts should make a broad estimate for the purpose of determining the amount of just and reasonable compensation under pecuniary loss. Admittedly, at the time of accident, the appellant was a young man of 33 years. For the rest of his life, the appellant will suffer from the trauma of not being able to do his normal work of his job as a driver. Therefore, it is submitted that to meet the ends of justice it would be just and proper to award him a sum of Rs.1,50,000/- towards pain, suffering and trauma caused to him and a further amount of Rs.1,50,000/- for the loss of amenities and enjoyment of life.

On the other hand, Dr. Meera Agarwal, the learned counsel for the respondent no.3 - The New India Assurance Company Ltd herein contended that this Court has held in a catena of cases that the percentage of loss of earning capacity should correspond to the percentage of loss of functional/physical disability, if the loss of functional disability is 55%, the loss of earning capacity should also be 55% of the income of the injured/claimant. In support of the above contentions, reliance was placed by her on the decision of this Court in the case of National Insurance Company Ltd. v. Mubasir Ahmed[5].

It is further contended on behalf of the Insurance Company that the amount of compensation awarded by the Tribunal was just and reasonable, still the High Court in exercise of its appellate jurisdiction has erroneously taken a generous view and enhanced the amount of compensation and therefore, does not warrant interference for enhancement of compensation as claimed by the appellant.

We have carefully examined the facts of the case and material evidence on record in the light of the rival legal contentions urged before us by both the learned counsel on behalf of the parties to find out as to whether the appellant is entitled for further enhancement of compensation? We have perused the impugned judgment and order of the High Court and the award of the Tribunal. After careful examination of the facts and legal evidence on record, it is not in dispute that the appellant was working as a driver at the time of the accident and no doubt, he could be earning Rs.4,500/- per month. As per the notification issued by the State Government of Madhya Pradesh under Section 3 of the Minimum Wages Act, 1948, a person employed as a driver earns Rs.128/- per day, however the wage rate as per the minimum wage notification is only a yardstick and not an absolute factor to be taken to determine the compensation under the future loss of income. Minimum wage, as per

State Government Notification alone may at times fail to meet the requirements that are needed to maintain the basic quality of life since it is not inclusive of factors of cost of living index. Therefore, we are of the view that it would be just and reasonable to consider the appellant's daily wage at Rs.150/- per day (Rs.4,500/- per month i.e. Rs.54,000/- per annum) as he was a driver of the motor vehicle which is a skilled job. Further, the Tribunal has wrongly determined the loss of income during the course of his treatment at Rs.51,000/- for a period of one year and five months. We have to enhance the same to Rs.76,500/- (Rs.4,500 X 17 months).

Further, with respect to the permanent disablement suffered by the appellant, Mr. K. Parameshwar, the learned amicus curiae, has rightly submitted that the appellant was examined by Dr. P.K. Upadhyay in order to prove his medical condition and the percentage of permanent disability. The doctor who has treated him stated that the appellant has one long injury from his arm up to the wrist. Due to this injury, the doctor has stated that the appellant had great difficulty to move his shoulder, wrist and elbow and pus was coming out of the injury even two years after the accident and the treatment taken by him. The doctor further stated in his evidence that the appellant got delayed joined fracture in the humerus bone of his right hand with wiring and nailing and that he had suffered 55% disability and cannot drive any motor vehicle in future due to the same. He was once again operated upon during the pendency of the appeal before the High Court and he was hospitalised for 10 days. The appellant was present in person in the High Court and it was observed and noticed by the High Court that the right hand of the appellant was completely crushed and deformed. In view of the doctor's evidence in this case, the Tribunal and the High Court have erroneously taken the extent of permanent disability at 30% and 55% respectively for the calculation of amount towards the loss of future earning capacity. No doubt, the doctor has assessed the permanent disability of the appellant at 55%. However, it is important to consider the relevant fact namely that the appellant is a driver and driving the motor vehicle is the only means of livelihood for himself as well as the members of his family. Further, it is very crucial to note that the High Court has clearly observed that his right hand was completely crushed and deformed. In the case of *Raj Kumar v. Ajay Kumar* (supra), this Court specifically gave the illustration of a driver who has permanent disablement of hand and stated that the loss of future earnings capacity would be virtually 100%. Therefore, clearly when it comes to loss of earning due to permanent disability, the same may be treated as 100% loss caused to the appellant since he will never be able to work as a driver again. The contention of the respondent Insurance Company that the appellant could take up any other alternative employment is no justification to avoid their vicarious liability. Hence, the loss of earning is determined by us at Rs.54,000/- per annum. Thus, by applying the appropriate multiplier as per the principles laid down by this Court in the case of *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*[6], the total loss of future earnings of the appellant will be at Rs.54,000 X 16 = Rs.8,64,000/-.

From the facts, circumstances and evidence on record it is clear that a cost of Rs.2,00,000/- was incurred during medical treatment of the appellant. Keeping in mind his medical condition and future medical needs and requirements, we further award Rs.2,00,000/- towards future medical treatment & incidental expenses in favour of the appellant by applying the legal principles laid down by this Court in the case of *Nagappa v. Gurudayal Singh* (supra).

Further, we refer to the case of Rekha Jain & Anr. v. National Insurance Co. Ltd.[7], wherein this Court examined catena of cases and principles to be borne in mind while granting compensation under the heads of (i) pain, suffering and (ii) loss of amenities and so on. Therefore, as per the principles laid down in the case of Rekha Jain & Anr. (supra) and considering the suffering undergone by the appellant herein, and it will persist in future also and therefore, we are of the view to grant Rs.1,50,000/- towards the pain, suffering and trauma which will be undergone by the appellant throughout his life. Further, as he is not in a position to move freely, we additionally award Rs.1,50,000/- towards loss of amenities & enjoyment of life and happiness.

We further award an amount of Rs.20,000/- towards special diet, Rs.40,000/- towards attendant expenses during the period of treatment and Rs.20,000/- towards transportation.

Since, the claim of the appellant has been pending for several years before the courts, we are of the view to award a sum of Rs.40,000/- towards costs incurred during pendency of the appeal.

As regards the rate of interest to be awarded on the compensation awarded in this appeal, we are of the view that the Tribunal and the High Court have erred in granting interest rate at only 7% p.a. and 8% p.a. respectively on the total compensation amount instead of 9% p.a. by applying the decision of this Court in Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy[8]. Accordingly, we award the interest @9% p.a. on the compensation determined in the present appeal.

In the result, the appellant shall be entitled to the compensation figured out in the following table under different heads:

SL.No	Particulars	Amount of compensation
1.	Loss of future income due to disability	Rs.8,64,000/-
2.	Loss of income during period of treatment	Rs.76,500/-
3.	Pain and suffering	Rs.1,50,000/-
4.	Medical Expenses	Rs.2,00,000/-
5.	Attendant charges during the period of treatment for 17 months	Rs.40,000/-
6.	Transportation charges during the period of treatment	Rs.20,000/-
7.	Special diet and nutrition as advised by the doctor during the period of treatment	Rs.20,000/-
8.	Permanent Disability/loss of amenities, happiness and enjoyment of life	Rs.1,50,000/-
9.	Future medical expenses	Rs.2,00,000/-
10.	Expenses during pendency of	Rs.40,000/-

	appeal		
	TOTAL	Rs . 17 , 60 , 500 / -	

Thus, the total compensation payable to the appellant by the respondent Insurance Company will be Rs.17,60,500/- as per amount awarded against different heads mentioned above in the table with interest @ 9% p.a. on the compensation awarded by this Court from the date of filing of the claim petition till the date of payment.

22. Since the claim petition has been pending in the courts for the last 6 years, we direct the Insurance Company to either pay the compensation awarded in this appeal by way of demand draft or deposit the same before the concerned MACT within four weeks from the date of receipt of the copy of this Judgment and submit the compliance report for the perusal of this Court.

23. When this matter was listed, neither the counsel on record nor the arguing counsel on behalf of the appellant was present on a number of dates of hearing despite granting several opportunities to him. Therefore, keeping in view Article 39A of the Constitution of India, this Court vide order dated 19.01.2015 appointed Mr. K. Parameshwara, as amicus curiae on behalf of the appellant to assist us to determine just and reasonable compensation. In pursuant to the same, the learned amicus curiae has given his valuable assistance to this Court by addressing the arguments and submitting the written submissions. Therefore, it is just and proper for this Court to direct the Legal Services Authority, State of Madhya Pradesh to pay a nominal fee of Rs.10,000/- to him by sending a demand draft in the name of 'K. Parameshwar' within four weeks from the date of receipt of the copy of this Judgment. The Registry is directed to send a copy of this judgment to the Legal Services Authority, State of Madhya Pradesh to comply with our order.

The appeal is allowed in the above said terms.

.....J. [V.GOPALA GOWDA]
J. [R. BANUMATHI] New Delhi, February 18, 2015

- [1] (1995) 1 SCC 551
- [2] (2009) 6 SCC 1
- [3] (2011) 1 SCC 343
- [4] (2003) 2 SCC 274
- [5] (2007) 2 SCC 349
- [6] (2009) 6 SCC 121
- [7] (2013) 8 SCC 389
- [8] (2011) 14 SCC 481