

Yadava Kumar vs Div.Mangr.,National Insurance Co.L.& ... on 31 August, 2010

Equivalent citations: AIR 2010 SUPREME COURT 3741, 2010 (10) SCC 341, 2011 AAC 477 (SC), (2011) 2 MPLJ 250, (2011) 2 MAD LJ 626, (2011) 1 CIVLJ 316, (2011) 1 ORISSA LR 120, (2011) 1 JCR 269 (SC), (2011) 2 MAH LJ 1, 2010 (3) SCC (CRI) 1285, (2010) 6 ALL WC 5947, (2010) 4 RAJ LW 3378, (2010) 2 WLC(SC)CVL 695, (2010) 82 ALL LR 782, (2010) 4 TAC 10, (2010) 3 ACC 869, (2010) 4 ACJ 2713, (2010) 47 OCR 472, 2010 (8) SCALE 567, (2010) 94 ALLINDCAS 114 (SC), (2010) 4 RECCIVR 155, (2010) 4 CIVILCOURTC 222, (2010) 4 PUN LR 242, (2010) 8 SCALE 567

Bench: Asok Kumar Ganguly, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7223 OF 2010
(Arising out of SLP (Civil) No.1827 of 2010)

Yadava Kumar

..Appellant(s)

Versus

The Divisional Manager,
National Insurance Co. Ltd. & Another

..Respondent(s)

J U D G M E N T

GANGULY, J.

1. Delay condoned.
2. Leave granted.

3. Assailing the Division Bench judgment of the Karnataka High Court dated 12.8.2009, whereby compensation of Rs.52,000/- granted by the Tribunal was enhanced to Rs.72,000/-, this appeal claiming higher compensation was filed by the appellant.

4. The Hon'ble High Court has awarded compensation under the following heads:

1. Towards pain and suffering: Rs.20,000/-

2. Loss of income from the period of treatment: Rs.9,000/-

3. Towards medical expenses, conveyance, nourishing food and attendant charges:

Rs.8,000/-

4. Towards loss of amenities: Rs.35,000/-

Total: Rs.72,000/- + 8% p.a. interest from the date of the petition till realization.

5. The material facts of the case are that, the appellant, a painter by profession, was 30 years old at the time of sustaining the injury in a road accident which took place on 24th March 2003 while the appellant was standing on the side of Nagavara Ring Road to cross it from south to north. The offending Tempo bearing No.KA-04-C/6030 came at a great speed from west to east and hit the appellant as a result of which he fell down and sustained several injuries. The appellant was rushed to Al- Habeeb Hospital where he was treated. The claim petition was filed on 3rd February, 2006.

6. About the nature of the injury sustained by the appellant, the evidence of PW-2 Dr. S. Ranjanna, Orthopaedic Surgeon, Bowring & Lady Curzon Hospital, Bangalore is very crucial. PW-2 examined the appellant on 26.11.05. As per the wound certificate and X-ray report of Al-Habeeb Hospital, Bangalore, PW-2 noted that the appellant sustained the following injuries:

"(1) Fracture of distal end of left radius with fracture of left ulnar styloid process.

(2) Fracture of distal end of right radius with mild diastases in Radioulnar joint and soft tissue swelling around wrist joint."

7. Even on examination on 26.11.05, which is after two and a half years after the date of incident, PW-2 found the following injuries on the appellant:

(1) Deformity of right wrist (2) Limitation of right wrist movements by 40% (3) Limitation of right forearm movements by 30% (4) Wasting of right forearm muscles by 3 cms (5) Weak Right hand grip (6) Limitation of left wrist movement by 25% (7) Tenderness over left wrist (8) Instability of left in favour of Radio ulnar joint (9) Weakness of left hand

8. PW-2 opined that in view of the injuries the appellant cannot perform any hard work, cannot lift any weight and cannot perform any work smoothly and after referring to various guidelines in manual PW-2 opined that the appellant has disability of 33% of right upper limb and 21% to left upper limb and 20% total disability of the whole body. In view of such disability, appellant cannot work as a painter and cannot do any other manual work also. In cross- examination also PW-2 admitted that even if the appellant continues his old vocation as a painter, he has to do it with difficulty.

9. Both the Tribunal and the High Court have failed to incorporate any thing by way of compensation in the category of 'loss of future earnings' in spite of recognizing the fact that there is disability of 33% in the right upper limb, 21% in the left upper limb and 20% in respect of the whole body, which does not allow the appellant to paint as he did earlier.

10. The Second Schedule under Section 163A of the Motor Vehicles Act, 1988 gives a structured formula for the calculation of compensation in accident cases. Section 5 of the Schedule deals with disability in non-fatal accidents and reads as follows:

"5. Disability in non-fatal accidents:

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents: Loss of income, if any, for actual period of disablement not exceeding fifty two weeks.

PLUS either of the following:-

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923."

11. Thus, the multiplier method is to be applied in cases of injuries also and it has been applied in a number of accident cases by High Courts and this Court.

12. This Court in Sunil Kumar Vs. Ram Singh Gaud and others - 2008 ACJ 9, awarded compensation in case of injury for loss of future earnings and applied the multiplier method for calculation of the same. The same principle was recognized by this Court in Priya Vasant Kalgutkar Vs. Murad Shaikh & Ors. - AIR 2010 SC 40.

13. In Mukesh Kumar Sharma Vs. Ramdutt and Ors. - 2006 ACJ 1792, Madhya Pradesh High Court applied the multiplier method keeping in mind the percentage by which the injured person's earning capacity was reduced. A similar calculation was made by the Division Bench of Karnataka High Court in Syed Nisar Ahmed Vs. The Managing Director, Bangalore Metropolitan Transport Corporation - 2003 5 Karn. L.J. 186.

14. In this case, the appellant has sustained a fracture of distal end of left radius with fracture of left ulnar styloid process and fracture distal end of right radius with mild diastosis and soft tissues swelling around wrist joint. The doctor has assessed the disability at 33% in respect of the right upper limb and 21% towards left upper limb and 20% in respect of the whole body, which prevents the appellant from painting in view of multiple injuries sustained by him.

15. The Hon'ble High Court while granting compensation refused to award any amount towards loss of future earning. Though that point was specifically urged before the Hon'ble High Court, the Hon'ble High Court refused any compensation towards loss of future earning by, inter alia, holding that:

"We are of the view that, the said submission has no force for the reason that, the appellant has not produced an iota of document to substantiate his stand."

16. We are unable to agree with the aforesaid view of the High Court.

17. While assessing compensation in accident cases, the High Court or the Tribunal must take a reasonably compassionate view of things. It cannot be disputed that the appellant being a painter has to earn his livelihood by virtue of physical work. The nature of injuries which he admittedly suffered, and about which the evidence of PW-2 is quite adequate, amply demonstrates that carrying those injuries he is bound to suffer loss of earning capacity as a painter and a consequential loss of income is the natural outcome.

18. It goes without saying that in matters of determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a 'just compensation'. It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of 'just compensation' obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field. Both the Courts and Tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result become just and equitable (See Mrs. Helen C. Rebello and others Vs. Maharashtra State Road Transport Corpn. and another - AIR 1998 SC 3191).

19. This Court also held that in the determination of the quantum of compensation, the Court must be liberal and not niggardly in as much as in a free country law must value life and limb on a generous scale (See Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another - (1992) 2 SCC 567).

20. The High Court and the Tribunal must realize that there is a distinction between compensation and damage. The expression compensation may include a claim for damage but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for the atonement of injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in the matter of computation of compensation, the approach will be slightly more broad based than what is done in the matter of assessment of damages. At the same time it is true that there cannot be any rigid or mathematical precision in the matter of determination of compensation.

21. Going by these principles, as we must, this Court is constrained to observe that in this case the approach of the High Court in totally refusing to grant any compensation for loss of future earning is not a correct one.

22. This Court could have remanded the matter to the High Court for assessment of compensation on the aforesaid lines but the accident took place in March 2003 and a remand to the High Court for determination of compensation will further delay the matter. Therefore, to shorten litigation, and having regard to this Court's power under Article 142 of the Constitution to do complete justice between the parties, this Court itself assesses the compensation as follows:

Therefore, in the present case, the loss of future income may be calculated using the multiplier method as follows:

Income of the appellant (as accepted by the High Court) is Rs.3,000/- p.m. Therefore, the yearly income is Rs.36,000/-.

Multiplier according to age (30 years) as per Schedule is 17.

Thus, the total comes to: Rs.36,000/- x 17 = Rs.6,12,000/-.

Percentage of disablement is 20% Therefore, loss of future earnings would come to Rs.1,22,400/-.

23. If this is added to the compensation provided by the High Court in other categories, the total compensation comes to Rs.1,22,400/- + Rs.72,000/-, that is Rs.1,94,400/-.

24. This Court, therefore, grants a lump sum of Rupees Two Lakhs by way of compensation plus 8% interest as granted by the High Court.

25. The appeal is allowed to the extent indicated above.

There will be no order as to costs.

.....J. (G.S. SINGHVI)J. (ASOK KUMAR GANGULY) New Delhi August 31,
2010