

Abhimanyu Partap Singh vs Namita Sekhon on 6 July, 2022

Author: J.K. Maheshwari

Bench: J.K. Maheshwari, Indira Banerjee

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4648 OF 2022
(ARISING OUT OF SLP (C) NO.18886 OF 2019)

ABHIMANYU PARTAP SINGH

...APPELLANT(S)

VERSUS

NAMITA SEKHON & ANOTHER

...RESPONDENT(S)

JUDGMENT

J.K. Maheshwari, J.

Leave granted.

2. The instant appeal arises out of the judgment dated 21.05.2019 passed by the Single Judge of the High Court of Punjab and Haryana at Chandigarh in First Appeal Order No.4829 of 2002 preferred by the claimant/appellant (hereinafter to be referred to as “claimant”), whereby the said appeal was partly allowed and the compensation granted to the tune of Rs.9,00,000/□by the Motor Accident Claims Tribunal, Chandigarh (hereinafter to be referred to as “MACT”) in MACT Case No. 29 of 1997 was enhanced to Rs. 23,20,000/□

3. The claimant filed a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (in short “M.V. Act”) asking compensation to the tune of Rs. 200,000,00/□(two crores only) in various heads on account of permanent disability caused to him arising out of a road accident occurred on 10.11.1996, for which FIR was lodged on 11.11.1996. At the time of accident, claimant was five and half years of age and a student of UKG, suffered multiple injuries like cerebral edema/brain edema, fracture right part of temporal bone, spinal cord, lower limbs, due to which he was having loss of speech, convulsions, injuries on face. The lower limb of claimant was completely paralysed resulted into 100% disability, his hope to live blissful life was lost due to those injuries. It is said his father was a professor and mother was an IAS officer, the claimant was having desire to become Executive/IAS officer because of his background. On account of head injuries including the fracture in temporal bone, the development and capacity of the brain was not comparable to a common man. Due to injuries in lower limbs, he lost the senses for calls of nature and needs all time attendants for

his daily routine work. He cannot move without wheel chair or motorized vehicle, thus his future is in complete jeopardy.

4. The MACT while deciding the claim petition recorded the finding of joint and several liability and the claimant has suffered 100% disability. The Tribunal calculated the compensation applying the multiplier of 16 and awarded Rs.1,92,000/□in the head of attendant charges @ Rs.1,000/□per month, for physiotherapy Rs.2,88,000/□@ Rs.50 per day, Rs.15,000/□has been awarded in transportation charges, and Rs.5,000/□for use of diapers in future. The Tribunal granted Rs.4,00,000/□in the head of loss of expectations of life, loss of marital bliss, loss of enjoyment and amenities of life, permanent disability, pain and sufferings, thus awarded total sum of Rs.9,00,000/□with interest @ 9% per annum from the date of filing of the claim petition till the date of payment.

5. The adequacy of the grant of compensation was assailed by the claimant by filing an appeal before the High Court which was allowed in part vide order dated 21.05.2019. The Court awarded Rs.1,00,000/□for the motorized wheel chair. The future loss of earning is awarded to the tune of Rs.6,00,000/□accepting the loss of Rs.60,000/□per annum for 10 years only. The attendant charges as granted by the claims Tribunal is enhanced to the tune of Rs.7,08,000/□@ Rs.3,500/□per month only for 20 years. In appeal, in the head of medicines, physiotherapy and diapers the High Court awarded Rs.8,00,000/□in lump sum enhancing the amount as allowed by MACT. In the head of loss of amenities of life, marital bliss Rs.3,00,000/□was allowed and Rs.1,00,000/□for the special diet enhancing the total amount of compensation to the tune of Rs.23,20,000/□ The High Court further directed to pay interest on the enhanced amount @ 7.25% p.a. from the date of filing of Claim Petition till its payment.

6. By filing this appeal, the inadequacy of grant of compensation by MACT and also by the High Court has been questioned seeking enhancement applying the just and reasonable theory, looking to the nature of permanent disability, the profession which he is doing, in pecuniary as well as in non-pecuniary heads. It is urged that the compensation granted by the MACT and the High Court is unjust and unreasonable and not commensurate to the nature of injuries, which caused 100% permanent disability to the claimant. The enhancement has also been prayed on various heads and on various grounds.

7. The adequacy of the grant of compensation as allowed was challenged in the head of future loss of earning suffered due to permanent disability for the whole life. It is urged, the loss of future earnings granted by the High Court @ Rs. 60,000/□p.a. for 10 years only but on account of the disability caused, the earning of claimant shall affect him for whole life, that too cannot be comparable to an advocate doing profession having normal capacity. The attendant charges @ Rs.3,500/□per month granted by the High Court only for 20 years though the appellant required attendant all the time, during lifetime. On account of loss of senses, he is required to use diapers for whole life. In the head of future treatment, medical expenses including physiotherapy, the amount as awarded is inadequate. He is required to purchase motorized wheel chair, time to time during his life. In the head of pain and sufferings, loss of marital bliss, loss of amenities of life, the agony which he shall face before the society for whole life the adequate amount of compensation has not been granted,

however enhancement of compensation is prayed. In support of the contentions, reliance has been placed on the judgment of this Court in the case of *Kajal vs. Jagdish Chand and others* [(2020) 4 SCC 413].

8. The record indicates that despite service, none present for the respondent No.1. Mr. Kailash Prashad Pandey, advocate is representing respondent No. 2 – United India Insurance Company Limited and filed the counter-affidavit, inter alia, contending that both courts have rightly decided the case on the basis of admitted facts and documentary evidence on record and the concurrent findings are in favour of respondent No. 2. It is said the judgment passed by a 3-Judge Bench of this Court in *Jagdish vs. Mohan and Others* [(2018) 4 SCC 571] and the case titled *NIC Vs. Pranay Sethi and Others* [(2017) 16 SCC 680] decided by the Constitutional Bench of this Court are supporting the case of respondent No.2. It is further submitted that High Court has rightly followed the law laid down by this Court and there is no future scope for enhancement of compensation.

9. After hearing learned counsel for the parties and looking to the findings recorded by the MACT and High Court, it cannot be doubted that the claimant has suffered 100% permanent disability in a road accident and the liability is joint and several. For the purpose of understanding the nature of injuries and its extent, the statement of PW1-Dr. Sunil Katoch, Consultant, Indian Spinal Injuries Centre, New Delhi is relevant. As per his testimony, the claimant suffered the spinal injury at level C7, C8 with complete bowel and bladder paralysis and is unable to use his upper limbs (hands) with full strength. MRI suggests extensive myelomalacia of spinal cord from C7 to D4 level, to which optimize domiciliary care is required. Further, regular and every year check-up is also required to him. Due to spinal injury, he has suffered complete paralysis of both lower limbs and partial involvement of hands along with bowel and bladder. In consequence, he may suffer urinary complications throughout his life to which adequate medical attention is required. He cannot pursue a regular career having embarrassing situation. The percentage of permanent disability is 100%. With the said medical opinion and the findings, the issue of adequacy and to grant the just and reasonable amount of compensation requires consideration.

10. It is not out of place to state, by making the payment of compensation for damages would not revive the claimant into his original position. The compensation towards wrongful act in terms of money though cannot be decided by the Court but it may be determined as per the recognized principles. In the said context, some of the English judgments are relevant, which may specify why the compensation be paid, what should be the basis for determination and what may be the reason for awarding such compensation, applying the uniform methodology for determination of compensation, comparable to the injuries, thereby a person can lead his life, though his physical frame cannot be reversed.

11. In the case of *Philipps vs. London & South Western Railway Co.* [(1879) LR 5 QBD 78], it was held that by making a payment of compensation for the damages, the Court cannot put back again the claimant into his original position. On the date of determination of the compensation, he is being compensated but he cannot sue again, therefore, the compensation must be full and final while determining the same. In *Mediana, In re* [1900 AC 113 (HL)], it is said that the determination for an amount of compensation to the damages is an extreme task. What may be adequate amount

for a wrongful act and can it be compensated by money, particularly towards pain and suffering. By an arithmetical calculation, it cannot be decided what may be the exact amount of money which would represent the pain and suffering to a person, but as per recognized principles, damages must be paid. In *H. West & Son Ltd. vs. Shephard* [1964 AC 326], it was held that payment of compensation in terms of money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered, however the courts must consider to award sums, which may be a reasonable. Simultaneously, uniformity in the general method of approach is also required. Thereby, possible comparable injuries can be compensated by comparable awards. Lord Denning, while speaking for the Court of Appeal in *Ward vs. James* [(1966) 1 QB 273] has specified three basic principles i.e. accessibility, uniformity and predictability to be followed in the like cases.

12. In the perspective of Indian law, in the case of *R.D. Hattangadi vs. Pest Control (India) (P) Ltd.* [(1995) 1 SCC 551], this Court has specified that while determining the compensation for physical injuries, the heads on which the amount of compensation is to be determined, may be of two types, one is of pecuniary damages and another is of non-pecuniary damages. Pecuniary damages include the loss of earning, medical attendance, transport charges and other material loss. The non-pecuniary damages include the expenses for mental and physical shock, pain and suffering already suffered or likely to be suffered in the future, loss of amenities of life, loss of expectation of life, inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life which has been followed in the case of *Raj Kumar vs. Ajay Kumar and another* [(2011) 1 SCC 343].

13. In the case of *Kajal* (supra), this Court in case of permanent disability, to decide the just compensation, the principles have been summarized, whereby the compensation may be awarded in the heads of 'loss of earning', 'medical expenses, transportation, special diet, attendant charges', 'loss or diminution to the pleasures of life by loss of a particular part of the body' and 'loss of future earning capacity', damages, pecuniary as well as non-pecuniary have to be assessed while it is impossible to equate human sufferings and personal deprivation with money. This Court said attendant charges @ Rs.2,500/□p.m. awarded by the High Court is inadequate, however enhanced to Rs. 5,000/□with two attendants, total Rs.10,000/□p.m. for whole life and calculated the compensation applying the multiplier of 18. The Court further said compensation may also be awarded for non-pecuniary damages including pain, suffering, loss of amenities, loss of marriage prospects. Therefore, the compensation on account of injuries, causing 100% disability, looking to the facts of the case at hand, is required to be determined, applying the ratio of the said judgment.

14. The High Court in the impugned order observed that the claimant has now started practice as an advocate, therefore, future loss of earning has been calculated only for 10 years, applying the multiplier of 16, without looking to the facts that claimant cannot perform the work of advocacy similar to the other advocates by attending the cases in different Courts. The attendant charges have been allowed only for 20 years with one attendant. In fact, not only for determination of future loss of earning but for attendant charges also the multiplier method should be followed. The multiplier method has been recognized as most realistic and reasonable because it has been decided looking to the age, inflation rate, uncertainty of life and other realistic needs. Thus, for determination of just

compensation to ensure justice with the family of deceased or the injured as the case may be the compensation can be determined applying said method. Therefore, in our view the Tribunal while granting the compensation of future loss as well as earning only for 10 years and attendant charges only for 20 years was not justified. In fact, the said amount should be determined applying the multiplier method.

15. It is also relevant to observe that in the judgment of Sarla Verma (Smt.) & Others vs. Delhi Transport Corporation and Another [(2009) 6 SCC 121 and National Insurance Company Limited vs. Pranay Sethi & Others [(2017) 16 SCC 680, while replacing the schedule of Motor Vehicle Act, it is not made clear what multiplier would be applicable below the age of

15. In the case of Kajal (supra), the injured was 12 years of the age, however, the multiplier of 18 has been applied. Therefore, taking guidance from the judgment of Kajal (supra), for determination of the compensation in the present case, the multiplier of 18 shall be applicable.

16. In view of the said legal position, the compensation can be assessed in pecuniary heads i.e. the loss of future earning, medical expenses including future medical expenses, attendant charges and also in the head of transportation including future transportation. In the non-pecuniary heads, the compensation can be computed for the mental and physical pain and sufferings present and in future, loss of amenities of life including loss of marital bliss, loss of expectancy in life, inconvenience, hardship, discomfort, disappointment, frustration, mental agony in life etc.

17. On perusal of the record out of the pecuniary heads MACT has not awarded any amount in future loss of earning even having 100% permanent disability while the High Court granted Rs.6,00,000/- only for 10 years because the appellant is now practicing as an advocate in the Court accepting his earning Rs.60,000/- per annum. From the pleadings and evidence brought, it is clear that the father of the appellant was a Professor and the mother was an IAS officer. The claimant has been nurtured and brought up in a status enjoyed by his parents. He was planning to become an Executive or IAS officer. On account of the injuries in temporal region and the permanent disability suffered, he was unable to do his studies as expected or planned. After sincere efforts he could have passed the LL. B and started the advocate profession. A judicial notice can be taken of the fact that for a proficient advocate the person must be physically fit as he is required to move frequently to attend the professional work reaching from one Court to other, and for movements to complete other professional commitments. Looking to the nature of injuries and the permanent disablement which the claimant has suffered, i.e., lower limb is completely paralyzed while his upper limb is partially paralyzed having 100% permanent disability resulting in bodily movements being hampered. The capacity of the claimant being an advocate cannot be equated with other practicing advocate having no deformity in the same profession. The claimant is required to make extraordinary efforts to attend the proceedings in the Court and to come up to the expectations of the client. The disablement suffered to the claimant is for whole life and in the said fact, in our considered view, the future loss of earning calculated by the High Court only for 10 years is not justified. If we accept the future loss of earning Rs.5,000/- per month as decided by the High Court which annually comes to Rs.60,000/- and apply the multiplier of 18 as applicable looking to the age, then the sum comes to Rs.10,80,000/- in the said head.

18. In the head of medical expenses, the MACT or the High Court has not awarded any compensation presumably because the mother of the claimant who was minor at the time of accident may have claimed the amount of medical expenses being an IAS officer. But now the claimant has become major, and looking to the nature of injuries, future medical expenses that includes the attendant charges, use of diapers due to loss of urination senses is required to be calculated including future medical expenses. The Tribunal awarded Rs.1,92,000/- in the head of attendant charges @ 1,000/- per month. While the High Court proceeded on the premises that the rate of the attendant charges is variable after every five years, however, the Court calculated the amount @ Rs.2,000/- thereafter @ Rs.4,000/- per month for a period of 20 years and accordingly determined Rs.9,00,000/- making enhancement of Rs.7,08,000/- in the said head. As discussed, if we apply the multiplier method and in view of the judgment of Kajal (supra), we accept the rate of attendant charges Rs.5000/- per month for 12 hours, looking to the nature of injuries and disability the claimant is required two attendants at least within 24 hours then the expenses in the head of attendant charges comes to Rs.10,000/- per month. If we apply the multiplier of 18, the amount comes to Rs.21,60,000/-

19. Similarly for medical expenses in the head of physiotherapy required to the claimant, the Tribunal awarded Rs.2,88,000/- @ Rs.50 per day. The High Court granted lumpsum amount of Rs.8,00,000/- including the expenses for diapers. In our considered opinion, the said amount is not adequate. In these days the physiotherapist would charge at least Rs.150/- per day to treat the patient for one hour which monthly comes to Rs.4,500/- and annually 54,000/- applying the multiplier of 18, the amount in the head of physiotherapy charges comes to Rs.9,72,000/- For the purpose of use of diapers, regular medical checkup and medical expenses if we further add Rs.2,00,000/- then in the head of future medical expenses the amount comes to Rs.11,72,000/-

20. Under the head of transportation, the MACT awarded only Rs.15,000/- for the visit Delhi to Chandigarh which is enhanced by the High Court to the tune of Rs.50,000/- The High Court further awarded Rs.1,00,000/- in the head of motorized wheel chair. In our opinion, during the life span grant of amount for motorized vehicle only for once is not just. Similarly, in the head of transportation in future, therefore, we enhance the said amount in lumpsum to Rs.2,50,000/- in place of Rs.1,00,000/- + Rs.50,000/- as awarded by the High Court.

21. Under the head “non-pecuniary damages”, the claimant has faced the pain, suffering and trauma as a consequence of injuries. It is to observe that to award compensation under the head “pain, shock and suffering”, multiple factors are required to be considered from the date of accident, which include the prolonged hospitalization and regular medical assistance, nature of the injuries sustained, the operations underwent and the consequent pain, discomfort and suffering. Simultaneously, he has to suffer post-accident agony for whole life, including the amenities of life, which he can enjoy as a normal man but unable to do so on account of permanent disability. In the era of competition, he can perform better as a normal man but is unable to compete with others. Therefore, under the head “pain, shock and suffering”, amount of compensation deserves to be granted.

22. The MACT awarded Rs.4,00,000/- in the head of loss of expectation of life, loss of marital bliss, total loss of enjoyment of life and amenities of life, permanent disability, pain and sufferings while the High Court granted the same amount bifurcating it in the head of loss of amenities in life and marital bliss to Rs.3,00,000/- while special diet Rs.1,00,000/- making the total Rs.4,00,000/-

23. Considering the facts and circumstances of the case and nature of injuries in our considered opinion, the appellant is entitled for a sum of Rs.4,00,000/- in the head of loss of amenities of life and marital bliss, pain and sufferings, loss of enjoyment and loss of expectancy, Rs.1,00,000/- as awarded by the High Court is maintained in the head of special diet. Thus, in the non-pecuniary heads, the compensation as determined comes to Rs.5,00,000/-

24. In view of the foregoing calculation, the amount determined for payment of the compensation in pecuniary heads comes to Rs.46,62,000/- and in non-pecuniary heads the sum comes to Rs.5,00,000/- Thus, in our view, the total compensation comes to Rs.51,62,000/- If we deduct the amount of Rs.23,20,000/- awarded by the High Court then the enhanced amount comes to Rs.28,42,000/-

25. Resultantly, this appeal is allowed in part to the extent indicated hereinabove. The enhanced amount shall carry interest @ 6.5% p.a. from the date of filing the claim petition till its realization.

.....J. [INDIRA BANERJEE]J. [J.K. MAHESHWARI] NEW DELHI;

JULY 06, 2022.