

## **Ashwani Kumar Mishra vs P. Muniam Babu And Ors on 8 April, 1999**

**Equivalent citations: AIR 1999 SUPREME COURT 2260, 1999 (4) SCC 22, 1999 AIR SCW 2301, (1999) 2 SCALE 479.2, 1999 (2) UJ (SC) 1142, 1999 UJ(SC) 2 1142, 1999 (2) ALL CJ 1379, 1999 (2) LRI 457, 1999 (2) ANDH WR 60, 1999 (2) SCALE 479, 1999 (3) ADSC 365, 1999 SCC(CRI) 502, (1999) 2 JT 619 (SC), 1999 (122) PUN LR 270, (1999) 2 PUN LR 270, 1999 (5) SRJ 67, (1999) ILR (KANT) 4163, (1999) 3 CALLT 30, (1999) 2 MAD LW 611, (1999) 4 SUPREME 24, (1999) 2 ICC 681, (1999) 1 ACC 505, (1999) 2 ACJ 1105, (1999) 2 ALL WC 1526, (1999) 3 BLJ 618, (1999) 3 CIVLJ 667, (1999) 3 RAJ LW 398, (1999) 3 RECCIVR 134, (1999) 3 TAC 35**

**Bench: S. Saghir Ahmad, R.P. Sethi**

CASE NO.:

Appeal (civil) 2158 of 1999

PETITIONER:

ASHWANI KUMAR MISHRA

RESPONDENT:

P. MUNIAM BABU AND ORS.

DATE OF JUDGMENT: 08/04/1999

BENCH:

S. SAGHIR AHMAD & R.P. SETHI

JUDGMENT:

JUDGMENT 1999 (2) SCR 518 The Judgment of the Court was delivered by SETHI, J, Leave granted.

Notice was issued to the respondent to show cause why the compensation amount in favour of the appellant be not further enhanced. Respondent No. 3-New India Insurance Company has filed the counter affidavit submitting therein that there is not documentary evidence to show that the appellant was at all employed anywhere at the time of the accident and in the absence of proof regarding his income; the amount of compensation cannot be enhanced. It is submitted that as the appellant had claimed Rs. 2,90,919.15 and was awarded Rs. 2,25,000 with interest, there is no justification for him to claim enhancement of the compensation amount.

The facts giving rise to the filling of the present appeal are that the appellant who was 23 years of age had met with an accident and received severe injuries causing damages to his spinal cord. He

remained under treatment for about 90 days and became permanently disabled. He had preferred a claim for Rs. 63,00,919.15 from the owner, driver and the insurer of the vehicle for injuries suffered by him in the motor accident. The Motor Accident Claim Tribunal (hereinafter referred to as 'the Tribunal') after appreciating the evidence led in the case held that the appellant was travelling as an agent of the construction firm when he met with the accident and awarded him a compensation of Rs. 1,64,037 with interest at the rate of 10 per cent per annum. Both the appellant and the insurance company preferred appeals before the High Court which were disposed by the impugned judgment holding the appellant entitled to Rs. 2.25.000 as compensation payable with interest at the rate of 12 per cent per annum instead of 10 per cent as awarded by the tribunal. It is not disputed that the appellant had met with a road accident in which he was seriously injured, underwent operations of his spinal cord/ kidney number of times and has become invalid for all practical purposes for the rest of his life. The appellant had claimed that his income was Rs. 2,000 per month at the time of accident when he was 23 years of age. He had prayed for applying the multiplier of 55 for granting him compensation in lieu of loss of income which he would have earned in the absence of accident in which he has admittedly been totally incapacitated. The learned counsel appearing for the insurance company submitted that there was no proof of his income and that he was not proved to have been employee of his father in the work where the vehicle was being utilised at the time of the accident. It is however, not disputed that at the time of the accident, the appellant was assisting his father in the construction work of Sunita Construction at Deposit No. 40 in Township of Kailash Nagar for renewing of fencing in front of residential and non-residential quarters providing C.C. coping with glasses for compound walls of Kailash Nagar when he met with the accident. He has claimed his income to be Rs. 2,000 per month. The appellant, a young man cannot be disputed to be contributing and augmenting the income of his father. Some guess work has to be applied while assessing the loss. This Court in *R.D. Hattangadi v. M/s Pest Control (India) pvt. Ltd & Ors.*, [1995] 1 SCC 551 had held : "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 is 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 suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of the 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 was further held that whenever a tribunal or court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. However all such elements are required to be viewed with objective standards. While assessing damage, the court cannot base its opinion merely on speculation or fancy though conjectures to some extent or inevitable.

In the instant case, the appellant has been awarded Rs. 94,037 as expenses incurred on medical care, Rs. 20,000 for special diet and expenses for attendant during treatment. For his becoming permanently disabled and paraplegic on account of the injury and damages caused to his spinal cord, the appellant, who admittedly has been held permanently incapacitated has been granted only Rs. 1,00,000. We are of the opinion that the appellant was right in claiming his income at Rs. 2,000 per month while working with his father at the time of the accident and even if we apply the multiplier of 16, he is entitled to the claim of Rs. 3,84,000 on account of loss of expectation to life besides disappointment, frustration and mental stress particularly when he has to keep a permanent attendant to look after him in his rest of life. Adding this amount to the amount of Rs. 1,14,000 to which the appellant has rightly been held entitled on account of expenses incurred on medical care and for the pain sufferings during the period of treatment, the appellant is entitled to a total sum of Rs. 4,98,000 which we round up to Rs. 5,00,000 inclusive of costs of litigation. The aforesaid amount is liable to be paid by the respondent-insurance company as was held by the High Court. In the result, this appeal is allowed by modifying the order impugned holding the appellant entitled to a compensation of Rs. 5,00,000 with interest at the rate of 12 percent per annum as awarded by the High Court. No further costs.