Sanjay Verma vs Haryana Roadways on 29 January, 2014

Equivalent citations: AIR 2014 SUPREME COURT 995, 2014 (3) SCC 210, 2014 AIR SCW 856, 2014 AAC 807 (SC), AIR 2014 SC (CIVIL) 830, (2014) 2 CIVILCOURTC 412, (2014) 1 SIM LC 388, (2014) 1 TAC 711, (2014) 1 ACC 473, (2014) 103 ALL LR 204, (2014) 2 ALL WC 1907, (2014) 118 CUT LT 423, (2014) 2 JCR 193 (SC), (2014) 1 RECCIVR 914, (2014) 2 PUN LR 641, (2015) 1 RAJ LW 325, (2014) 1 SCALE 682, (2014) 1 CLR 617 (SC), (2014) 1 ACJ 692, (2014) 1 ORISSA LR 851, (2014) 1 WLC(SC)CVL 333, (2014) 135 ALLINDCAS 123 (SC), 2014 (2) SCC (CRI) 149

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Bench: Shiva Kirti Singh, Ranjan Gogoi, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5256 OF 2008

SANJAY VERMA ... APPELLANT (S)

VERSUS

HARYANA ROADWAYS ... RESPONDENT (S)

J U D G M E N T

RANJAN GOGOI, J.

1. This quantum appeal is by the claimant seeking further enhancement of the compensation awarded by the High Court of Uttaranchal at Nainital by its Order dated 27.03.2006.

2. The facts relevant for the purpose of the present adjudication may be noticed at the outset.

On 12.08.1998 the appellant-claimant was travelling from Ambala to Kurukshetra in a bus belonging to the Haryana Roadways and bearing registration No. HR-07PA-0197. On the way the driver of the bus lost control over the vehicle resulting in an accident in the course of which the claimant suffered multiple injuries. He was initially treated in the civil hospital Pehwa and thereafter transferred to the PGIMER, Chandigarh on 14.08.1998. The appellant underwent surgery

on 16.09.1998 and eventually he was released from the hospital and referred to the Rehabilitation Centre, Jawaharlal Nehru Hospital, Aligarh. According to the claimant, apart from other injuries, he had suffered a fracture of the spinal cord resulting in paralysis of his whole body. In these circumstances the claimant filed an application before the Motor Accident Claim Tribunal claiming compensation of a total sum of Rs.53,00,000/- under different heads enumerated below:

(i)	Pecuniary loss	Rs. 24,00,000.00
(ii)	Expenditure incurred in treatment till now	Rs. 2,00,000.00
(iii)	Expenses which shall be incurred in future in treatment	Rs. 3,00,000.00
(iv)	Cost of attendant from the date of accident till he remains alive	Rs. 2,00,000.00
(v)	Passage and diet money	Rs. 2,00,000.00
(vi)	Pain and suffering and mental agony	Rs. 20,00,000.00
	Total	Rs.53,00,000.00

3. The learned Tribunal by its Award dated 12.06.2000 held that the accident occurred due to the rash and negligent driving of the bus and that the claimant is entitled to compensation. The total amount due to the claimant was quantified at Rs. 3,00,000/- under the heads “Loss of Income”, “reimbursement of medical expenses” and “pain and suffering”. The learned Tribunal also awarded interest at the rate of 9% from 24.08.1999 i.e. the date of filing of the claim application till date of payment.

4. Aggrieved, the claimant filed an appeal before the High Court which enhanced the compensation to Rs.8,08,052/-. The High Court quantified the amount due to the claimant towards “loss of income” at Rs.6,19,500/-; Rs.1,38,552/- on account of “medical expenses” and an amount of Rs.50,000/- “for future treatment” and “pain and suffering”. The High Court, however, reduced the interest payable to 6% per annum from the date of the filing of the application. Aggrieved, this appeal has been filed.

5. We have heard Dr. Manish Singhvi, learned counsel for the appellant- claimant and Dr. Monika Gusain, learned counsel for the respondent.

6. Learned counsel for the appellant has contended that in computing the amount due to the appellant on account of loss of income, future prospects of increase of income had not been taken into account by the High Court; the multiplier adopted by the courts below is 15 whereas the correct multiplier should have been 18. In so far as the amount awarded for “future treatment” and “pain and suffering” is concerned, learned counsel has submitted that not only the amount of Rs.50,000/- is grossly inadequate but High Court has committed an error in clubbing the two heads together for award of compensation. In this regard the learned counsel has drawn the attention of the Court to the amounts claimed in the claim petition under the aforesaid two heads, as already noticed

hereinabove. It is submitted by the learned counsel that the amount of compensation is liable to be enhanced.

7. Controverting the submissions advanced on behalf of the appellant, Dr. Monika Gusain learned counsel for the respondent-Haryana Roadways has submitted that the enhancement made by the High Court to the extent of over Rs.5,00,000/- is more than an adequate measure of the "just compensation" that the Motor Vehicles Act, 1988 (hereinafter for short the "Act") contemplate. It is also the submission of the learned counsel for the respondent that in awarding the enhanced amount the High Court has taken into account all the relevant circumstances for due computation of the amount of compensation payable under the Act.

8. Before proceeding any further it would be appropriate to take note of the evidence tendered by PW-1, Dr. Shailendra Kumar Mishra, who was examined in the case on behalf of the claimant. The relevant part of the evidence of PW-1 is extracted below:

> ".....Medical Board granted 80% disability of Sanjay Verma during the course of examination. Today I re-examined Mr. Sanjay Verma in the Court, at the time of issuance of certificate, it was the opinion that his condition may improve, but even after such a long duration his condition has deteriorated, in place of improvement.
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> Today he has become cent percent paralyzed. Now Sanjay Verma is unable to perform his day to day needs such as latrine and urination could not be done of his own. A tube has been inserted into his urinary tract along with a bag which he has to use entire life. There will be no control over his toilet and urine which he might have been doing on his bed.
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> He will not be able to move throughout his life due to the paralysis below waist and he is now not been able to do any work. The Spinal chord will be pressurized due to the facture of back bone and he will have to bear the pain throughout his life. Sanjay Verma will not be able to lead his normal life and will have remain in the same condition throughout his life. Due to his laying position he will be effected by bed sores which will be excessive painful. Due to lack of urination in normal course his kidney may be damaged and this possibility will always remain." ".....At the time of issuance of handicapped certificate I had also given 100% disability certificate but thinking that he might improve, I had given a certificate 80% disability. The cutting over the certificate No.16 G has been done by me which bears my signature. This cutting was also done at the time of issuance of the certificate. As per the prescribed standard, at the time when patient was examined by the medical board, he was also suffering from the total paralysis and 100% disability but because patient's toe was having slight movement, therefore, it was unanimously decided that for the time being his disability is 80%."

9. It is also established by the materials on record that the age of the claimant at the time of the accident was 25 years and he was married. The age of his wife was 22 years and at the time of the

accident the claimant had one son who was 1½ years of age. Apart from the above, from the deposition of the claimant himself (PW-2) it transpires that after the accident he is not able to do any work and "one person is always needed to look after him".

10. Having noticed the evidence of PW-1 Dr. Shailendra Kumar Mishra and the other facts and circumstances of the case we may now proceed to determine as to whether the compensation awarded by the High Court under the different heads noticed above is just and fair compensation within the meaning of Section 168 of the Act.

11. The appellant was a self employed person. Though he had claimed a monthly income of Rs.5,000/-, the Income Tax Returns filed by him demonstrate that he had paid income tax on an annual income of Rs.41,300/-. No fault, therefore, can be found in the order of the High Court which proceeds on the basis that the annual income of the claimant at the time of the accident was Rs.41,300/-. Though in Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and Another[1] this Court had held that in case of a self employed person, unless there are special and exceptional circumstances, the annual income at the time of death is to be taken into account, a Coordinate Bench in Santosh Devi vs. National Insurance Company Ltd. and Others[2] has taken a different view which is to the following effect:

> "14. We find it extremely difficult to fathom any rationale for the observation made in para 24 of the judgment in Sarla Verma case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naïve to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life."

12. The view taken in Santosh Devi (supra) has been reiterated by a Bench of three Judges in Rajesh and Others vs. Rajbir Singh and Others[3] by holding as follows :

> "8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self- employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

> 9. In Sarla Verma case, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

13. Certain parallel developments will now have to be taken note of. In Reshma Kumari and Others vs. Madan Mohan and Another[4], a two Judge Bench of this Court while considering the following questions took the view that the issue(s) needed resolution by a larger Bench "(1) Whether the multiplier specified in the Second Schedule appended to the Act should be scrupulously applied in all the cases?

(2) Whether for determination of the multiplicand, the Act provides for any criterion, particularly as regards determination of future prospects?"

14. Answering the above reference a three Judge Bench of this Court in Reshma Kumari and Ors. vs. Madan Mohan and Anr.[5] reiterated the view taken in Sarla Verma (supra) to the effect that in respect of a person who was on a fixed salary without provision for annual increments or who was self-employed the actual income at the time of death should be taken into account for determining the loss of income unless there are extraordinary and exceptional circumstances. Though the expression "exceptional and extraordinary circumstances" is not capable of any precise definition, in Shakti Devi vs. New India Insurance Company Limited and Another[6] there is a practical application of the aforesaid principle. The near certainty of the regular employment of the deceased in a government department following the retirement of his father was held to be a valid ground to compute the loss of income by taking into account the possible future earnings. The said loss of income, accordingly, was quantified at double the amount that the deceased was earning at the time of his death.

15. Undoubtedly, the same principle will apply for determination of loss of income on account of an accident resulting in the total disability of the victim as in the present case. Therefore, taking into account the age of the claimant (25 years) and the fact that he had a steady income, as evidenced by the income-tax returns, we are of the view that an addition of 50% to the income that the claimant was earning at the time of the accident would be justified.

16. Insofar as the multiplier is concerned, as held in Sarla Verma (supra) (para 42) or as prescribed under the Second Schedule to the Act, the correct multiplier in the present case cannot be 15 as held by the High Court. We are of the view that the adoption of the multiplier of 17 would be appropriate. Accordingly, taking into account the addition to the income and the higher multiplier the total amount of compensation payable to the claimant under the head "loss of income" is Rs. 10,53,150/- (Rs. 41300 + Rs. 20650= Rs. 61,950 x 17).

17. In so far as the medical expenses is concerned as the awarded amount of Rs.1,38,552/- has been found payable on the basis of the bills/vouchers etc. brought on record by the claimant we will have no occasion to cause any alteration of the amount of compensation payable under the head "medical expenses". Accordingly, the finding of the High Court in this regard is maintained.

18. This will bring us to the grievance of the appellant-claimant with regard to award of compensation of Rs.50,000/- under the head "future treatment" and "pain and suffering". In view of the decisions of this Court in Raj Kumar vs. Ajay Kumar and Another[7] and Sanjay Batham vs. Munnalal Parihar and Others[8] there can be no manner of doubt that the above two heads of compensation are distinct and different and cannot be clubbed together. We will, therefore, have to severe the two heads which have been clubbed together by the High Court.

In so far as "future treatment" is concerned we have no doubt that the claimant will be required to take treatment from time to time even to maintain the present condition of his health. In fact, the claimant in his deposition has stated that he is undergoing treatment at the Apollo Hospital at Delhi. Though it is not beyond our powers to award compensation beyond what has been claimed [Nagappa vs. Gurudayal Singh and others[9]], in the facts of the present case we are of the view that the grant of full compensation, as claimed in the claim petition i.e. Rs.3,00,000/- under the head "future treatment", would meet the ends of justice. We, therefore, order accordingly.

19. The claimant had claimed an amount of Rs.20,00,000/- under the head "pain and suffering and mental agony". Considering the injuries sustained by the claimant which had left him paralyzed for life and the evidence of PW-1 to the effect that the claimant is likely to suffer considerable pain throughout his life, we are of the view that the claimant should be awarded a further sum of Rs. 3,00,000/- on account of "pain and suffering". We must, however, acknowledge that monetary compensation for pain and suffering is at best a palliative, the correct dose of which, in the last analysis, will have to be determined on a case to case basis.

20. In the claim petition filed before the Motor Accident Claim Tribunal the claimant has prayed for an amount of Rs.2,00,000/- being the cost of attendant from the date of accident till he remains alive. The claimant in his deposition had stated that "he needs one person to be with him all the time". The aforesaid statement of the claimant is duly supported by the evidence of PW-1 who has described the medical condition of the claimant in detail. From the aforesaid materials, we are satisfied that the claim made on this count is justified and the amount of Rs.2,00,000/- claimed by the claimant under the aforesaid head should be awarded in full. We order accordingly.

21. In view of the discussions that have preceded, we hold that the claimant is entitled to enhanced compensation as set out in the table below:

Sl. No.	Head	Amt. as per High Court (in Rs.)	Amt. as per this Court (in Rs.)
(i)	Loss of Income	6,19,500.00	10,53,150.00
(ii)	Medical Expenses	1,38,552.00	1,38,552.00
(iii)	Future Treatment		3,00,000.00

		50,000.00	
			3,00,000.00
(iv)	Pain and suffering and mental agony		
(v)	Cost of attendant from the date of accident till he remains alive		2,00,000.00
	Total=	8,08,052.00	19,91,702.00

22. In view of the enhancement made by us, we do not consider it necessary to modify the rate of interest awarded by the High Court i.e. 6% from the date of the application i.e. 24.08.1999 to the date of payment which will also be payable on the enhanced amount of compensation.

23. The appeal filed by the claimant is allowed as indicated above.

.....CJI.

[P. SATHASIVAM] .....J. [RANJAN GOGOI] .....J. [SHIVA KIRTI SINGH] NEW DELHI, JANUARY 29, 2014.

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[1] (2009) 6 SCC 121
[2] (2012) 6 SCC 421
[3] (2013) 9 SCC 54
[4] (2009) 13 SCC 422
[5] (2013) 9 SCC 65 (para 36)
[6] (2010) 14 SCC 575
[7] (2011) 1 SCC 343
[8] (2011) 10 SCC 665
[9] (2003) 2 SCC 274
