

Ibrahim vs Raju & Ors on 31 October, 2011

Equivalent citations: AIR 2012 SUPREME COURT 534, 2011 (10) SCC 634, 2012 AIR SCW 413, 2012 AAC 415 (SC), 2012 (2) AIR JHAR R 317, (2012) 1 ALLMR 916 (SC), 2011 (12) SCALE 297, (2012) 113 ALLINDCAS 19 (SC), 2012 (1) ALL MR 916, 2012 (1) SCC(CRI) 120, 2012 (113) ALLINDCAS 19, AIR 2012 SC (CIVIL) 427, (2012) 3 ANDHLD 60, (2011) 12 SCALE 297, (2011) 4 ACJ 2845, (2011) 4 CURCC 199, (2011) 4 ACC 678, (2012) 2 MAD LJ 250, (2011) 50 OCR 943, (2012) 3 PUN LR 102, (2012) 1 TAC 22, (2011) 4 RECCIVR 863, (2012) 92 ALL LR 469, (2012) 1 ALL WC 213, (2012) 3 CIVLJ 102

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Bench: Asok Kumar Ganguly, G.S. Singhvi

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.8943 OF 2011

(Arising out of S.L.P. (C) No.25372 of 2005)

Ibrahim

.....Appellant

Versus

Raju and others

.....Respondent

J U D G M E N T

G.S. Singhvi, J.

1. Delay condoned.

2. Leave granted.

3. Feeling dissatisfied with the enhancement granted by the High Court in the amount of compensation awarded by 2nd Additional Motor Accident Claims Tribunal, Karwar (for short, 'the Tribunal'), the appellant has filed this appeal.

4. The appellant sustained serious injuries on the head, nose, back and lower region of abdomen including the pelvic region when the tempo in which he was travelling met with an accident on 23.4.2000. He was taken to Vijayashree Orthopaedic Centre for first aid and was then shifted to Kasturba Hospital, Manipal. He remained in the hospital from 23.04.2000 to 05.06.2000.

5. The appellant filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') and claimed compensation of Rs.3,00,000/- with interest and cost. He pleaded that the accident was caused due to rash and negligent driving of the tempo by its driver Shri Raju; that he had suffered serious injuries in the accident; that he remained in the hospital for almost one month and a half and had to spend more than Rs.80,000/- towards medical treatment, conveyance and expenses of the attendants; that at the time of accident he was a student of Class 8 and on account of the injuries he was not in a position to continue his studies.

6. The owner and the driver of the offending vehicle, who were impleaded as non-petitioners No.1 and 2 did not contest the claim of the appellant. However, the National Insurance Company, which was impleaded as non-petitioner No.3 contested the claim by asserting that the accident was not caused due to rash and negligent driving of the tempo and that the appellant was himself responsible for the accident.

7. Two of the four issues framed by the Tribunal were whether the accident was caused due to rash and negligent driving of the tempo and whether the appellant was entitled to compensation. After analysing the evidence produced by the parties, the Tribunal held that the accident was caused due to rash and negligent driving of the tempo. The Tribunal then referred to the statements of Dr. Anil K. Bhat, Assistant Professor of Orthopaedics, who issued disability certificate Exhibit P-140 and Dr. Joseph Thomas, Professor of Urology, who issued treatment certificate Exhibit P-141 (both the doctors were working in Kasturba Medical College and Hospital, Manipal) and awarded compensation to the appellant under the following heads:

1. Pain and suffering Rs.25,000/-

2. Medical expenses Rs.20,340/-

3 Transportation Rs.

1,900/-

4. Diet and attendant charges Rs.30,600/-

5. Loss of future earning on Rs.21,600/-

account of disability

6. Decline in the prospects of Rs.50,000/ marriage -

Total

Rs. 1,49,4

8. The High Court partly allowed the appeal filed by the appellant under Section 173 of the Act and enhanced the amount of compensation by a sum of Rs.40,000/-.

9. The appellant has questioned the impugned judgment mainly on the ground that while determining the amount of compensation, the Tribunal and the learned Single Judge of the High Court overlooked the parameters and principles laid down by this Court and did not take into consideration the expenses likely to be incurred by him for future treatment and the loss of amenities and enjoyment of life.

10. We have heard learned counsel for the parties and carefully perused the record. The sufferings of the dependents of those who are killed in motor accidents and the survivors who are disabled are manifold. Some time these can be measured in terms of money but most of the times it is not possible to do so. If an individual is disabled as a result of road accident, the cost of treatment, care and rehabilitation is likely to be very high. A very large number of people involved in motor accidents are pedestrians, children and women and, on account of sheer ignorance, poverty and other disabilities, majority of them are unable to engage competent lawyers for putting their cause before the Tribunals and the Courts. The insurance companies, with whom the vehicles involved in accidents are insured always have the advantage of assistance of legally trained mind (law officers and panel lawyers). They contest the claim petitions by raising all possible technical objections for ensuring that their clients are either completely absolved or their liability is minimized and in the process, adjudication of the claims filed by the victims and/or their legal representatives is delayed for years together. At times, the delay in disposal of the claim cases and litigation expenses make the award of compensation meaningless for survivors of the accidents and/or families of the victims. This Court has time and again emphasized that the officers, who preside over the Tribunals adopt a proactive approach and ensure that the claims filed under the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure keeping in view the relevant factors. Unfortunately, despite repeated pronouncements of this Court in which guiding principles have been laid down for determination of the compensation payable to the victims of road accidents and/or their families,

the Tribunals and even the High Courts do not pay serious attention to the imperative of awarding just compensation to the claimants.

11. In *Ward v. James* (1965) 1 All ER 563, the Court of Appeal, while dealing with a case under Section 6 of the Administration of Justice (Miscellaneous Provisions) Act, 1933 made some important observations, which are extracted below:

"Although you cannot give a man so gravely injured much for his 'lost years', you can, however, compensate him for his loss during his shortened span, that is, during his expected 'years of survival'. You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The judges have worked out a pattern, and they keep it in line with the changes in the value of money."

12. In *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and others* (1995) 1 SCC 551, this Court while dealing with a case involving claim of compensation under the Motor Vehicles Act, 1939, referred to the judgment in *Ward v. James* (supra), Halsbury's Laws of England, 4th edn., vol. 12 (page 446) and observed:

"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."

In the same case, the Court further observed:

"In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

13. In *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka* (2009) 6 SCC 1, the three-Judge Bench was dealing with a case arising out of the complaint filed under the Consumer Protection Act, 1986.

While enhancing the compensation awarded by the National Consumer Disputes Redressal Commission from Rs.15 lakhs to Rs.1 crore, the Bench made the following observations which can appropriately be applied for deciding the petitions filed under Section 166 of the Act:

"We must emphasise 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 thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned.

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 supplied)

14. In *Reshma Kumari and others vs. Madan Mohan and another* (2009) 13 SCC 422, this Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below:

"The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms. The

question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so. In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in *Oriental Insurance Co. Ltd. v. Jasuben* held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.

One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor."

(emphasis supplied)

15. In *Arvind Kumar Mishra v. New India Assurance Company Limited and another* (2010) 10 SCC 254, the Court considered the plea for enhancement of compensation made by the appellant, who was a student of final year of engineering and had suffered 70% disablement in a motor accident. After noticing the factual matrix of the case, the Court observed:

"We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered."

(emphasis supplied)

16. In *Raj Kumar vs. Ajay Kumar and another* (2011) 1 SCC 343, the Court considered some of the precedents and held:

"The provision of the Motor Vehicles Act, 1988 ("the 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 the 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. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the

evidence of the claimant, that compensation will be granted under any of the heads (ii)(b),

(iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

(emphasis supplied)

17. In the light of the above, we shall now consider whether the compensation awarded to the appellant is just and reasonable or the Tribunal and the High Court committed an error by not awarding compensation for the future treatment, deprivation of opportunity to undertake further studies and consequential loss of earning/income which he would have derived by taking up appropriate job or doing some business as also diminution of the marriage prospects.

18. A perusal of the record shows that the appellant had produced substantive evidence to prove that as a result of accident he had suffered 8 grievous injuries including fracture of pelvis and he had to remain in the hospital for one month and a half; that he was treated by Dr. Anil K. Bhat, Assistant Professor, Orthopaedics and Dr. Joseph Thomas, Professor of Urology and that on account of grievous injuries he was unable to continue his studies. In his deposition, Dr. Joseph Thomas categorically stated that the appellant will have to undertake life long treatment for recurrence of urethral strictures and consequential dysfunction due to fracture of pelvis. Unfortunately, neither the Tribunal nor the High Court adverted to this part of the evidence and omitted to award compensation for the expenses likely to be incurred by the appellant for future treatment. One can reasonably expect that the appellant who was only 18 years old at the time of accident would live for at least next 50 years. The Tribunal awarded Rs.20,340/- for expenses incurred by the appellant for treatment taken by him in the hospital. Although, Dr. Thomas did not indicate the approximate expenditure likely to be incurred by the appellant and his family for future treatment, keeping in view the nature of injuries and the fact that he will have to take treatment for the remaining life, it will be reasonable to infer that he will be required to spend a minimum of Rs.1,000/- per month for future treatment, which would necessarily include fees of the doctors, medicines, transportation, etc. In the absence of concrete evidence about the anticipated expenditure, we think that ends of justice will be met if the appellant is awarded a sum of Rs.2 lacs which, if deposited in a fixed deposit, would earn an interest of Rs.14,000/- to 16,000/- per annum.

19. On account of the injuries suffered by him, the prospects of the appellant's marriage have considerably reduced. Rather, they are extremely bleak. In any case, on account of the fracture of pelvis, he will not be able to enjoy the matrimonial life. Therefore, the award of Rs.50,000/- under this head must be treated as wholly inadequate. In the facts and circumstances of the case, we feel that a sum of Rs.2 lacs should be awarded to the appellant for loss of marriage prospects and enjoyment of life.

20. The compensation awarded for loss of future earning on account of permanent partial disablement is ex facie unreasonable. Respondent No.3 did not produce any evidence to controvert the appellant's assertion that on account of the injuries suffered in the accident, he had to abandon

his studies. The consequences which followed were extremely grave inasmuch as he lost all opportunities for making a career in future. The prospects of the appellant's marriage are extremely bleak. Therefore, a sum of Rs.2 lacs deserves to be awarded under these heads.

21. We are conscious of the fact that in the petition filed by him, the appellant had claimed compensation of Rs.3 lacs only with interest and cost. It will be reasonable to presume that due to financial incapacity the appellant and his family could not avail the services of a competent lawyer and make a claim for adequate compensation. However, as the Tribunal and the High Court and for that reason this Court are duty bound to award just compensation, we deem it proper to enhance the compensation from Rs.1,89,440/- to Rs.6 lacs. This approach is in tune with the judgment in Nagappa v. Gurudayal Singh (2003) 2 SCC 274. In that case, the Court considered a similar issue, referred to the judgments of the Bombay High Court in Municipal Corporation of Greater Bombay v. Kisan Gangaram Hire 1987 ACJ 311 (Bombay), Orissa High Court in Mulla Mod. Abdul Wahid v. Abdul Rahim 1994 ACJ 348 (Orissa) and Punjab and Haryana High Court in Devki Nandan Bangur v. State of Haryana 1995 ACJ 1288 (P&H) and observed:

"For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition."

22. In the result, the appeal is allowed. The impugned judgment is modified and it is declared that the appellant shall be entitled to total compensation of Rs.6 lacs with interest at the rate of 6% per annum from the date of filing the claim petition. If respondent No.3 has already paid the compensation in terms of the award of the Tribunal and the impugned judgment, then it shall pay the balance amount with interest at the rate of 6% per annum on the enhanced amount of compensation within a period of 3 months. If the amount awarded by the Tribunal and the High Court has not been paid so far, then respondent No.3 shall pay the total amount of Rs.6 lacs to the appellant with interest at the rate of 6% per annum within the said period of 3 months.

.....J. (G.S. Singhvi)J. (Asok Kumar Ganguly) New Delhi,
October 31, 2011.