

Sri Laxman @ Laxman Mourya vs Divisional Manager, ... on 8 November, 2011

Equivalent citations: 2012 AIR SCW 361, 2012 (2) AIR JHAR R 312, 2012 AAC 572 (SC), 2012 (1) AIR KAR R 729, AIR 2012 SC (CIVIL) 383, (2012) 2 RAJ LW 1121, (2012) 1 RECCIVR 509, (2011) 12 SCALE 658, (2012) 1 MAD LJ 1002, (2012) 1 ORISSA LR 171, (2012) 2 CIVLJ 713, (2012) 1 PUN LR 664, 2011 (10) SCC 756, (2012) 3 ANDHLD 53, (2012) 1 ALL WC 189, (2012) 1 CIVILCOURTC 658, (2012) 1 TAC 376, (2011) 4 ACC 739, (2012) ACJ 191, 2012 (1) SCC (CRI) 108

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Bench: Sudhansu Jyoti Mukhopadhyaya, G.S.Singhvi

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.9676 OF 2011
(Arising out of SLP(C)No.14560 OF 2010)

SRI LAXMAN @ LAXMAN MOURYA

.....APPELLANT

VERSUS

DIVISIONAL MANAGER, ORITL.INS.CO.LTD& ANR

.....RESPONDENTS

J U D G M E N T

G.S. Singhvi, J.

1. This appeal is directed against the judgment of the Division Bench of the Karnataka High Court whereby the compensation awarded to the appellant by Motor Accident Claims Tribunal-4 Metropolitan Area, Bangalore (for short, 'the Tribunal') in MVC No. 860/2004 was enhanced by a paltry sum of Rs. 31,000/-

2. The appellant became a victim of road accident which occurred on 8.9.2003 when he was hit from behind by bus bearing No. KA-04-A-3784 belonging to respondent No. 2. As a result of accident, the appellant sustained grievous injuries on different parts of the body. On the same day, he was admitted in Bowring and Lady Curzon Hospital, Bangalore. He was discharged on 22.9.2003.

3. In the petition filed by him under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the appellant claimed compensation of Rs.5,00,000/- with interest by making the following assertions:

(i) that at the time of accident, his age was 24 years;

(ii) that the accident was caused due to the rash and negligent driving of the bus;

(iii) that due to the accident, he had sustained grievous injuries and remained in the hospital and that his treatment was still continuing;

(iv) that he had spent Rs.5,000/- by way of medical expenses;

(v) that he was apprehensive of becoming disabled and that the same would result in loss of earning and affect his livelihood; and

(vi) that he would have to suffer constant pain and discomfort throughout his life.

4. In their written statements respondent Nos. 1 & 2 denied the allegation of rash and negligent driving of the bus and pleaded that they were not liable to pay compensation.

5. After considering evidence produced by the parties, the Tribunal held that the accident was caused due to rash and negligent driving of the bus owned by respondent No. 2. The Tribunal then considered the issue of compensation, referred to statement made by the appellant in the form of affidavit as also the statement of Dr. S. Ranjanna, Orthopaedic Surgeon at Bowring and Lady Curzon Hospital, who was examined as PW-2 and held that the appellant is entitled to compensation of Rs.45,000/- with interest at the rate of 8% from the date of application till the date of deposit.

6. Dissatisfied with the award of the Tribunal, the appellant filed an appeal under Section 173 of the Act. The Division Bench of the High Court did notice that as per PW-2, the appellant had suffered 26% disability in the right lower limb, 25% urethral injury and 38% disability to the whole body but granted a meager enhancement of Rs.31,000/- and declared that appellant is entitled to total compensation of Rs.76,000/- with interest at the rate of 6% on the enhanced compensation from the date of petition till the date of realisation.

7. We have heard Mr. V.N. Raghupathy, learned counsel for the appellant and perused the record. No one has appeared on behalf of the respondents to assist the Court.

8. The personal sufferings of the survivors of the road accidents and those who are disabled in such accidents are manifold. Some time they can be measured in terms of money but most of the times it is not possible to do so. If an individual is permanently disabled in an accident, the cost of his medical treatment and care is likely to be very high. In cases involving total or partial disablement, the term 'compensation' used in Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident. A very large number of people involved in motor accidents are pedestrians, children, women and illiterate persons. Majority of them cannot, due to sheer ignorance, poverty and other disabilities, engage competent lawyers for proving negligence of the wrongdoer in adequate measure. The insurance companies with whom the vehicles involved in the accident are insured usually have battery of lawyers on their panel. They contest the claim petitions by raising all possible technical objections for ensuring that their clients are either completely absolved or their liabilities minimized. This results in prolonging the proceedings before the Tribunal. Sometimes the delay and litigation expenses' make the award passed by the Tribunal and even by the High Court (in appeal) meaningless. It is, therefore, imperative that the officers, who preside over the Motor Accident Claims Tribunal adopt a proactive approach and ensure that the claims filed under Sections 166 of 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. The amount of compensation in such cases should invariably include pecuniary and non-pecuniary damages. In *R.D. Hattangadi v. Pest Control (India) Private Limited* (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 of the Court of Appeal in *Ward v. James* (1965) 1 All ER 563, Halsbury's Laws of England, 4th Edition, Volume 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."

9. In *Reshma Kumari v. Madan Mohan* (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.

Jashuben 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)

10. In *Arvind Kumar Mishra v. New India Assurance Company Limited* (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 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)

11. In *Raj Kumar v. Ajay Kumar* (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)

12. The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earning and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

13. In the light of the above, we shall now consider whether the compensation awarded to the appellant is just or he is entitled to enhanced compensation under any of the following heads:

(i) Loss of earning and other gains due to the accident.

(ii) Loss of future earning on account of the disability.

(iii) Expenses for future treatment.

(iv) Compensation for pain, suffering and trauma caused due to the accident.

(v) Loss of amenities including loss of the prospects of marriage.

(vi) Loss of expectation of life.

14. In the affidavit filed by him before the Tribunal, the appellant categorically stated that due to accident he had suffered injuries on the abdomen and other parts of the body; that he was shifted to Bowring Hospital, where he remained for 15 days; that thereafter, he went to his native place at Gorakhpur and remained admitted in Royal Hospital from 29.9.2003 to 10.10.2003; that he had also taken treatment at Sri Krishna Hospital and Urology Centre as indoor patient from 12.10.2003 to 13.10.2003 and that he had spent Rs. 40,000/- towards medicines, conveyance and other charges. He further stated that due to accident, he was finding it difficult to pass urine and was having severe pain in the lower part of the abdomen; that the Doctors had advised him to undergo an operation to set right the problem but due to financial constraint he was not in a position to undergo the surgery. As regards his earning, the appellant gave out that at the time of accident, he was working as Carpenter and was earning Rs. 5,000/- per month and that after the accident he was not in a position to work as carpenter.

15. In his affidavit, PW-2 Dr. S.Ranjanna confirmed that the appellant was admitted in Bowring and Lady Curzon Hospital on 8.9.2003 and was discharged on 22.9.2003; that he had examined the patient on 2.5.2005 and found that he was having altered gait, frequency of inculcation and was finding difficult to sit with cross-legs or squat. In cross-examination, Dr. Ranjanna made the following statement:

- "1) Patient walks with a riding gait.
- 2) Tenderness present over pubic region.
- 3) His movements on right side are restricted by 30%.
- 4) Wasting of right pelvis by 6 cms.
- 5) Wasting of right leg muscles by 3 cms.
- 6) Difficulty to pass urine.

As per urologist opinion he needs surgery for STRUCTURE URETHRA.

Check X-ray shows 698/10.1.2003 evidence of old fracture of both rami of both pelvic bones noted with altered shape of pelvic inlet. Due to above disabilities he cannot pass the urine smoothly he will have disturbed sleep due to frequency of ... He cannot sit crossed, difficulty to squat difficulty to lift any weight. He cannot do any hard manual work.

After referring to various guidelines and including Alimco manual I am the opinion that the petitioner is having disability 26% of right lower limb & 25% due to urethral injury and 38% disabilities to the whole body. In view of this disabilities, the petitioner cannot work as a Carpenter and cannot do any other manual work also.

I am herewith producing the following documents. Such as,

- 1) Case Sheet.
- 2) Recent examination O . P . Book
- 3) Recent check X-ray."

16. Unfortunately, neither the Tribunal nor the High Court adverted to the criteria laid down by this Court for award of compensation under the two broad heads, i.e., pecuniary and non- pecuniary damages and awarded compensation, which cannot but be described as wholly unjust.

17. The respondents have not controverted the appellant's assertion that at the time of accident his age was 24 years; that he was earning Rs.5,000/- per month as a Carpenter and that as a result of accident he had to remain in hospitals for different durations. Therefore, under the first head i.e, loss of earning and other gains during the period of hospitalisation (one month), the appellant is entitled to compensation of Rs.5,000/-

18. It is also not in dispute that as a result of accident, the appellant suffered 26% disability of the right lower limb, 25% disability due to urethral injury and 38% disability to the whole body. Although, the percentage of the disability of whole body is 38, the evidence produced by the appellant in the form of his own affidavit and the affidavit of PW-2 shows that he will not be able to work as carpenter or do any manual work throughout his life. In other words, even though the disability suffered by the appellant is not 100 per cent, his working capacity has been reduced to zero. However, keeping in view the degree of disability, i.e. 38%, we hold that he shall be entitled to compensation of Rs.3,32,640/- (38% of Rs.5,000.00 = Rs.1,540/- x 12 x 18) for loss of future earning.

19. The issue regarding expenses for future treatment is required to be decided in the light of the evidence produced by the parties. Although, in his evidence, PW-2 Dr. S Ranjanna has stated that the appellant would require future treatment but no concrete evidence was produced by him, i.e. appellant, about the possible expenses which he may incur for treatment in future. This phenomenon is not unusual in such cases particularly when the claimant belongs to financially weaker strata of the society. He cannot engage a competent lawyer to effectively prosecute his case before the Tribunal and the High Court. However, as held in R. D. Hattangadi v. Pest Control (India) Private Ltd. (supra) the Tribunal and the Court can fix the amount of compensation by making some guess work. Keeping in view the nature of injuries suffered by the appellant and the fact that he will have to take treatment throughout life, we feel that ends of justice will be met by awarding him a sum of Rs.1,50,000/- under that head.

20. For pain, suffering and trauma caused due to the accident, a sum of Rs.1,50,000/- deserves to be awarded to the appellant. Likewise, for the loss of amenities including the loss of prospects of marriage which has become an illusion for the appellant, it will be just and proper to award a sum of Rs.2 lacs.

21. It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in Nagappa vs. Gurudayal Singh (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident.

22. In the result, the appeal is allowed. The impugned judgment is set aside and it is declared that the appellant shall be entitled to total compensation of Rs.8,37,640/- with interest at the rate of 8% from the date of filing the petition till the date of realisation. Respondent No. 1 is directed to pay the balance amount of compensation to the appellant with interest within a period of three months from the date of receipt/production of the copy of judgment by preparing a draft in his name.

.....J. (G.S.SINGHVI)J. (SUDHANSU JYOTI MUKHOPADHAYA) NEW DELHI;

NOVEMBER 8, 2011.