

Delhi High Court

Union Of India vs Sham Lal & Ors. on 10 June, 2009

Author: J.R. Midha

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*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO 486/2000 and CM No.7605/2009

Reserved on : 29th May, 2009

Date of Decision: 10th June, 2009

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UNION OF INDIA

..... Appellant

Through : Mr. A.K. Bhardwaj, Sr. Adv.
with Mr. M.P. Singh, Adv.

versus

SHAM LAL & ORS.

..... Respondents

Through : Respondent in person.

CORAM :-

THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

JUDGMENT

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.6,67,200/- has been awarded to respondent No.1.

2. The accident dated 30th June, 1996 resulted in grievous injuries to respondent No.1 and he has become paraplegic with permanent disability certified to be 90% as per Ex.PW-3/B. The learned Tribunal awarded compensation of Rs.6,67,200/- towards the loss of income to the claimant. However, no compensation has been awarded for pain, suffering, loss of amenities of life, future medical treatment, etc.

3. The appellant has challenged the impugned award on various grounds:-

(i) The claimant/respondent No.1 having been prematurely retired on medical grounds is entitled to and is receiving invalid pension apart from benefits of gratuity, leave encashment, provident fund, etc. received by him.

(ii) The claimant had 12 years service left with All India Radio and, therefore, the multiplier of 13 is not appropriate.

(iii) The amount awarded is highly excessive considering that the claimant was earning only Rs.3,600/-.

(iv) The driver of the Government vehicle was not rash and negligent as he saved the precious life of a child and in the process hit the pavement.

4. The appellant's contention that the claimant has been prematurely retired on medical grounds and is receiving invalid pension, is not a ground for denying compensation to him. The claimant is entitled to compensation according to the well settled principles of motor accident compensation.

5. With respect to the contention of the appellant that the amount is excessive, this Court is of the view that the compensation is grossly inadequate. The learned Tribunal has only computed the loss of income and has not considered the other heads for award of compensation such as compensation for pain and suffering, compensation for loss of amenities of life, future medical treatment, etc. Even the compensation for loss of income is inadequate as the learned Tribunal has not taken the future prospects of the claimant into consideration.

6. With respect to the contention of the appellant that the driver of the Government vehicle was not rash and negligent as he saved the precious life of the child and in the process hit the pavement, the evidence on record is contrary and clearly points out to the rashness and negligence of the driver of the Government vehicle. In fact, the accident has been admitted by the driver of the Government vehicle. It is also admitted that the Government vehicle did hit the child. However, the explanation given that the claimant lost his balance and fell along with other cyclists has been rightly rejected by the learned Tribunal because the injuries are so serious and the claimant's spine got fractured at so many places that it was not possible by simple fall by entanglement of the cycles. The statement of the driver that the Government vehicle did not touch the cycle is not supported by the evidence which points out to the contrary. The finding of the learned Tribunal that the accident occurred due to the rash and negligent driving of the Government vehicle is upheld.

7. For the aforesaid reasons, the appeal is dismissed. The claimant has filed the cross-objections before this Court for enhancement of the compensation. The claimant has also led additional evidence in support of the cross-objections.

8. The claimant was admitted in BLK Memorial Hospital, Pusa Road, New Delhi on 13th May, 2009 and remained there till 15th May, 2009. The hospital has carried out various tests including Blood Test, X-Ray Cervical Spine, MRI Cervical Spine, MRI Dorsal Spine and the claimant has been examined by various doctors including Dr. Suneel Kumar, Head of the Department, Orthopedic Surgery who appeared in the witness box as PW-1 before this Court and was cross-examined by the learned counsel for the appellant.

9. The report of Dr. Suneel Kumar along with the complete record of the patient in BLK Memorial Hospital has been exhibited as Ex.PW1/1 collectively. According to the statement of Dr. Suneel Kumar and his report - Ex.PW1/1, the claimant is quadriparetic (weakness of limbs). The claimant is unable to sit or stand. He is totally bed ridden and dependent upon his attendants even for most miniscule activity. His activities are restricted in all spheres of life. Dr. Suneel Kumar is of the view that implantation of a device called Baclofen Pump would improve his quality of life and he may even be able to stand up with some support. The cost of the implantation of Baclofen Pump is approximately Rs.8,00,000/- to Rs.9,00,000/-. The surgical procedure shall take two days of admission of the claimant in the hospital. The implantation of the device shall have to be supplemented with intensive rehabilitation programme. The doctor has submitted in his report that the approximate cost of transportation and physiotherapy charges for a period of one year shall be Rs.3,000/- per day. However, on being asked to provide physiotherapy at hospital at subsidized rates, the doctor agreed that the physiotherapy along with hospital charges of bed and meals shall be provided at the rate of Rs.1,000/- per day and rehabilitation programme would require at least 6-8 weeks. PW-1 has further stated in his report that the claimant would require attendant which would cost about Rs.8,000/- per month. Considering that the claimant belongs to the poorest strata of the society, full time attendant may not be trained to give him support and physiotherapy and Rs.8,000/- per month is on a higher side, Dr. Suneel Kumar agreed that the hospital shall provide a nursing attendant to visit the claimant six days a week to provide physiotherapy as well as other support required by him at the cost of Rs.5,000/- per month.

10. From the testimony of PW-1, Dr. Suneel Kumar and Ex.PW1/1, it is proved that the claimant shall require the following treatment in respect of his present condition:-

(i) Implantation of Baclofen Pump cost of approximately Rs.8,00,000/- to Rs.9,00,000/-.

(ii) After the surgery, intensive rehabilitation programme costing Rs.1,000/- per day for a period of 6-8 weeks.

(iii) Nursing attendant from the hospital to attend to the claimant six days a week costing Rs.5,000/-

per month.

(iv) Motorized Wheel Chair costing Rs.1,50,000/-.

11. The learned amicus curiae submits that the claim petition was filed before the learned Tribunal under Section 166 of the Motor Vehicles Act and the complete evidence was led before the learned Tribunal. However, the learned Tribunal on its own without any application from any of the party and without any basis converted the claim petition to Section 163A of the Motor Vehicles Act and awarded the lower compensation. The learned counsel for the claimant further submits that the negligence was duly proved by the statement of the witnesses and, therefore, there was no occasion for the learned Tribunal to convert the claim petition under Section 166 of the Motor Vehicles Act to

the petition under Section 163A of the Motor Vehicles Act which is a provision for no fault liability and can be invoked where the claimants are not able to prove the negligence. The learned Tribunal was in error in converting the claim petition to Section 163A of the Motor Vehicles Act. The finding to this effect is, therefore, set aside. The claim petition is treated to be under Section 166 of the Motor Vehicles Act.

12. The claimant is entitled to non-pecuniary damages including the compensation for pain and suffering and the compensation for loss of amenities of life being unable to walk, run and sit, compensation for expectation of life on account of injury and longevity of the life, disfigurement, discomfort, inconvenience, hardship, disappointment, frustration and mental stress in life. The Hon ble Supreme Court in the case of R.D. Hattangadi vs. Pest Control (India) Pvt. Ltd., 1995 ACJ 366 awarded Rs.1,50,000/- under the head of loss of expectation of life. Following the aforesaid judgment of the Hon ble Supreme Court, this Court in the case of Virender Singh vs. Anand Prakash, 2007 RLR 532 awarded Rs.1,50,000/- towards pain and suffering in respect of the claimant who had suffered 100% permanent disability, Rs.1,50,000/- under the head of loss of expectation of life and Rs.50,000/- towards depression and mental stress in life. Relevant portion of the judgment is reproduced hereunder:-

"30. Non pecuniary damages includes the following:-

- (i) Pain and suffering.
- (ii) Damages for mental and physical shock.
- (iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.
- (iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.
- (v) Disfigurement.
- (vi) Discomfort or inconvenience,

hardship, disappointment, frustration and mental stress in life.

31. Pain and suffering:- Pain and suffering compensates victim for the physical and mental discomfort caused by the injury. Pain is physical; suffering is emotional. While pain is the physiological response to certain stimuli, suffering is psychological or emotional response to pain.

32. In the decision reported as R.D.Hattangadi vs. Pest Control (India) Pvt. Ltd. 1995 ACJ 366 because of the accident, the appellant in said case became a paraplegic and suffered 100% permanent disability. Date of accident was 20.5.1980. Appellant in said case had remained hospitalized for a period from 20.5.1980 to 2.8.1980. Analyzing the law relating to non pecuniary damages, compensation in sum of

Rs.1,50,000/- was awarded under the head 'pain and suffering'.

33. In the light of Hattangadi's case (supra);

noting the period of hospitalization of injured; the 100% physical disability suffered by him, I award compensation in sum of Rs.1,50,000/- under the head 'pain and suffering'.

34. Loss of expectation of life:- Compensation for loss of expectation of life compensates victim for the limitation, resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activities of daily life, or the individual's inability to pursue his talents, recreational interests, hobbies or avocations. In essence, compensation for loss of expectation of life compensates an individual for loss of life and loss of the pleasures of living.

35. In the Hattangadi's case (supra) compensation in sum of Rs.1,50,000/- were awarded under the head 'loss of expectation of life'.

36. On the same analogy, I consider it reasonable to award compensation in sum of Rs.1,50,000/- under the head 'loss of expectation of life'.

37. Depression and mental stress in life:- A person not only suffers injuries on account of the accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. The appellant is reduced to a vegetable existence. I award compensation in sum of Rs.50,000/- under the said head."

13. Following the aforesaid judgments of the Hon ble Supreme Court and this Court, a sum of Rs.1,50,000/- is awarded towards pain and suffering and Rs.1,50,000/- towards loss of amenities of life and loss of expectation of life.

14. With respect to the pecuniary damages, a sum of Rs.8,50,000/- is awarded for implantation of Baclofen Pump, Rs.56,000/- is awarded for rehabilitation programme for eight weeks @ Rs.1,000/- per day and Rs.1,50,000/- is awarded for motorized wheel chair.

15. With respect to the requirement of a nursing attendant, Rs.1,50,000/- is awarded for two and a half years calculated @ Rs.5,000/- per month. The claimant is 62 years old and considering the life expectancy of 65 years, the attendant charges are allowed for a period of two and a half years.

16. With respect to the compensation for loss of income, the learned Tribunal has not taken the future prospects into consideration as per the recent judgment of the Hon ble Supreme Court in the case of Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129 decided on 15th April, 2009. However, considering that the claimant is drawing some pension, computation of loss of

income is not being interfered with.

17. The learned Tribunal has not awarded any amount for conveyance and special diet. Considering the facts and circumstances of this case, Rs.15,000/- is awarded for special diet and Rs.35,000/- towards conveyance. The total compensation is enhanced by Rs.15,56,000/- (Rs.1,50,000/- + Rs.1,50,000 + Rs.8,50,000/- + Rs.56,000/- + Rs.1,50,000/- + Rs.1,50,000 + Rs.15,000/- + Rs.35,000/-).

18. The appeal is dismissed and the cross-objections are allowed. The award of the learned Tribunal is enhanced from Rs.6,67,200/- to Rs.22,23,200/-. Rs.12,06,000/- has been awarded to the claimants towards the cost of implantation of Baclofen Pump, rehabilitation programme, cost of nursing attendant and purchase of motorized wheel chair. This expense has yet to be incurred by the claimant and, therefore, no interest is being awarded on this amount. With respect to the remaining amount of Rs.3,50,000/- towards the compensation for pain and suffering, loss of amenities of life and loss of expectation of life, compensation for special diet and conveyance, the interest @ 7.5% is awarded from the date of filing of the petition i.e. 3rd January, 1997 up to the date of the award by the learned Tribunal on 31 st July, 2000. No interest is being awarded after the date of the award as the claimant did not file the appeal and the cross- objections have been filed only on 20th May, 2009.

19. The enhanced amount be deposited with the Registrar General of this Court within 30 days. With respect to the compensation of Rs.12.06 lacs towards the installation of Baclofen Pump, rehabilitation programme, nursing attendant and cost of motorized wheel chair, the cheque be prepared in the name of the Registrar General, Delhi High Court, who shall keep the same in fixed deposit in the name of Registrar General A/c Sham Lal for a period of six months with cumulative interest and the said amount shall be released to the concerned hospital and the supplier of the motorized wheel chair upon the invoices being filed with this Court. BLK Memorial Hospital is directed to start the treatment of the claimant immediately upon the deposit of the award amount. After the implantation of Baclofen Pump, BLK Memorial Hospital shall raise the invoice in the name of the claimant and shall submit to the learned amicus curiae who shall file the same in this Court for release of the amount. It is made clear that if the expenditure on treatment exceeds Rs.8,50,000/-, BLK Memorial Hospital shall bear the same and shall complete the treatment but shall not leave the treatment in between and shall not claim any further amount from the claimant. With respect to motorized wheel chair, the order be placed with the supplier and the invoice be submitted through the learned amicus curiae whereupon the amount shall be released to the supplier. With respect to the compensation of Rs.3,50,000/- towards pain and suffering, loss of amenities of life and loss of expectation of life, compensation for special diet and conveyance, the interest awarded from the date of the institution of the claim petition i.e. 3rd January, 1997 up to the date of the award i.e. 31st July, 2000 comes to Rs.93,889/-. The principal amount of Rs.3,50,000/- along with interest of Rs.93,889/- comes to Rs.4,43,889/-. The cheque for Rs.3,00,000/- be issued in the name of UCO Bank A/c Shyam Lal for being kept in fixed deposit for a period of five years on which monthly interest shall be payable to the claimant which shall be credited in the savings account of the claimant. Since the claimant is 90% disabled and unable to work, UCO Bank shall send the monthly interest personally to the claimant as a special case. The remaining amount of

Rs.1,43,889/- be paid by the appellant to the claimant by means of an account payee cheque drawn in the name of the claimant.

20. Vide order dated 23rd April, 2009, this Court appointed Mr. Pankaj Seth, Advocate as amicus curiae who has very effectively assisted this Court in the present case. The learned amicus curiae got the claimant admitted in the BLK Memorial Hospital from 13th May, 2009 to 15th May, 2009 for tests and medical opinion. The learned amicus curiae also filed the cross-objections on behalf of the claimant and also led the additional evidence of doctor from BLK Memorial Hospital. It is further noted that the learned amicus curiae visited the hospital on 13th May, 2009 to meet the concerned doctors and request them to appear as a witness. This Court records the appreciation for the learned amicus curiae for his assistance. The fees of the learned amicus curiae is fixed at Rs.15,000/-to be paid by Delhi High Court Legal Services Authority.

21. List for compliance on 8th July, 2009.

22. Copy of this order be given „Dasti to learned counsel for the parties and learned amicus curiae under signatures of Court Master.

J.R. MIDHA, J JUNE 10, 2009 aj/j