

Supreme Court of India

Jai Bhagawan vs Laxman Singh on 8 April, 1994

Equivalent citations: 1994 SCC (5) 5

Author: M Venkatachalliah

Bench: Venkatachalliah, M.N.(Cj)

PETITIONER:

JAI BHAGAWAN

Vs.

RESPONDENT:

LAXMAN SINGH

DATE OF JUDGMENT 08/04/1994

BENCH:

VENKATACHALLIAH, M.N. (CJ)

BENCH:

VENKATACHALLIAH, M.N. (CJ)

ANAND, A.S. (J)

SINGH N.P. (J)

CITATION:

1994 SCC (5) 5

ACT:

HEADNOTE:

JUDGMENT:

## ORDER

1. This appeal for enhancement of compensation in a personal-injury action arises out of and is directed against the judgment and award dated Arising out of SLP (C) No. 10228 of 1987 19-11-1986 in FAO 222 of 1986 of the High Court of Delhi dismissing in limine the first appeal for enhancement preferred by the appellant. the injured claimant, against the award dated 30-7-1986, of the Motor Accidents Claims Tribunal awarding a compensation of Rs 45,000 for the injuries suffered in an automobile accident resulting, amongst other things, in the amputation of appellant's left leg above the knee.

2. We have heard learned counsel for the petitioner. The respondents, though served, have chosen to remain unrepresented. Special leave granted.

3. Appellant, Jai Bhagwan Sharma, suffered serious injuries in a road accident that occurred at 10.45 a.m. on 2-1-1981 in Delhi. The appellant was a pillion-rider on a two wheeler DHW 1330 driven by one Azad Singh. The vehicle was proceeding from Saket to Khanpur Petrol Pump via M.B. Road. At a place called Sainik Camp, Mehrauli, the Bus DEP 2511 driven by Lachman Singh, Respondent 1, and owned by Respondent 3, which was coming from the opposite direction collided against the two wheeler. Azad Singh, the driver of the two wheeler, received fatal injuries. Appellant suffered, amongst others, a crush injury on his left leg. Appellant was removed to the Safdarjung Hospital. On 6-1- 1981 appellant's left leg had to be amputated above the knee.

4. Appellant filed a claim for compensation before Motor Accidents Claims Tribunal against the driver, the owner and the insurer, M/s Oriental Fire and General Insurance Company Ltd. seeking a compensation of Rs 2 lakhs. The Tribunal, on an appreciation of the evidence, recorded a finding that the accident was the result of actionable negligence on the part of the driver of the bus. As this appeal is for enhancement of compensation by the injured claimant, the finding of the Tribunal on this question assumes finality.

5. As to the quantum of compensation the Tribunal, on some calculations of its own, determined and awarded a sum of Rs 45,000 to be paid with interest @ 12 per cent per annum from the date of the petition till payment.

6. The appellant, dissatisfied with the size of the award, filed a first appeal before the High Court which, as aforesaid, has come to be dismissed in limine.

7. Shri C.V. Rappai, learned counsel for the appellant, urges that having regard to the young age of the injured appellant, the severity of the injury, the consequential degree of permanent disablement and incapacitation, loss of earning capacity, shortened expectancy of life and the loss of amenities of life, the appellant is clearly undercompensated. Learned counsel submitted that in a personal injury action the impairment of the integrity of the person is, in itself, a head of compensation. He submitted that the award of Rs 20,000 for the injury and for pain and suffering does not recognise and take into account the permanent impairment of the integrity of the body by the amputation of a major limb. In addition, it was submitted, appropriate awards for loss of earnings, loss of earning capacity, shortened expectation of life, loss of amenities of life should also have been made. Learned counsel submitted that if that part of the award providing for actual medical expenses was deleted, the rest of the award aggregates only to Rs 35,000 which the learned counsel characterised as niggardly having regard to the nature and gravity of the injuries.

8. The appellant was 22 years of age at the time of the accident, As a result of the injuries, sustained in the accident, his left leg had to be amputated above the knee leaving him permanently impaired. Both pecuniary and non- pecuniary losses resulting from the injury are to be compensated. Assessment of damages is subject to rules of remoteness and mitigation. Such difficulties as arise in the task of quantification in terms of money of non- pecuniary losses are largely the result of ignoring the basic rule that while the awards should be reasonable, they should also be assessed with moderation having regard to the awards in comparable cases.

9. In the matter of assessment of damages in personal- injury-actions, the approach of the Court, as indicated by the House of Lords in *H. West & Son, Ltd. v. Shephard* 1 is guided by these considerations :

" My Lords, the damages which are to be awarded for a tort are those which 'so far as money can compensate, will give the injured party reparation for the wrongful act and for all the natural and direct consequences of the wrongful act' [*Admiralty Comrs. v. Susquehanna (Owners), The Susquehanna*2]. The words 'so far as money can compensate' point to the impossibility of equating money with human suffering or personal deprivations. A money award can be calculated so as to make good a financial loss. Money may be awarded so that something tangible may be procured to replace something else of like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation, Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional."

10. In *Clerk and Lindsell on Torts* (16th Edn.), referring to damages for personal injuries, it is stated :

"In all but a few exceptional cases the victim of personal injury suffers two distinct kinds of damage which may be classed respectively as pecuniary and non-pecuniary. By pecuniary damage is meant that which is susceptible of direct translation into money terms and includes such matters as loss of earnings, actual and prospective, and out-of-

(1963) 2 All ER 625 (1926) All ER 124: 1926 AC 655 pocket expenses, while non-pecuniary damage includes such immeasurable elements as pain and suffering and loss of amenity or enjoyment of life. In respect of the former, it is submitted, the court should and usually does seek to achieve restitution in integrum in the sense described above, while for the latter it seeks to award 'fair compensation'. This distinction between pecuniary and non-pecuniary damage by no means corresponds to the traditional pleading distinction between 'special' and 'general' damages, for while the former is necessarily concerned solely with pecuniary losses notably accrued loss of earnings and out-of-pocket expenses the latter comprises not only non-pecuniary losses but also prospective loss of earnings and other future pecuniary damage."

As to awards for non-pecuniary losses, the learned authors say "Non-pecuniary losses are different from pecuniary losses in that the restitution in integrum objective cannot be applied literally to them damages cannot restore a lost limb or happiness. While there is some disagreement as to the function of non-pecuniary damages, many would agree with the Royal Commission's suggestions that they serve as a palliative, or provide the plaintiff with the means to purchase alternative forms of happiness, or help to meet hidden expenses caused by injury. While the practice of the courts is

not to subdivide non-pecuniary damages under specific heads, nevertheless proper consideration cannot be given to the plaintiff's claim without taking into account the various types of loss he has suffered."

11. The contention of the learned counsel that the appellant is undercompensated, appears somewhat justified. In the case of *Pushpa Thakur v. Union of India*<sup>3</sup>, wherein an unmarried girl of 23 years of age who suffered the amputation of the right leg, this Court enhanced the compensation from Rs 50,000 to Rs 1,00,000. In the present case having regard to the age of the appellant at the time of the accident and all the relevant facts and circumstances, the compensation requires to be reasonably enhanced. We think that the ends of justice would be met by enhancing the compensation to Rs 80,000 from Rs 45,000. The enhanced sum of Rs 35,000 shall be paid to the appellant with interest @ 12 per cent per annum from the date of the application before the Tribunal till payment. The insurer, M/s Oriental Fire & General Insurance Co. Ltd., of the offending bus shall be liable to satisfy the award.

12. The enhanced amount shall be deposited in the Tribunal within two months from today. The enhanced amount, together with accrued interest, shall be invested by the Tribunal in any nationalised bank of the choice of appellant for a period of five years and the appellant shall be entitled only to the payment of the periodic accrued interest on the deposit for the said period. The bank shall not permit any loans on the security of the deposit or any premature withdrawal for a period of five years. The appellant shall be entitled to the proceeds of the deposit at the end of five years. The appeal is disposed of accordingly. No costs.