

Anant Son Of Sidheshwar Dukre vs Pratap Son Of Zhamnnappa Lamzane on 21 August, 2018

Equivalent citations: AIR 2018 SUPREME COURT 5081, 2018 (9) SCC 450, 2019 (1) ABR 380, (2019) 193 ALLINDCAS 163 (SC), (2018) 10 SCALE 130, (2018) 2 ORISSA LR 521, (2018) 2 WLC(SC)CVL 405, (2018) 3 PUN LR 779, 2018 (3) SCC (CRI) 756, (2018) 4 ACC 1, (2018) 4 ACJ 2773, (2018) 4 JCR 217 (SC), (2018) 4 RECCIVR 124, (2018) 4 TAC 22, (2018) 6 BOM CR 80, (2018) 72 OCR 229, (2019) 132 ALL LR 734, (2019) 193 ALLINDCAS 163, (2019) 1 ANDHLD 63, (2019) 1 CAL LJ 1, (2019) 2 UC 842, 2019 AAC 240 (SC), AIRONLINE 2018 SC 331

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Bench: Indu Malhotra, R. F. Nariman

REPORTA

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8420 OF 2018
(Arising out of SLP (Civil) No. 1159 of 2018)

IN THE MATTER OF:

Anant Son of Sidheshwar Dukre

...Appellan

Versus

Pratap Son of Zhamnnappa Lamzane & Another ...Respondents

J U D G M E N T

INDU MALHOTRA, J.

1. Leave granted.

2. The present Appeal by Special Leave has been filed against the final judgment and order in F.A. No. 1353 of 2015 dated 25.01.2017 passed by the High Court of Judicature at Bombay (Aurangabad Bench) in a claim under the Motor Vehicles Act.

3. The facts giving rise to the present petition briefly stated are as follows:

3.1. The Appellant herein is the Claimant, who was 29 year old at the time of the accident, and employed as a driver, drawing a monthly salary of Rs. 8,500.

On 16.10.2009, at about 9:30 a.m. the Appellant and his wife were travelling by motorcycle from Pune towards Tambewasi, when a Maruti Car bearing Registration No. MH□4/AE 1108 owned and driven by Respondent No. 1 collided with them. The car was coming from the wrong side of the road, and was trying to overtake a State Transport Bus, when it hit the Appellant's motor cycle.

The Appellant fell on the road and sustained multiple injuries. The Appellant fractured his right thigh, right ankle, and right arm. He was admitted in various hospitals for treatment, and underwent several operations where steel rods were inserted in his right thigh and right knee. Artificial material was inserted in his right shoulder to facilitate restricted movement. The injuries suffered by the Appellant resulted in Permanent Disability to the extent of 75% for which a Disability Certificate was submitted before the MACT. Appellant also filed an Injury Certificate which records the various injuries suffered by him. 3.2. With respect to the injuries sustained by the wife, a separate Claim Petition was filed before the MACT. The present Appeal pertains only to the claim for enhancement of compensation made by the Appellant. 3.3. The Appellant filed Claim Petition bearing M.A.C.P. No. 33 of 2014 before the Ld. Motor Accident Claims Tribunal, Bhoom seeking compensation under various heads amounting to Rs. 20,00,000 against Respondent No. 1 – the owner of the Maruti Car and Respondent No. 2 –Insurance Company.

3.4. The MACT vide Order dt. 07.02.2015 partly allowed the Claim Petition and granted Rs. 7,00,000 as a lump□sum compensation payable jointly and severally by both the Respondents within one month along with Interest @ 7% p.a. on the compensation amount from the date of the Claim Petition till the date of realization. The MACT erroneously made a departure from the multiplier method, and granted a lump□sum amount as compensation. The Tribunal did not grant compensation under various heads such as actual loss of income, future loss of income, medical expenses, and compensation for permanent disability sustained. 3.5. Being dissatisfied with the quantum of compensation granted by the MACT, and the method used for awarding compensation,

the present Appellant filed First Appeal u/S. 173 of the M.V. Act for enhancement of compensation, before the High Court. The High Court vide its Judgment dated 25.01.2017 partly allowed the Appeal by enhancing the compensation to Rs. 14,65,500 with 9% Interest p.a. from the date of application, till realization. The High Court held that lump sum compensation cannot be awarded, and the multiplier method must be followed. The compensation awarded by the High Court was as follows:

Claim	Amount awarded (in INR)
i. Loss of future income (60,000 x 17)	10,20,000
ii. Loss of actual income	5,500
iii. Pains and sufferings	1,00,000
iv. Medical expenses	2,00,000

v. Attendance and conveyance charges 70,000 vi. Special diet and nutrition 20,000
vii. Loss of amenities in future life 50,000 TOTAL 14,65,500 3.6.
The Appellant has challenged the judgment of the High Court by way of the present Appeal by Special Leave Petition.

4. We have heard counsel for both parties, and carefully perused the record filed before the Court. The undisputed facts of the present case are:

4.1. Both the Courts below have found from the evidence, that the Respondent was driving his car rashly and negligently.

4.2. The Appellant, who was a young 29 year old on the date of the accident, has suffered serious injuries which have caused Permanent Disability to the extent of 75%. The Appellant produced his Orthopedic Doctor who corroborated that the Appellant was hospitalized from 25.10.2010 to 09.11.2010, and again from 25.11.2010 to 05.12.2010. The Appellant had sustained multiple injuries which resulted in Permanent Disability to the extent of 75% which is evidenced from the Disability Certificate issued by his Doctor. On account of the Permanent Disability, the Appellant is not able to drive any motor vehicle. 4.3. As a consequence of the accident, the Appellant lost his employment as a driver, and his livelihood. Before the accident, he was drawing a monthly salary of Rs.

8,500. In order to prove his income, the Appellant produced his employer Mr. Neeraj

Rajendra Tiwari before the High Court as Witness No. 3. Mr. Neeraj Tiwari deposed that he was working as a General Manager in Fiat India Automobiles Ltd. from June, 2008, and was the head of the Engine Department. He further deposed that the Appellant was employed by him, and was driving his personal car from 01.08.2008 on a monthly salary of Rs. 8,500. He also gave a certificate to that effect. The High Court erroneously concluded that it would be just and appropriate if the monthly income of the Appellant is considered at Rs. 5,000 on the ground that the salary of Rs. 8500 for a driver was on the higher side.

We do not agree with the reasoning given by the High Court for not accepting the income of the Appellant. The income of the Appellant must be taken as Rs. 8500 per month.

4.4. The Appellant submitted that even though his permanent disablement is 75%, his ability to earn his income was reduced by 100%, as he is not able to move or do any work.

5. In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his inability to lead a full life, and enjoy those things and amenities which he would have enjoyed, but for the injuries.

6. The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.

This Court in *Yadav Kumar v. The Divisional Manager, National Insurance Company Ltd.*¹ explained “just compensation” in the following words:

“It goes without saying that in matters of determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a ‘just compensation’. It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of ‘just compensation’ obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field.”

7. The Appellant would be entitled to compensation as follows:

7.1. The Appellant’s income was Rs. 8,500 per month. The Appellant was 29 year at the time of the accident. The Multiplier laid down in *Sarla Verma and Ors. v. Delhi Transport Corporation and Ors.*² would be 17. 7.2.

Loss of future income must be calculated in terms of the judgment of this Court in *Raj Kumar v. Ajay Kumar*³ wherein the Court held that where the claimant suffers a Permanent Disability as a result of injuries, the 1 (2010) 10 SCC 341 2 (2009) 6 SCC 121 3 (2011) 1 SCC 343 assessment of compensation for loss of future earnings would depend upon the impact and effect of the Permanent Disability on his earning capacity. The effect of the Permanent Disability on the earning capacity of the injured must be considered; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings suffered by the claimant. Hence, the compensation to be awarded is calculated as follows:

i. Minimum annual income of Appellant = $8,500 \times 12 = \text{Rs. } 1,02,000$ ii. Loss of future income at the level of his disability (i.e. 75%) = 75% of $1,02,000 = \text{Rs. } 76,500$ p.a. iii. Multiplier applicable (29 years) = 17 iv. Loss of future earnings = $76,500 \times 17 = \text{Rs. } 13,00,500$ 7.3. The Appellant has claimed compensation for actual loss of income at Rs. 1,50,000. This claim of the Appellant cannot succeed. The grant of loss of future income compensates for any further period of time where income was lost. Actual loss of income can only be awarded for the month in which the accident took place. Therefore, one month's salary being Rs. 8,500 be awarded for the month of October. 7.4. The Appellant has claimed reimbursement of Medical Expenses at Rs. 2,50,000.

The MACT in para 4 of the judgment recorded that the Claimant had incurred total expenditure of Rs. 5,50,000 till the date of the judgment for medicines, hospital charges, doctor's fee, operation charges, travelling expenses and expense for special diet and granted Rs. 2,00,000 as compensation based on actual expenditure.

Since the Appellant has claimed expenses for special diet and attendance charges separately before this Court, we find it appropriate to award Rs. 2,50,000 as claimed by him on account of recurring medical expenses.

7.5. The Appellant has claimed Rs. 90,000 for attendance and conveyance charges. The High Court had granted Rs. 70,000. Keeping in consideration the injury suffered, the Appellant has permanently lost the source of livelihood as his movement has got severely restricted with permanent impairment of the right side of his body. As he is permanently disabled for life, towards the attendance and conveyance charges we grant to the Appellant Rs. 90,000 as claimed. 7.6. The Appellant made a claim for Rs. 1,00,000 for special diet and nutrition. The High Court awarded Rs. 20,000

on this account. This amount seems to be meager to this Court given inflationary trends, and increased costs of living.

In Puttamma and Ors. v. K.L. Narayana Reddy and Anr.⁴ this Court has stated:

“... we hold that the Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy.” ⁴ (2013) 15 SCC 45 In view of the said principle, compensation for special diet and nutrition be enhanced to Rs. 80,000. 7.7. The compensation for loss of amenities in future life is enhanced from Rs. 50,000 to Rs. 1,00,000. 7.8. The Appellant has further claimed compensation for pain and suffering at Rs. 2,00,000. The High Court awarded the Appellant Rs. 1,00,000 on this count. In case of permanent disability to the extent of 75%, and loss of livelihood of the sole bread winner of the family, it is not only the victim, but also his kith and kin who face the trauma. The Appellant has had steel rods and artificial material inserted into his body through surgery. His income earning capacity has been reduced by 100%.

In such circumstances, we find it appropriate to award the Appellant Rs. 2,00,000 as compensation for the life long pain and suffering by him and his family.

8. The total compensation awarded above is set out hereinbelow:

Compensation	Amount awarded (in INR)
i) Loss of future income	13,00,500
ii) Loss of actual income	8,500
iii) Medical expenses	2,50,000
iv) Attendance and conveyance charges	90,000
v) Special diet and nutrition	80,000
vi) Loss of amenities in future life	1,00,000
vii) Pain and suffering	2,00,000
Total	20,29,000

The Appellant is entitled to payment of a total compensation of Rs. 20,29,000 (Rupees Twenty Lakhs Twenty Nine Thousand Only) along with Simple Interest at 9% p.a. from the date of the application made before the MACT on 11.10.2010 till the date of payment from both the Respondents, who are jointly and severally liable for the same. The amount be paid to the Appellant within twelve weeks from the date of this judgment.

9. Civil Appeal is accordingly allowed, with no order as to costs.
Pending applications if any are accordingly disposed of.

.....J. (R. F. Nariman)J. (Indu Malhotra) New Delhi
August 21, 2018