

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 5846-5851 OF 2013.
(Arising out of SLP(C) Nos. 17215-17220 of 2010)

K.Gowthami (minor) through
Maternal Grandmother and another ...Appellants
15/07/2013
versus

New India Assurance Company Ltd. and another...Respondents

O R D E R

Leave granted.

These appeals are directed against judgment dated 25.2.2010 of the learned Single Judge of the Madras High Court whereby he reduced the amount of compensation determined by Motor Accidents Claims Tribunal, Chennai (for short, the Tribunal).

Ananthi (aged 35 years) and her son Subash (aged 9 years) were killed in a road accident which occurred on 25.12.2003 when the TVS Scooty being driven by Ananthi was hit from behind by a lorry belonging to respondent No.2 - S.Senthilkumar. Two other children of Ananthi, viz., K.Gowthami (aged 12 years) and K.Ashok Kumar (aged 14 years) sustained serious injuries in the accident, the details of which are given below:

K.GOWTHAMI

- i. Removal of the spleen.
- ii. Damage to internal digested and reproductive organs.
- iii. Nerve injury in left hand and shoulder.
- iv. Severe internal injury in the chest and skull.

K.ASHOK KUMAR

- i. Fracture and complete degloving injury in the left leg from the hip to the foot leading to disruption of the vascular and nervous system.
- ii. Severe internal injuries in the chest and skull.
- iii. Multiple internal and external injuries.

K.P.Padmavathi (mother of deceased Ananthi, who had separated from her husband many years ago) filed 4 petitions under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act) for award of compensation, the details of which are given below:

CLAIM NO.VICTIMCOMPENSATION CLAIMED

MACT OP NO.693/04K.GOWTHAMIRs.22,00,000/-

MACT OP NO.694/04K.ASHOK KUMARRs.24,00,000/-

MACT OP NO.695/04K.SUBASH (DEAD)Rs.6,00,000/-

MACT OP NO.696/04K.ANANTHI (DEAD)Rs.23,00,000/-

In the written statement filed on behalf of respondent No.1, it was pleaded that the accident had been caused due to the carelessness of Ananthi and that there was no rashness or negligence on the part of lorry driver. It was also pleaded that the injuries suffered by K.Gowthami and K.Ashok Kumar were simple and the compensation claimed on their behalf was highly excessive.

After considering the statements of K. Gowthami and K. Ashok Kumar, the Tribunal held that the accident was caused due to rash and negligent driving of the lorry resulting in the death of Ananthi and her son Subash and injuries to them. The Tribunal further held that respondent No. 1 is liable to pay compensation because the offending vehicle was insured.

The Tribunal then considered the issue relating to compensation, took cognizance of the nature of injuries suffered by K.Gowthami, which included removal of her spleen and awarded compensation under the following heads:

K.GOWTHAMI

Transport expenses

: Rs. 5,000

Extra nourishment

: Rs. 25,000

Damage to clothing and articles :

: Rs. 1,000

Medical expenses

: Rs. 10,000

Pain and sufferings to family members

: Rs. 10,000
Inability to participate in sports
: Rs. 10,000
Mental agony and torture
: Rs. 50,000
Loss of proper marital alliance
: Rs. 1,00,000
Additional Transport expenses
: Rs. 20,000
Pain and sufferings
: Rs. 2,00,000
Permanent disability
: Rs. 40,000
Total compensation is fixed at
: Rs. 4,71,000

The Tribunal noted that K.Ashok Kumar had suffered 75% permanent disability and awarded compensation under the following heads:

Transport expenses
: Rs.
5,000
Extra nourishment
: Rs.
25,000
Damage to clothing and articles
: Rs.
1,000
Medical expenses
: Rs.
10,000
Pain and sufferings to family members
: Rs.
10,000
Inability to participate in sports
: Rs.
10,000
Mental agony and torture
: Rs.
50,000
Loss of proper marital alliance
: Rs.
75,000
Additional Transport expenses
: Rs.
20,000
Pain and sufferings
: Rs.
2,00,000
Permanent disability
: Rs.
70,000
Total Compensation is fixed at
: Rs.
4,76,000

For determining the amount of compensation in lieu of the death of Ananthi, the Tribunal took note of the appellants plea that she was working as beautician in Jimmys Ennis Gents Hair dressing Saloon and part time consultant in Hindustan Lever Network, referred to the bills given by the management of the Saloon and concluded that her monthly income could be taken as Rs.7,500/-. The Tribunal deducted 1/3rd of the income towards personal expenses and applied the multiplier of 16. The Tribunal also awarded Rs.25,000/- towards loss of expectation of life, Rs.20,000/- due to loss of love and affection of the mother, Rs.8,000/- for funeral expenses and Rs.2,000/- due to damage to the clothing of the deceased. The Tribunal also awarded Rs.2,65,000/- on account of the death of Subash.

The learned Single Judge of the High Court partly allowed the appeals filed by respondent No.1 and substantially reduced the amount of compensation awarded by the Tribunal. The particulars of the reduced compensation awarded to K.Gowthami and K.Ashok Kumar are as under:

K. Gowthami

Consequently, the total amount of Rs.4,71,000/- is hereby reduced to Rs.1,62,000- and the brea

Up details are as follows:

Transport charges
Rs.
6,000
Damage to clothes and articles
Rs.
1,000
Extra nourishment
Rs.
15,000
Medical expenses
Rs.
10,000
Mental agony and torture
Rs.
20,000
Pain and suffering
Rs.
30,000
Permanent disability
Rs.
80,000
Total
Rs.
1,62,000

K.ASHOK KUMAR

In view of the above modification, the award amount of Rs.4,76,000/- is hereby reduced to Rs.1,86,000/- and the modified amounts are as follows:

Transport charges
Rs.
5,000
Damage to clothes and articles
Rs.
1,000
Extra nourishment
Rs.
10,000
Medical expenses
Rs.
30,000
Mental agony and torture
Rs.
30,000
Permanent disability
Rs.
1,00,000
Total
Rs.
1,86,000

The compensation awarded in lieu of the death of Subash and Ananthi was reduced to Rs.50,000/- and Rs.6,31,000/-, respectively.

We have heard Shri P.B. Suresh, learned counsel for the appellants and Shri A.K. Raina, learned counsel for respondent No.1 and carefully scrutinized the record.

In our view, the impugned judgment is liable to be set aside because while reducing the amount of compensation awarded by the Tribunal, the learned Single Judge did not keep in mind the principles laid down by this Court in R.D.Hattangadi v. Pest Control (India) (P) Ltd. (1995) 1 SCC 551 and Reshma Kumari v. Madan Mohan (2009) 13 SCC 422 which were subsequently followed in Raj Kumar v. Ajay Kumar (2011) 1 SCC 343, Ibrahim v. Raju (2011) 10 SCC 634, Sanjay Batham v. Munnalal Parihar (2011) 10 SCC 665, Govind v. New India Insurance Company Ltd. (2011) 10 SCC 683, Kavita v. Deepak (2012) 8 SCC 604 and several other judgments. The ratio of these judgments is that compensation in personal injury cases should be awarded under the following heads:

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.

red, 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 *Raj Kumar v. Ajay Kumar* (supra), this Court referred to several precedents and made the following significant observations:

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.

Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses Item (iii) depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages Items (iv), (v) and (vi) involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability Item (ii)(a). We are concerned with that assessment in this case.

Assessment of future loss of earnings due to permanent disability

Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a persons inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a persons inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (the Disabilities Act, for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is, 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

What requires to be assessed by the Tribunal is the effect of the permanent disability on the

earning capacity of the injured; 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 (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.

A critical analysis of the impugned judgment shows that in the case of K.Gowthami, the learned Single Judge set aside the award of Rs.1,00,000/- under the head of loss of proper marital alliance by observing that the removal of spleen would not diminish the prospects of marriage. The award of Rs.2,00,000/- under the head pain and sufferings was also treated by the learned Single Judge to be on higher side and was reduced to a paltry amount of Rs.30,000/-. The award of Rs.25,000/- under the head of extra nourishment was reduced to Rs.15,000/-. The compensation awarded under the head of mental agony and torture was reduced from Rs.50,000/- to Rs.20,000/- and compensation awarded under the head inability to participate in sports was altogether set aside. The narrow and pedantic approach of the learned Single Judge is evinced from the following observations:

It may be a person can survive even without a spleen. But one thing is clear that it is performing various functions in the human body.

Thus, this court has upheld the disability fixed by the Tribunal at 40% for the removal of spleen; however, considering the facts and circumstances of the case, I am of the opinion that a sum of Rs.2,000/- could be awarded for each percentage of disability. If so awarded, the total amount works out to Rs.80,000/- for 40% disability.

In the case of K.Ashok Kumar, the learned Single Judge did take cognizance of the fact that his disability was 70% but reduced the amount of compensation by making the following observations:

I find that on account of the accident, the victim had sustained devolving injury in the left thigh and the doctor had assessed the disability at 70%. In this case also, I find that the amounts awarded under different heads were boosted up, resulting in awarding an exorbitant amount of Rs. 4,76,000/-, I am of the view that proper reduction has to be made by way of modification in the amounts awarded under different heads. The Tribunal has awarded a sum of Rs.2 lakhs under the head pain and suffering, which, in my view, is not justified by the Tribunal by giving any proper reason. Hence, the sum of Rs. 2 lakhs awarded under the head 'pain and suffering' is reduced to Rs. 30,000/-. Similarly, the amount of Rs.20,000/- awarded towards additional transport expenses is hereby set aside since the same is not supported by any evidence. Likewise, a sum of Rs.75,000/- awarded for loss of proper marital alliance is also liable to be set aside since the injury will not in any way affect the marital prospects. Hence, the said sum of Rs. 75,000/- is hereby set aside. Further, a sum of Rs. 50,000/- under the head of mental agony and torture is hereby reduced to Rs. 30,000/-. Similarly, a sum of Rs.10,000/- each awarded towards the heads 'inability to participate in sports' and 'pain and suffering to family members' are hereby set aside and a sum of Rs.25,000/- awarded under the head of extra nourishment is hereby reduced to Rs. 10,000/-. However, a sum of Rs. 70,000/- awarded under the head 'permanent disability' is enhanced to a consolidated sum of Rs. One lakh.

For reducing the compensation awarded on account of the death of Subash, the learned Single Judge assigned the following reasons:

The claim was made by his brother and sister, who were aged about 14 and 11 years, and they cannot be the dependants of the 9 years old minor boy. Under such circumstances, I am of opinion that they are entitled only to a sum of Rs.50,000/- under the head of 'no fault liability'. With regard to this, the learned counsel for the appellant relied on the judgment reported in (2008) 1 MLJ 1107 (cited supra), wherein it has been held that "the brother and sisters of the deceased are not entitled to compensation as they are not dependants and they are entitled to get compensation only at Rs.50,000/- under 'no fault liability' in terms of section 140 of the Motor vehicles Act". The ratio laid down in the said judgment is squarely applicable to the facts of the case on hand. Hence, the sum of Rs.2,65,000/- awarded by the Tribunal towards compensation is hereby reduced to 50,000/-.

The compensation awarded for the death of Ananthi was also reduced to Rs.6,31,000/- by the learned Single Judge arbitrarily treating her income as Rs.4,500/- per month.

We are sure that if the learned Single Judge had taken the trouble of going through the judgment in R.D.Hattangadis case, then he would not have arbitrarily reduced the amount of compensation. What is most surprising is that in the cases of K.Gowthami and K.Ashok Kumar, the learned Single Judge completely overlooked the fact that as a result of accident both had suffered grievous injuries which will not only affect the quality of their life, but also deprive them of the opportunities to excel in future endeavors. Not only this, their marital prospects will be substantially diminished. Admittedly, as a result of the accident, the spleen of K.Gowthami had to be removed. It is impossible to comprehend as to how the learned Single Judge could say that the spleen is an insignificant part of the body and removal thereof will not adversely

y affect the life of K. Gowthami, who was only 12 years old at the time of accident. In our considered view, the removal of spleen will certainly be a serious impediment in the marriage of the injured. That apart, she will require constant treatment, medicines, the particular type of food and will have to suffer various other adverse consequences including loss of expectation of life, i.e., shortening of normal longevity. Therefore, the learned Single Judge was not at all justified in reducing the amount of compensation in her case.

The reasons assigned by the learned Single Judge for reducing the amount of compensation awarded to K.Ashok Kumar are equally untenable. Having agreed with the Tribunal that K.Ashok Kumar had suffered 70% disability, the learned Single Judge was not at all justified in reducing the amount of compensation under the head pain and suffering from Rs.2,00,000/- to Rs.30,000/-. He should have taken note of the fact that the disability suffered by the victim will affect him for the rest of life and he will have to take constant treatment by spending substantial amount. The setting aside of the award of Rs.20,000/- towards additional transport expenses is not supported by any reason. Unfortunately, the learned Single Judge forgot the settled law that while determining the compensation in accident cases, the Tribunal/the Court is entitled to make some guess work about the expenses incurred by the victim.

We may now advert to the issue relating to award of compensation in lieu of the death of Ananthi. The claimants had adduced oral as well as documentary evidence to prove that late Ananthi's income was Rs.10,000-12,000/- per month. Respondent No.1 did not adduce any evidence on this issue. The Tribunal determined the amount of compensation by taking the income of the deceased as Rs.7,500/- per month. The learned Single Judge reduced the same to Rs.4500/- per month without assigning any reason. Therefore, the conclusion recorded by him cannot be sustained.

The decision of the learned Single Judge to reduce the amount of compensation in lieu of the death of Subash from Rs.2,65,000/- to Rs.50,000/- is also unsustainable. The reason assigned by the learned Single Judge for this purpose is ex-facie erroneous. The mere fact that the age of the deceased was 9 years was, by itself, not sufficient for reducing the amount of compensation. How can it be said that the surviving children will not suffer the pain and trauma of having lost their younger brother in the accident. As a matter of fact, they will not be able to reconcile with the loss of the younger brother throughout their life. The Tribunal had relied upon the judgment of this Court in Manju Devi v. Musafir Paswan 2005 ACJ 99 and determined the compensation by assuming his income at a given point of time to be Rs.15,000/- per month and applied the multiplier of 15. This was a perfectly correct approach and the learned Single Judge was not right in reducing the amount of compensation.

In the result, the appeals are allowed, the impugned judgment is set aside and the award passed by the Tribunal is restored with the modification that instead of 7.5%, respondent No.1 shall pay 9% interest.

Respondent No.1 is directed to pay the balance amount of compensation to the claimants with interest at the rate of 9% from the date of filing the claim petition, i.e., 5.2.2004. The needful must be done within a period of three months from today by getting demand drafts prepared in the name of the claimants from a nationalized bank.

After making payment, respondent No.1 shall submit a report to Motor Accident Claims Tribunal, Chennai. If the Presiding Officer of the Tribunal finds that respondent No.1 has not complied with the directions contained in this order, then he shall suo-motu initiate action for recovery of the amount and pay the same to K. Gowthami and K. Ashok Kumar.

The Registry is directed to send copies of this order to the appellants, K. Gowthami and K. Ashok Kumar at the addresses mentioned in the memo of the special leave petitions.

.....J.
(G.S. SINGHVI)

.....J.
(V. GOPALA GOWDA)

New Delhi;
July 15, 2013.

ITEM NO.38

COURT NO.3

SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).17215-17220/2010

