

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6178 OF 2013
(Arising from SLP(C) No.27513/2011)

K. Govinda Raju

..Appellant

versus

The Manager,
Bajaj Allianz General Insurance
Company Limited and another

..Respondents

O R D E R

Delay condoned.

Leave granted.

Feeling dissatisfied with the meager enhancement of less than Rs.40,000 granted by the High Court in the amount of compensation determined by Motor Accident Claims Tribunal, Bangalore (for short, 'the Tribunal'), the appellant has filed this appeal.

The appellant became victim of an accident which occurred on 8.2.2007 when he was hit by a motorcycle owned by respondent no.2. At the relevant time, the appellant's age was 21 years. He claimed compensation of Rs.6,00,000 by alleging that the accident was caused due to rash and negligent driving of the motorcycle. The insurance company took the stand that the motorcycle owned by respondent No.2 was not involved in the accident. On the pleadings of the parties the Tribunal framed the following issues:

- "1. Whether the petitioner proves that he sustained injuries in an accident, occurred on 8.2.2007 at about 11.45 p.m. at old madras road, Opp. Muttumariyamma temple, KR puram, Bangalore due to actionable negligence of the rider of motor cycle No.KA-03-EW-1558?
2. Whether the entitled for compensation? If so at what amount and from which respondent?
3. What award or order?"

After considering the pleadings and evidence of the parties the Tribunal held that the accident was caused due to rash and negligent driving of motorcycle bearing No. KA-03-EW-1558, which was insured with the insurance company. The Tribunal then considered the issue relating to quantum of compensation, referred to the statement of Dr.S. Rajanna and passed award dated 2.2.2009 for payment of compensation amounting to Rs.1,36,760 with six per cent interest from the date of filing the claim petition till the date of actual payment.

The High Court partly allowed the appeal preferred by the appellant and enhanced the compensation to Rs.1,74,720.

We have heard Shri V.N.Raghupathy, learned counsel for the appellant and Shri Priyadarshi Gopal, learned counsel for respondent No.1 and perused the record.

In our view, the impugned judgment is liable to be set aside because while deciding the appellant's claim for enhancement of compensation the Tribunal and the High Court did not take into consideration the appellant's functional disability and consequential loss suffered by him as also the principles laid down by this Court in R.D.Hattangadi v. Pest Control (India) (P) Ltd. (1995) 1 SCC 551, which were subsequently reiterated and expanded in Raj Kumar v. Ajay Kumar (2011) 1 SCC 343 and large number of other cases.

It is not in dispute that at the time of accident the appellant's age was 21 years and he was doing the work of a Painter. It is also not in dispute that as a result of accident, he suffered the following injuries:

- "1) Abrasion over centre of Fore-head 3x2 cm. size.
- 2) Contusion over centre of fore head.
- 3) Swelling and tenderness over middle 1/3 of right leg with abnormal mobility.

X-ray No.3081/08-02-2007 showed:

Fracture middle 1/3rd of right Tibia and fibula with displacement."

Dr. S. Rajanna, who examined the appellant on 8.4.2008, found the following disabilities in his body:

1. Patient walks with limp on to right side.
2. Operated scar on anterior aspect of right knee.
3. Shortening of (right) lower limb by 1.5 cms.
4. Limitation of (right) knee movements by 30%.
5. Movements of (right) Ankle movements by 25%.
6. Muscle power around (right) knee is Gr.IV against Gr.V.
7. Muscle power around (right) Ankle is Gr.IV against Gr.V.

Dr. Rajanna expressed his opinion in the following words:

"Due to above mentioned disabilities, he cannot stand and walk for long time, needs support to climb stairs, cannot sit crossed leg, difficulty to squat, cannot do any work in kneeling position, cannot lift any weight.

After referring various guidelines including Alimco manual, I am of the opinion that the petitioner is having disability 36% of (right) lower limb disability and disability of 20% to the whole body. In view of this disabilities, the petitioner cannot work as a Painter and cannot do any other manual work also."

From what we have noted above, it is clear that the appellant's functional disability would be 100% because he will not be able to do the work of Painter or any other manual work. In other words, his earning capacity has been reduced to zero.

In R.D.Hattangadi v. Pest Control (India) (P) Ltd., this

Court referred to the judgment of the Court of Appeal in Ward v. James (1965) 1 ALL ER 563 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 as 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."

The Court further observed that determination of the amount of compensation involves some guess work, some hypothetical considerations and some amount of sympathy linked with nature of the disability caused due to the accident.

After 16 years, a Bench of two Judges revisited the issue in Raj Kumar v. Ajay Kumar (2011) 1 SCC 343 and held that compensation in the matters like the present one 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, 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).

The Bench then elaborated the methodology to be adopted by the Tribunals and the Courts for assessing the degree of disability etc. in the following words:

"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 person's 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 person's 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."

The propositions laid down in R. D. Hattangadi's case and Raj Kumar's case were reiterated in 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 cases.

In the appeal arising out of SLP(C) No.6630/2012, Mounesh v. Thinmanna, decided on July 22, 2013 this Court considered the claim of a person, who became disabled to perform the work of a Coolie, which he was doing before the accident and enhanced the compensation from Rs.1,49,319, determined by the High Court (the Tribunal had awarded Rs.1,67,400 but the High Court reduced the same) and held that the appellant is entitled to total compensation of Rs.10,00,000 under various heads i.e. expenses incurred in medical treatment; hospitalization, medicines, transportation and nourishing food; future medical treatment; loss of marriage prospects; pain and suffering and loss of earning and other gains.

The appellant's case is similar to that of Mounesh. Therefore, by applying the principles laid down in R.D. Hattangadi's case, Raj Kumar's case and Mounesh's case, we hold that the appellant is entitled to compensation of Rs.10,00,000.

The appeal is accordingly allowed and the impugned judgment is set aside. The award passed by the Tribunal is also set aside and it is declared that the appellant is entitled to compensation of Rs.10,00,000 (rupees ten lacs) with interest at the rate of nine per cent per annum from the date of filing the claim petition till the date of actual payment.

The Insurance Company is directed to pay the amount of enhanced compensation to the appellant within a period of three months from today by getting a demand draft prepared in his name from a nationalised bank.

| (Parveen Kr.Chawla)
| Court Master
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| | (Phoolan Wati Arora)
| | Court Master
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[signed order is placed on the file]