

K. Govindaraj Vs. K. Kumar and Another

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Court : Chennai Madurai

Decided On : Apr-22-2016

Judge : The Honourable Ms. Justice V.M. Velumani

Appeal No. : C.M.A(MD).No. 708 of 2007

Appellant : K. Govindaraj

Respondent : K. Kumar and Another

Judgement :

(Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and executable order dated 12.09.2006 passed in M.C.O.P.No.571 of 2004 by the Motor Accident Claims Tribunal (Principal Subordinate Court), Kumbakonam.)

This Civil Miscellaneous Appeal has been filed to set aside the order dated 12.09.2006 passed in M.C.O.P.No.571 of 2004 by the Motor Accident Claims Tribunal (Principal Subordinate Court), Kumbakonam.

2. The appellant is the claimant in M.C.O.P.No.571 of 2004 and he claimed a sum of Rs.5 lakhs (subsequently by amendment, the same was enhanced to Rs.8 lakhs) for injury sustained by him in the road accident occurred on 19.08.2004.

3. According to the appellant, he was travelling in a Hero Honda Motorcycle as a pillion rider. One Mohan was riding the motorcycle in a rash and negligent manner.

In order to avoid the lorry coming in the opposite direction, the said Mohan suddenly turned his vehicle at high speed. Due to that, the appellant was thrown out and suffered grievous injuries on his head and left shoulder. A complaint was given against the driver of the lorry and a case has been registered. He was admitted in the hospital and spent Rs.1,50,000/- towards medical expenses and therefore, he claimed total sum of Rs.5 lakhs as compensation. Before the Tribunal, the first respondent remained ex-parte.

4. The second respondent filed counter statement and denied all the averments made by the appellant and stated that the injury suffered by the appellant is only simple injury and the appellant was in a drowsy mood and therefore, fell down from the motor-bike and suffered injuries. In any event, the amount claimed by the appellant is excessive. The second respondent also stated that the first respondent was not owner and the vehicle was not duly insured.

5. Before the Tribunal, the appellant himself was examined as P.W.1 and one Doctor Srinivasan and Doctor Sundar were examined as P.W.2 and P.W.3 and marked 21 documents as Ex.A.1 to Ex.A.21. The second respondent did not let-in any oral and documentary evidence. The Doctor P.W.2 gave disability certificate Ex.A.19 with regard to the injury on the chest and left shoulder at 20%. P.W.3 Doctor, who is a Neuro Surgeon gave a disability certificate as Ex.A.21 at 80% with regard to the head injury.

6. The Tribunal considering the pleadings, evidence and arguments, came to the conclusion that the driver of the motorcycle was responsible for the accident. The learned Judge held that the appellant joined duty in the police department and therefore, fixed liability with regard to the injuries on head only at 30% and for injury at chest and shoulder at 20% and awarded a compensation of Rs.50,000/- each for injury suffered in chest, shoulder and head. The Tribunal awarded Rs.1,00,000/- towards medical expenses. Total sum of Rs.2 lakhs was awarded. Against the said award, the present C.M.A is filed.

7. The learned counsel for the appellant submitted that the Tribunal failed to consider the grievous nature of injuries caused and suffered by the appellant in the accident. The learned Judge erred in reducing the disability percentage to 30% to

the brain, when the competent Neuro Surgeon certified at 80%. The Tribunal erred in awarding one lakh towards medical expenses, while the appellant produced the medical bills and substantiated his claim for Rs.1,20,000/-. The learned counsel for the appellant submitted that due to injuries suffered by the appellant, medical board certified him as unfit to continue in service. The department declared him as invalid and Superintendent of Police by order dated 13.11.2006, declared him as unfit to hold the post of Head Constable and he was granted only invalid pension. The learned counsel for the appellant filed an application for filing additional documents to substantiate the claim that the appellant was relieved from service and was granted invalid pension. The said application was allowed. The document is taken on file and marked as A2. In view of the subsequent development, the learned counsel for the appellant contended that the appellant is entitled to get total compensation of Rs.8 lakhs.

8. The learned counsel for the appellant relied on the following judgments:

(i) In **SARLA VERMA (SMT) AND OTHERS V DELHI TRANSPORT CORPORATION AND ANOTHER** reported in **2009(6)SCC 121**, in which Paragraph Nos.24, 42 are extracted hereunder:

24. In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words actual salary should be read as actual salary less tax). The addition should be only 30% if the age of the deceased was 40 to 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied of different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the Courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare

and exceptional cases involving special circumstances.

42. We therefore, hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-19 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

(ii) In **HELEN C. REBELLO (Mrs) AND OTHERS V MAHARASHTRA STATE ROAD TRANSPORT CORPORATION AND ANOTHER** reported in **1999(1) SCC 90**, in which Paragraph No.34 is extracted hereunder:

This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through deduction not to give gain to the claimant twice arising from the same transaction, viz., the same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How, thus an amount earned out of one's labour or contribution towards one's wealth, savings etc., either for himself or for his family which such person knows under the law has to go to his heirs after his death either by succession or under a Will could be said to be the pecuniary gain only on account of one's accidental death. This, of course, is a pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicles Act. There is no correlation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any correlation with an amount earned by an individual. Principle of loss and gain has to be on the same plane within the same sphere, of course, subject to the contract to the contrary or any

provisions of law.

(iii) In **RAJ KUMAR V AJAY KUMAR AND ANOTHER** reported in **2011 ACJ 1**, in which Paragraph Nos.10, 11 are extracted hereunder:

10. Ascertainment of the effect of the permanent disability on the actual learning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability [sic disability] (this is also relevant for awarding compensation under the head loss of amenities of life). The Second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60 per cent. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100 per cent as in the case of a driver or carpenter, nor 60 per cent which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability and may, therefore, be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head

of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100 per cent (or even anything more than 50 per cent), the need to head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an inquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment [for example Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorised texts) for understanding medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view Schedule I to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

(iv) In **BALRAM PRASAD V. KUNAL SAHA AND OTHERS** reported in **2014(1) SCC 384**, in which Paragraph Nos.103.1, 103.2 and 116 are extracted hereunder:

103.1. In Ningamma case this Court has observed at para 34 which reads thus:(SCC p.721)

34. Undoubtedly, Section 166 of the MVA deals with 'just compensation' and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting 'just compensation' in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the Court is duty-bound and entitled to award 'just compensation' irrespective of the fact whether any plea in that behalf was raised by the claimant or not.

103.2. In Malay Kumar Ganguly case this Court by placing reliance on the decision of this Court in R.D.Hattangadi v.Pest Control (India) (P) Ltd., made observation while remanding back the matter to the National Commission solely for the determination of quantum of compensation, that compensation should include loss of earning of profit up to the date of trial and that it may also include any loss already suffered or is likely to be suffered in future . Rightly the claimant has contended that when original complaint was filed soon after the death of his wife in 1998, it would be impossible for him to file a claim for just compensation for the pain that the claimant suffered in the course of the 15 year long trial.

116. In view of the aforesaid reasons stated by us, it is wrongly untenable in law with regard to the legal contentions urged on behalf of AMRI Hospital and the doctors that without there being an amendment to the claim petition, the claimant is not entitled to seek the additional claims by way of affidavit, the claim is barred by limitation and the same has not rightly been accepted by the National Commission.

9. The learned counsel for the second respondent submitted that the learned Judge has properly appreciated Ex.A.19, Ex.A.21 and has considered that the appellant suffered only 50% disability and awarded proper compensation. Similarly, with regard to other claim also, the Tribunal considered and awarded just

and proper compensation. The learned counsel for the second respondent has relied on the judgment in **RAJ KUMAR V AJAY KUMAR AND ANOTHER** reported in 2011 ACJ 1, in which Paragraph Nos.6 and 7 are extracted hereunder:

6. 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 accidents 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 ('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.

7. 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 per cent of the left lower limb, it is not the same as 45 per cent 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 per cent permanent disability of the right hand and 80 per cent permanent disability of left leg, it does not mean that the

extent of permanent disability with reference to the whole body is 140 per cent (that is 80 per cent plus 60 per cent). If different parts of the body have suffered different percentage of disabilities the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100 per cent.

10. I have heard Mr.T.V.Sivakumar, learned counsel appearing for the appellant and Mr.P.Malini, learned counsel appearing for the second respondent and carefully perused the entire materials available on record.

11. From the materials on record, it is seen that the appellant claimed a sum of Rs.1,50,000/- towards medical expenses and produced bills Ex.A.7 to Ex.A.14, for having spent of Rs.1,20,000/-. The learned Judge without any reason granted only Rs.1,00,000/- towards medical expenses. The appellant is entitled to further sum of Rs.20,000/- towards medical expenses. The Tribunal did not grant any amount towards Transport, Extra nourishment, damage to clothing and compensation for pain and suffering and attendant charges. The appellant is entitled for following amounts under the above heads:

Transport	Rs. 2,000/-
Extra Nourishment	Rs. 25,000/-
Damage to clothing	Rs. 1,000/-
Pain and suffering	Rs.1,00,000/-
Attendant Charges	Rs. 25,000/-
Total	Rs.1,53,000/-

12. From the judgment relied on by the learned counsel for the appellant and the second respondent, it is seen that;

(a) Claimants must prove whether disability suffered by him is total permanent disability or permanent disability.

(b) Tribunal must consider the evidence and must come to the conclusion whether due to disability there is total loss of income, or partial loss of income or no loss of income. Based on such finding, compensation for loss of income has to be

awarded.

(c) It is for the Court to award just compensation. Even if the claimant has not claimed compensation under certain heads or claimed less compensation, the Court can award just compensation more than the amount claimed by claimants.

(d) There is no necessity to file amendment petition for claiming additional amount for compensation.

13. As far as the compensation for disability is concerned, the learned Judge erred in not accepting the disability certificate given by P.W.3 Doctor Srivivasan, a Neuro Surgeon without assigning any reasons. The Tribunal reduced disability for head injury to 30% instead of 80% as certified by P.W.3. It is pertinent to note that the respondent did not let-in any contra evidence to disprove the evidence of P.Ws2 and 3 and Ex.A.19 and 21.

14. The second respondent has not produced any evidence to prove that the appellant was in a drowsy mood and fell down from the bike and suffered injuries, this Court is taking note of subsequent event i.e., order dated 13.11.2006 issued by the Superintendent of Police whereby the appellant was relived from duty with effect from 27.10.2006 F.N., as he is not fit to continue as Head Constable. He was granted invalid pension. From the invalidation certificate of Medical Board as well as reliving order of Superintendent of Police based on certificate of Medical Board, the disability of appellant due to injuries is total permanent disability and total loss of income. In view of this fact the appellant is entitled to compensation for permanent disability as well as total loss of income. Hence, the appellant is entitled to compensation of Rs.2 lakhs for permanent disability instead of Rs.1,00,000/- and the appellant is entitled to compensation of Rs.2 lakhs for loss of income, as Medical Board declared the appellant as unfit to continue in service and the appellant was relived from service with effect from 27.10.2006. In the result, the award of Tribunal is modified as follows:

S.No	Description	Amount awarded by		Award confirmed/enhanced/granted
		Tribunal	This Court	

1.	Permanent disability	1,00,000/-	2,00,000/-	enhanced
2.	Loss of income	Nil	2,00,000/-	Granted
3.	Medical expenses	1,00,000/-	1,20,000/-	Enhanced
4.	Transport	-	2,000/-	Granted
5.	Extra Nourishment	-	25,000/-	Granted
6.	Damage to clothing	-	1,000/-	Granted
7.	Pain and suffering	-	1,00,000/-	Granted
8.	Attendant charges	-	25,000/-	Granted
Total Compensation		2,00,000/-	6,73,000/-	4,73,000/- enhanced

With the above modification, the Civil Miscellaneous Appeal is allowed. No costs. The Insurance Company is directed to deposit the amount, now fixed by this Court, with interest at 7.5% p.a., from the date of claim petition till the date of realisation to credit of the M.C.O.P.No.571 of 2004 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Court), Kumbakonam, within a period of eight weeks from the date of receipt of copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the same by making necessary application before the Tribunal.

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