

Basavaraj Vs. Shekhar and ors.

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Court : Karnataka

Decided On : Apr-03-1987

Reported in : ILR1987KAR1399

Judge : M.N. Venkatachaliah and ;P.K. Shyamasundar, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110-B and 110-D

Appeal No. : Misc. F.A. No. 2055 of 1986

Appellant : Basavaraj

Respondent : Shekhar and ors.

Advocate for Def. : K. Suryanarayana Rao and ;Suresh S. Joshi, Advs.

Advocate for Pet/Ap. : K. Apparao, Adv.

Judgement :

Skyamasundar, J.

1. This appeal arising under S. 110-D of the Motor Vehicles Act, is by consent of learned counsel on both sides taken up for final hearing and disposed of by this judgment.

2. The appeal is directed against the award dt. 26-12-1984 made by the Motor Accidents Claims Tribunal, Gulbarga in M.V.C. No. 86 of 1983 on its file. The

Tribunal awarded to the claimant-appellant a sum of Rs. 6,000/-as compensation for the injuries the claimant sustained at a mishap in which he was involved on the 24th April, 1983 at a place called Kembhavi, some distance from the city of Gulbarga. The appellant feels aggrieved by this award under appeal, complains of its stymied nature and seeks enhancement.

3. Having heard learned counsel on either side, we feel that the award in question suffers from extreme conservatism not justified in the facts and circumstances, besides it also appears to have been arrived without conforming to well settled parameters to which this court has on a number of occasions called attention to. It is a matter of some regret that despite the consistent endeavors made by this court in directing these Claims Tribunals to adopt appropriate norms evolved, more or less on a scientific basis, there still appears to be a discernible disinclination to follow such well tracked moorings in preference to producing awards dependent large1v on wayward intuition and hazardous guess-work.

4. The award under appeal suffers largely from these deficiencies. Therefore, it is, we have been compelled to interfere with it in order to put it on proper rails. It would in this connection be necessary to state a few facts necessary in the disposal of this appeal.

The appellant, on the date of the accident was a young man of 24 years. He is stated to be an agriculturist, who was also running a furniture and radio shop at the village of Kembhavi. On that ill-fated day he was riding a motor bicycle and enroute he ran into a tractor-tailor belonging to the 1st and the 2nd respondents herein, as a result of which a collision occurred and in consequence thereof the claimant was badly injured.

He suffered a number of fractures involving major bones of both arms both legs for mending of which he had to stay at the Gulbarga Government Hospital for 17 days receiving- the attention of an Orthopaedic surgeon, who was later examined before the Tribunal being PWI Dr. Somashekhar. Even after discharge it transpires, from proved facts, that for a period of three months he .had to convalesce in bed.

5. Amongst the several hardships he lists as a fall-out from this accident is the winding up of his furniture and radio shop business and the' diminishing returns from his agricultural holdings his further states that inspite of treatment which cost over eleven thousand rupees, he was still not restored to normalcy and suffered a nagging pain even now. Therefore, he asked for compensation in a sum of Rs. 1,00,000/-.

6. It is not disputed that if actionable negligence is held, proved, the liability to compensate would be of the Insurer, Respondent-3 herein. Mr. K. Suryanarayana Rao, who appears for the Insurer in this court does not dispute the existence of insurance coverage to the offending vehicle and does not further dispute liability to satisfy the award now under review or any enhancement which this court may make herein.

7. The Tribunal has recorded a finding that the accident was the result of rash and negligent driving of tractor- trailer by its driver and as a result of such ineptitude the claimant had suffered physically. In other words it held actionable-negligence on the part of the driver of the tractor-tailor was established. That finding, not having been appealed by anybody, stays and consequently the claimant's entitlement to compensation is established. The question is one of appropriate quantification. Rs. 6,000/-has been awarded by the learned Tribunal. After, going through the somewhat prolix order under appeal we must confess that we are unable to ascertain the basis or the reasons for making an award in a meagre sum of Rs. 6,000/-.

8. The Law as to the general nature of damages has been stated to be the ascertainment of the consideration which will make good to the sufferer, as far as money can do, the loss which he has suffered as the natural result of the wrong done to him. If the original position cannot be restored-is indeed in personal injury or fatal accident cases it cannot obviously be - the law must endeavour to give a fair equivalent in money, so far as money can be an equivalent and so 'make good' the damage. Lord Morris of Borth. Y. Gest said:

'To compensate in money for pain and for physical consequences is invariably difficult but.... no other process can be devised than that of making a monetary

assessment.'

(See *Parry v. Cleaver* (1970) AC 1 at 22)

Damages in personal injury actions 'are not punitive, still less a reward. They are simply compensation.' Damages must be full and adequate and as Field, J. said in *Phillips v. South Western Railway Co.*, (1874) 4 QBD 406:

'You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. (The plaintiff) can never sue again for it. You have, therefore, now to give him compensation, once and for all. He has done no wrong, he has suffered a wrong at the hands of the defendants, and you must take care to give him full fair compensation for that which he has suffered.'

The difficulties and uncertainties that attained the task of assessment should not prelude an assessment as best as can, in the circumstances be made. In the *Mediana* (1900) AC 113 Lord Halsbury said:

'Of course the whole region of inquiry into damage is one of extreme difficulty you very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those, who stand in place of the jury to consider what compensation in money shall be given for what is a wrongful act. 'Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that u can by any arithmetical calculation establish what is the exact mount amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident... But, nevertheless, the law recognises that as a topic upon which damages may be given.'

9. The two main elements in personal injury actions are the personal loss and pecuniary loss. In *Fair v. London and North Western Rly. Co.*, (1869) 21 LT 326 Chief Justice Cockburn distinguished the two aspects thus:

'In assessing (the) compensation the jury should take into account two things; first, the pecuniary loss (the plaintiff) 'sustains by accident; secondly, the injury he sustains in his person, or. his physical capacity of enjoying life. When they come to the consideration of the pecuniary loss they have to take into account not only his present loss, but his incapacity to earn -a future improved income.'

Referring to the heads of damages in personal injury actions McGregor on Damages (14th Edition) para 1157 provides:

'The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the courts have sub-divided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life.'

10. It is Trite law that in granting compensation for personal injuries the victim has to be compensated (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special damages.

11. Besides, it is well to remember (hat the measure of damages in all these cases should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure. Lord Devlin, observed that, the proper approach to the problem was to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrong doer to 'hold up his head among his neighbours and say with their approval that he has done the fair thing.'

12. There can be no-doubt that in this case the Tribunal had almost unforgivably oversimplified the issue. Surprisingly in the course of its lengthy order the Tribunal never referred to the nature, magnitude and the severity of the injuries the claimant had suffered. We had to ascertain them for ourselves after going through the record and on a perusal of the certified copy of the injury certificate, Exhibit P-4, marked in evidence.

13. Exhibit PA the injury certificate shows the following injuries:

- (1) Right foot of heads of the right 3rd and 4th metatarsal bones.
- (2) Right leg communicated fractures of mid shaft of right tibia and Rt. fibula in its middle 1/3rd.
- (3) Left leg communicated of proximal shaft of L tibia and fibula.
- (4) Right fore-arm-colle's of Rt. radius ulna sty lord.
- (5) Left fore-arms Colle's of Lt. Radius of u lna sty lord and base of 1st metacarpal.
- (6) Lacerated wound 2 x 1/2 cms. on chin.
- (7) Lacerated wound 1 1/2- x 1/2 cm s. on rt. ear.

14. The evidence of Dr. Somashekhar, PW 1, who treated the claimant both in the hospital and even thereafter during his post-treatment check-ups, is that the claimant was in the hospital as an inpatient for 17 day's and after discharge he was in bed for three months. He had undergone a lot of pain and suffering and even thereafter if the fractures had united he would still suffer pain now and then. He resisted more than one suggestion in the cross examination that the injured was completely free from all symptoms of pain from injury and he was absolutely normal.

15. In spite of this evidence of the Doctor, the teamed Tribunal did not take notice of the continued affectation suffered even after treatment. It proceeded to dispose of the aforesaid aspect of the claimant's case by making the following observations, which appears to us to be extremely casual besides being error prone.

'It is no doubt true that the evidence on record will show that the injured claimant sustained some serious injuries to his legs and hands and he was admitted to the Government General Hospital at Gulbarga as an inpatient from 24-4-1983 to 17-5-1983. During this period, the claimant must have suffered some amount of pain

and suffering and was unable to attend to his normal duties during this period. But, Unfortunately the injuries had not caused any Permanent disability.....'

The statement as above 'that unfortunately the injuries had not caused any permanent disability,' we take it is a mistake that had crept into the record and had obviously been allowed to linger by oversight. We have earlier pointed out that the learned Tribunal did not spread the compensation awardable over distinct heads which are now recognised in the field of Torts as inevitable para-meters affording the basis on which and to the extent, an accident victim was, liable to be compensated in an action for personal injuries.

16. If only the Tribunal spread its Rs. 6000/- award over the several heads under which compensation could be recovered, it would have at once recognised how futile was the exercise made and how grossly unfair the result of such exercise to the claimant, who had admittedly five fractures and was virtually tied down to his bed for nearly four months. The unchallenged medical evidence indicates that the painful fall out from the accident still continued to afflict the victim, who was a young man of 24 years at the time of the accident and who must now be 27 or 28 years old.

17. The evidence shows that he was a young farmer and was along side running some business as well and he had since taken the initiative to start a cloth business in which he appeared to be thriving.

18. It seems to us that for a young man in the prime of his life who could probably no more enjoy riding a motor bicycle as he was accustomed to, is deprived of not merely many amenities of life, but also the prospects of enjoyment of vigorous physical activities compensation for such pitiful plight should not be something which has the appearance of being cramped, cribbed and confined to a penurious award totally unjustified in the facts and circumstances of the case. Therefore, it is, we propose revise and reschedule the award on proper lines.

19. The first head under which the compensation has to be granted to the claimant is for the injury suffered and pain and suffering endured. Five of the injuries sustained by the claimant have been classified as grievous (vide Ex. P-4). Two of

his toes had broken and both legs had been fractured. The right and the left fore arms had been fractured besides he had sustained two deep wounds on the chin and right ear. He was in the hospital for 17 days and the evidence further shows that he was bed-ridden of three months thereof. The Doctor's evidence is that even now the claimant was not free from pain. It is obvious that, the injured had endured a lot of pain and had suffered consequent inconvenience and hardship.

20. We have earlier referred to the statement of Lord Devlin, regards the approach to be made in these matters of awarding compensation and we would also in this connection like to refer to the decision of the Supreme Court in the case of Concord of India insurance Co., Ltd. v. Nirmala Devi, AIR 1974SC 1666 wherein it has been held:

'The determination of the quantum must be liberal, or not niggardly since the law values life and limb in free country in generous scales.'

21. Therefore, it is, we think in the facts and circumstances of this case a sum of Rs. 25,000/- should be awarded to this man who had his toes, fingers, hands and legs broken and suffered untold pain and misery for 3 to 4 month-, under the head 'injury pain and suffering.'

22. The next head under which the claimant has to be compensated is towards loss of earnings. It is in evidence that he was an agriculturist and was also doing some business in furniture and radio and that he had to wind up his furniture and radio establishment following the accident and, therefore, started a flourishing cloth trade which he could carry on despite the physical constraints that he had developed following the accident.

23. It also transpires from the evidence that he is the eldest male member of the family and it may be that he was, as he says, supervising the agricultural operations, albeit they were conducted with the help of hired labour. But, it is not unnatural to expect that when the person at the helm of affairs of a family becomes an invalid it would result automatically in diminished returns. It therefore seems to us that a minimum of Rs. 5000/- should be awarded towards loss of earnings during the period he was so laid-up.

24. The third head under which we should compensate the victim is the loss of amenities and enjoyment of life. It is in evidence that he was riding a Motor-bicycle at the time of the accident and probably he would not be able to ride a motor bike again, or indulge himself in such kind of physical activity which calls for initiative and physical strength and endurance. We therefore think that we should award a sum of Rs. 5,000/under that head.

25. The next head under which compensation is liable to be allowed is for expenses incurred on the treatment and other incidental matters. It is in evidence that the claimant was in the hospital for 17 days and subsequently he was meeting with his Doctor P.W. I. Somashekhar off and on for which purpose he had to make several trips to Gulbarga from Kembhavi.

26. The claimant states in his evidence that he always hired a taxi for that purpose and even produced two bills at Exhibits P- 14 and P-15. He has also produced some cash vouchers- towards purchase of medicines.

27. Nothing has been paid for under this head, since the learned Member of the Tribunal was probably of the view that these items of expenditure had -not been strictly proved.

28. Suffice it to state that even in the absence of appropriate proof the Tribunal would still be required to compensate an injured person under this head by awarding a reasonable sum adequate to reimburse the claimant as regards expenses incurred. The claimant was in the hospital for 17 days. The Doctor has stated that, on occasions drugs prescribed had to be purchased from outside and the treatment appears to have continued even after the patient was discharged from the hospital. It is common ground that the period of convalescence had spread over for a period of three months, during which period the claimant had to go to Gulbarga from Kembhavi and he does appear to have made several trips for check-ups by P.W. I. Dr. Somashekhar. He has to be compensated in this behalf.

29. Even granting that the taxi bills are not strictly proved and the drug vouchers are not strictly proved and there is some deficiency it still seems to us taking an overall view of the expenditure necessarily involved on treatment and transport

etc. we would be justified in making an award in this head in a sum of Rs. 5000/-.

30. No award can be made under the head of shortened expectancy of life since there is no evidence in support.

31. In fine, we would thus make an award in a sum of Rs. 40,000/- with interest at 9 per cent per annum from the date of petition and direct the Insurer of the tractor-tailor the 3rd respondent herein to satisfy the award in its entirety as also the costs of this appeal.

32. This appeal therefore succeeds in part and to the extent indicated above. The award under review if it has already been satisfied by the Insurer, it will deposit the balance now due under the award made by this court. Otherwise, the entire sum awarded herein will have to be deposited before the Tribunal and it will do so in either-event within two weeks from the date of this order.

33. Before parting with this case we must take this opportunity to notice that despite the many interdicts of this Court on several occasions still awards are being made which oscillate between abstinence parsimony at one end and lavish generosity on the other. Therefore, it is, we had to point out herein, these matters of compensation are no longer attributes of whims and fancy, but are to be decided on ascertained parameters which are well established and have only got to be employed in the appropriate manner.

34. We do hope that Accident Claims Tribunals will in future bear this observation in mind and will hereafter at least stop indulging in the type of lapses we have noticed with regret, which more often than not, leave the accident victims and their dependents in a state of grave uncertainty as regards their rights.

35. Appeal partly allowed.