

Vijay Kumar Singhal Vs. U.P. State Road Trans. Corporation and ors.

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Court : Allahabad

Decided On : Jan-17-1996

Reported in : 1996ACJ771

Judge : R.B. Mehrotra and ;R.K. Singh, JJ.

Appeal No. : F.A.F.O No. 545 of 1981

Appellant : Vijay Kumar Singhal

Respondent : U.P. State Road Trans. Corporation and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : A.K. Yog, Adv.

Disposition : Appeal allowed

Judgement :

R.B. Mehrotra, J.

1. The present first appeal from order is directed against an award given by the IIInd Additional District Judge, Meerut (exercising powers of the Motor Accidents Claims Tribunal) dated 30.5.1981, awarding Rs. 26,000/- to the claimant for the injuries sustained by him in a motor accident, whereas the claimant has claimed an amount of Rs. 3,00,000/-for the injuries sustained by him on the person, mental

agony, etc. and for loss of earnings. This appeal is filed by the claimant praying for enhancing the amount of compensation awarded.

2. The only point which arises for consideration in the present appeal is that in the facts and circumstances of the case, what is the appropriate amount which the claimant is entitled to be awarded.

3. The Tribunal recorded the following finding regarding nature of injuries sustained by the claimant:

The occupant, namely, Vijay Kumar Singhal who was on the back seat of the car and also sustained severe injuries, testified about the nature of the injuries sustained by him including the fracture of the femur bone. The head injury etc. have been testified to by the witness himself and stand proved by a number of documents, viz., X-ray reports, medical data, etc., furnished on record.

4. The Tribunal has also recorded the finding that the accident took place as a result of rash and negligent driving of the driver of the bus belonging to U.P. State Road Trans. Corporation. The said findings have not been challenged by the respondent.

5. The Tribunal has recorded the following finding regarding effect of accident on the claimant:

The injured, who is a youngman of 32 years of age at the time of the accident, naturally was a budding businessman filled with ambition. After the plaster, etc., was removed, his movements had been affected greatly by the partial permanent disablement. He cannot freely go to long distances. Even in a short distance of about 2 miles or so, he feels difficulty also in sitting and working for hours. About all this, there is bound to be denial of the amenities of life, loss of earning capacity which would in future affect his financial status.

6. The injured claimant stated that he is one of the partners in Ram Roller Flour Mill, Meerut and also partner in Lala Udai Ram Mechanised Agricultural Farm and M/s. Vijay Kumar and Sons, Meerut. The injured claimant was a man of status and was moving amongst the affluent section of the society.

7. The claimant claimed Rs. 3,00,000/- as damages under three heads-

(1) The claim for medical treatment is divided into two heads:

(i) Rs. 30,000/- already incurred.

(ii) Rs. 1,00,000/- for treatment and diet either in India or abroad.

(2) The claimant put up claim for Rs. 1,00,000/- for mental agony, bodily pain, suffering and permanent disability.

(3) The claimant claimed Rs. 70,000/- as loss of earnings and expectancy of life.

8. Tribunal has awarded Rs. 10,000/- in the first head, Rs. 10,000/- in the second head and Rs. 15,000/- in the third head, out of the aforesaid amount the Tribunal deducted 20 per cent for lump sum payment and uncertainties of life. The total amount after deduction came to Rs. 28,000 out of which the driver of the car was awarded Rs. 2,000/- for loss of earning, amount of Rs. 26,000/- was awarded to the claimant appellant.

9. It is settled principle of law that injured person is entitled for compensation for losses, which are to be categorised separately under two heads:

(i) pecuniary and

(ii) non-pecuniary.

10. The Supreme Court in *Jai Bhagwan v. Laxman Singh* 1994 ACJ 983 (SC), has held:

In the matter of assessment of damages in personal injury actions, the approach of the court, as indicated by House of Lords in *H. West & Son Ltd. v. Shephard* 1958-65 ACJ 504 (HL, England), is guided by these considerations. xxx xxx xxx

Non-pecuniary losses are different from pecuniary losses in that the restitutio in integrum objective cannot be applied literally to them-damages cannot restore a lost limb or happiness. While there is some disagreement as to the function of non-pecuniary damages, many would agree with the Royal Commission's

suggestions that they serve as a palliative, or provide the plaintiff with the means to purchase alternative forms of happiness, or help to meet hidden expenses caused by injury. While the practice of the courts is not to subdivide non-pecuniary damages under specific heads, nevertheless proper consideration cannot be given to the plaintiff's claim without taking into account the various types of loss he has suffered.' [See Clerk and Lindsell on Torts, 16th Edn.]

11. In *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.* 1995 ACJ 366 (SC), the Apex Court while fixing an amount of compensation payable to a victim of an accident laid down that the damages have to be assessed separately as pecuniary damages and special damages. The 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. The pecuniary damages include expenses incurred by the claimant and can be divided in three heads:

- (i) medical attendance;
- (ii) loss of earning of profit up to the date of trial;
- (iii) other material loss.

Non-pecuniary damages may include:

- (i) damages for mental and physical shock, pain, 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.

12. Whenever a Tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused.

13. When compensation is to be awarded for pain and suffering and loss of amenities of life, the special circumstances of the claimant have to be taken into account including his age, the usual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration.

14. In the present case the damages are required to be ascertained on the basis of the principles laid down by the Supreme Court in the aforesaid cases.

15. Under the heading pecuniary losses the claimant put forward his claim in two categories:

(i) Rs. 30,000/- already incurred and

(ii) Rs. 1,00,000/- for treatment and diet either in India or abroad in future.

16. It has not been disputed before us that the claimant submitted actual bills for medical expenses for Rs. 30,000/-. It is not whispered in the impugned judgment, as to on what basis the Tribunal reduced the said claim from Rs. 30,000 to Rs. 10,000. The correctness of the bills submitted by the claimant has not been doubted by the Tribunal. In the accident the right femur of the leg of the claimant was injured and injuries were received by the claimant on his forehead. The claimant became unconscious at the time of the occurrence of the accident. Thereafter he was removed in another car to Meerut and was admitted in a nursing home where he remained as an indoor patient for a couple of days. Thereafter he was shifted to Delhi. He was put under plaster for a pretty long time and even at the time of the filing of the petition, he was under plaster. A steel rod was also inserted and nailed.

17. On the basis of the aforesaid statement of the claimant, the Tribunal itself recorded a finding that the claimant incurred expenses for treatment which he received at Meerut and Delhi and number of visits he had to make to the doctors at Delhi. The claimant was admitted in Chaurasia Nursing Home after the accident and remained there till 13.12.1972. Thereafter he was shifted to Delhi Nursing Home, Daryaganj, where he remained as an indoor patient till 20.1.1973 and again admitted on 12.4.1973 and remained till 19.4.1973.

18. In view of this finding and in view of the facts that the claimant submitted bills of Rs. 30,000/- and there being no whisper in the impugned judgment as to on what basis the claim of the claimant on this count was reduced from Rs. 30,000/- to Rs. 10,000/-, we are of the view that the claim made by the appellant for actual medical treatment for Rs. 30,000/- was just and proper and there was no justification in reducing the claim to Rs. 10,000/-.

19. The second count on which the claimant has put up his claim for compensation under pecuniary losses is for an amount of Rs. 1,00,000/- for treatment and diet either in India or abroad. The Tribunal has awarded a sum of Rs. 10,000/- towards the said head.

20. It is true that there cannot be any evidence to ascertain the future expenditure likely to be incurred for the treatment of the claimant but the fact remains that the claimant is a man of status and a businessman and will get his treatment in good hospital including nursing home. It is also not disputed that the injuries sustained by the claimant in his legs require further treatment, as the claimant will like to get his disability removed, if possible, by operation or otherwise. In the said context, awarding a sum of Rs. 10,000/- towards future treatment is wholly inadequate. The actual expenses are likely to be much more, but being on reasonable side, we are of the opinion that the compensation on this count should be enhanced from Rs. 10,000/- to Rs. 20,000/-.

21. The last item for non-pecuniary losses, the claimant claimed a sum of Rs. 70,000/- out of which the Tribunal awarded only Rs. 15,000/-.

22. No hard and fast principle can be laid down for determining the damages under non-pecuniary head as indicated above, but even if a nominal amount is fixed for each item of non-pecuniary damages, it should come to Rs. 60,000/- as there are four sub-heads for determining the non-pecuniary damages:

(i) damages for mental shock, and physical pain, 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.

23. It is a hard reality of the present-day society that monetary status plays an important role in determining the quantum of compensation of the injured claimant, as his loss is to be ascertained on the basis of the gravity of shock which he is likely to feel in his future life due to his partial disability. Not only the man with monetary status, but the person otherwise holding a status in the society due to his position, is likely to suffer greater mental agony than the ordinary person who does not have to face an affluent section of the society who judge you by your appearance and by your performance, therefore, wherever there is a case for ascertaining the damages in regard to an injured, the fact of his commanding position in the society is a relevant factor for determining the compensation.

24. In the facts of the present case, it is not disputed before us that the claimant was a businessman and was a partner in several firms and was living in a society of affluent persons. Since non-pecuniary damages are to be ascertained keeping in mind the mental suffering he was likely to suffer while moving in such society taking into account overall consideration and entire situation, we are of the view that it is just and proper to award a sum of Rs. 50,000/- towards the non-pecuniary

damages to the claimant. Thus, we are of the view that the claimant-appellant is entitled to receive following amount of compensation from the respondents for the losses suffered by him in the accident:

(i) Expenses for medical treatment Rs. 30,000/- (ii) Expenses for future treatment and loss of earning during the period the claimant was hospitalised. Rs. 20,000/- (iii) Non-pecuniary damages Rs. 50,000/- _____ The total comes to Rs. 1,00,000/- _____

25. In the facts and circumstances of the present case, there is no justification for deducting any amount from the aforesaid amount of compensation.

26. In determining non-pecuniary damages, life expectancy or uncertainty cannot be a consideration for reducing the amount. However, since we have assessed the amount on a lower side, we are of the opinion that even otherwise there is no justification for reducing the said amount.

27. Accordingly, we hold that the claimant-appellant is entitled to get a sum of Rs. 1,00,000/- along with the interest at the rate of 12 per cent from the date he filed his claim petition.

28. The judgment of the Motor Accidents Claims Tribunal, Meerut, dated 30.5.1991 is accordingly modified and the amount of compensation awarded to the claimant-appellant is enhanced to Rs. 1,00,000/-. The respondents will pay the balance amount of compensation not paid to the claimant along with the interest at the rate of 12 per cent for the amount not paid from the date of claim.

29. The appeal is accordingly allowed.