

**Arvind Kumar Vs. Rajesh Kumar and ors.**

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**Court :** Delhi

**Decided On :** May-09-1995

**Reported in :** II(1995)ACC532; 1995ACJ948; 1995IIAD(Delhi)632; 58(1995)DLT691; (1995)111PLR31

**Judge :** C.M. Nayar, J.

**Acts :** [Motor Vehicles Act, 1939](#) - Sections 110A; [Motor Vehicles \(Amendment\) Act, 1988](#) - Sections 166

**Appeal No. :** First Appeal No. 60 of 1988

**Appellant :** Arvind Kumar

**Respondent :** Rajesh Kumar and ors.

**Advocate for Pet/Ap. :** O.P. Goyal and; S.M. Sarin, Advs

**Judgement :**

**C.M. Nayar, J.**

(1) The present first appeal arises from the award dated 20th October, 1987 of Shri B.L.Garg, Judge, Motor Accident Claims Tribunal, Delhi. The appellant, Arvind Kumar filed the petition for compensation under Section 110-A of the Motor Vehicles Act claiming Rs. 9,90,000.00 as compensation for injuries sustained by him in the accident. The appellant, it is alleged was driving two wheeler scooter

No. Dek 8787 with one Shri Jagdish Chand Bansal on the pillion seat on 21/11/1984 at about 12.00 noon from near Police Picket SaraswatiVihar, Shalimar Bagh on the left side of the Outer Ring road with slow speed when bus No. Dep 6535 driven rashly, recklessly and negligently by respondent No. 1 in due course of his employment with respondent No. 2 came from the opposite direction on the wrong side of the road and hit the two wheeler scooter with the front side of the bus. The offending bus stopped after covering some distance resulting into grievous injuries to the appellant and fatal injuries to Shri Jagdish Chand Bansal. The bus came on the road meant for traffic going from Saraswati Vihar side towards Inter State Bus Terminus and it came suddenly and hit the scooter with great force resulting into grievous injuries to the appellant. The appellant as a consequence of the accident has become disabled and was in coma for a long period. The relevant facts are elaborately stated in the Claim Petition as follows:-(a) The appellant suffered extreme mental pain and agony as a result of the injuries received by him in the accident. He has been disabled permanently; his leg has become short by one inch as compared to the other leg. The appellant has lost his health and he will not be able to regain his health which he was enjoying just before the accident. He has become crippled and his mental faculties have been adversely affected due to this accident caused by respondent No.1 He cannot swallow anything except liquid and has to be taken care of constantly day and night. The appellant has shifted to his brother's residence, Shri S.C. Garg as the cost of attending him was high as compared to the cost incurred at his residence. 6-7 persons were attending on him and even he needs assistance of minimum two persons day and night. Therefore the appellant will need permanent care throughout his life and he shall need special conveyance which may cost around Rs. 1,000.00 per month just to enable him to move about a bit. The appellant cannot speak as his tongue has been damaged due to brain injury; (b) As an impact of the accident the life of the appellant has been ruined, he will have no chances of settlement in life and marriage and in any case he will require permanent care; the earning capacity has been reduced to zero and he has lost enjoyment of life; (c) The family of the appellant is well connected, the elder brother is a university topper and is working as lecturer in Delhi University College. The second brother is also well placed and the appellant therefore, would have great

success in life considering the status of the family and was expected to earn a sum of Rs. 5,000.00 per month at the age of 24 to 25 years.

(2) The above are the broad averments made by the appellant in his claimpetition. It is further alleged that he was 20 years of age at the time of accident and he had passed 10+2 examination in the year 1983. He had been doing his business of property broker in the name and style of Elite Property Dealers and was earning about Rs. 2,000.00 per month. The resultant effect of the accident is that The appellant is confined to bed and is permanently disabled. therefore, even the petition before the Tribunal was filed by his brother Shri S.C. Garg. The amount of compensation as claimed under different heads are referred to in paragraph 21 of the petition and the same may be reproduced as below:(i) Expenses done on the treatment of the petitioner/appellant till this date Rs.40,000.00(ii) Future treatment expenses Rs. 50,000.00(iii) Pain and sufferings undergone by the petitioners/appellant Rs.50,000.00(iv) Disability suffered by the petitioner/appellant Rs. 50,000.00(v) Loss of earning including future loss of earning Rs.4,00,000.00(vi) Loss of enjoyment of life suffered by the petitioner Rs. 1,00,000.00appellant(vii) Conveyance expenses Rs. 1,00,000.00(viii) General damages Rs. 2,00,000.00Total Rs. 9,90,000.00

(3) The written statement was filed by respondents 1 and 3. The factum of accident as well as the fact that respondent No. 1 was the driver and respondent 3 was the owner was admitted. However, it was pleaded that respondent No. 2 was not the owner and as such he was not liable to pay any compensation. The accident was alleged to have taken place due to rash and negligent driving of the scooter on the part of the appellant. The bus was insured with respondent No. 4 and as such respondents 1 and 3 were not liable to pay any compensation. Respondent No 4 has filed separate written statement and admitted the factum of accident but denied that this accident took place due to rash and negligent driving on the part of respondent No. 1 The following issues were framed on the pleadings of the parties:1. Whether the petitioner sustained injuries as alleged in the petition on account of rash and negligent driving of vehicle No. DEP-6535 on the part of respondent No. 1?2. To what amount of compensation is the petitioner entitled and from whom?3. Relief.Issue No. 1The Tribunal referred to the evidence on

record which included the photo-graphs which were taken after the accident as well as the site plan. The learned Judge held that it was established that the appellant sustained injuries as a result of rash and negligent driving of bus No. `DEP-6535 as it caused the accident by coming on the wrong side of the road on the part of respondent No. 1. This issue was decided accordingly.'Issue No. 2The evidence with regard to this issue was referred to and examined. Public Witness 24,Shri S.C. Garg who is the brother of the appellant and Public Witness 25 Mrs. Vinod Garg who is the wife of the brother of the appellant appeared as witnesses and deposed that the appellant sustained serious head injuries, injury on left eye, multiple fractures on both legs and two teeth were broken. He was in complete coma for about 5months. After the accident he was admitted in Hindu Rao Hospital and then he was shifted to Sir Ganga Ram Hospital at about 4.30 p.m. on the same day in the emergency ward under the care of Dr. H.N. Aggarwal, Neurosurgeon. Cat scanning was performed and he remained in intensive care unit for about threeweeks. On 7.12.84 cat-scanning was done again and he was shifted to general hospital as there was no hope for his survival. He was discharged from the hospital thereafter and was kept at home. He was attended by 5-6 persons during the whole year of 1985 and was kept on special diet for about 1-' years which cost Rs. 60 toRs. 70.00 per day. The appellant was not in a position to walk properly and suffered from loss of memory and he was unable to do any job. He had been undergoing physiotherapy and, it is contended that he had already incurred Rs. 40,000.00 on medical expenses etc. till April, 1985. He has now been held to be permanently disabled and his leg has been shortened by one inch. The statement of Public Witness 24, ShriS.C. Garg was corroborated by the statement of Dr. N.V. Kamath, Public Witness 27 from Sanjay Gandhi Memorial Hospital. The appellant was having weakness of all four limbs due to head and spine injuries. He was having difficulty in speaking, walking and performing other daily activities. Similarly Public Witness 20, Dr. S.C. Sharma, Public Witness 21 Dr.J.P. Manocha from Ganga Ram Hospital were examined. They have reiterated that the brain of the petitioner was not functioning and he was in a deep unconsciousstage. The Tribunal assessed the evidence on record and held that the appellant remained hospitalised for a period of about 3 weeks and his left leg was shortened by one inch. He also remained in coma for about 5

months. Due to head and multiple bone injuries he has lost speech. The witnesses were not cross-examined and no rebuttal evidence was led on the side of the respondents. The Tribunal assessed the evidence and found no reason to disbelieve the same. The following amounts were awarded by the Tribunal under the respective heads; 1. General damages for pain and suffering Rs. 20,000.00 2. Treatment/medicine expenses Rs. 12,000.00 (against a claim of Rs. 40,000 for expenses already incurred + Rs. 50,000.00 for future treatment) 3. Special conveyance expenses 4. Special diet 5. Loss of amenities and future enjoyment of life 6. Loss of income Rs. 10,000.00 Rs. 10,000.00 Rs. 20,000.00 Rs. 96,000.00 Total Rs. 1,68,000.00

(4) The Tribunal, therefore, on the above basis awarded the compensation of Rs. 1,68,000.00 as against a claim of Rs. 9,90,000.00. The learned Counsel for the appellant has contended that the appellant is no doubt alive but his status in life is worse than dead. He has lost his speech, he cannot walk properly, he has suffered from brain damage and is not able to eat his food. The appellant is to remain in this state so long as he is alive and will need continuous assistance and support of his family members as well as the persons who are employed to look after him at all times. The Tribunal assessed the evidence on record and held that the accident was caused as a result of rash and negligent driving of the offending bus which came on the wrong side of the road and hit the scooter of the appellant. The learned Counsel for the Insurance Company has not been able to refer to any evidence to the contrary which will establish any negligence on the part of the appellant. The finding in this regard cannot be interfered which is affirmed. It may be relevant to mention that another person Mr. Jagdish Chand Bansal who was sitting on the pillion seat of the two wheeler driven by the appellant had died in the same accident. The claim petition was filed by his wife Mrs. Kirno Devi wherein it was also held that the accident took place as a result of the rash and negligent driving of the bus by respondent No. 1. The compensation in that case was assessed at Rs. 2,88,000.00 with interest @ 12% per annum from the date of filing of the petition till realisation. The Counsel for the appellant states that no appeal has been filed in respect of that award.

(5) The question which arises for consideration in this appeal is whether the compensation awarded is just, fair and adequate or it requires to be enhanced in the facts and circumstances of the case. There is no doubt that the evidence on record indicates that the appellant was in coma for quite a long time and has suffered permanent disability. It is also established from the evidence that he is required constant care and help and it is unlikely that he will be able to re-start his life as a normal healthy person. The appellant has, therefore, become permanently disabled. The Hon'ble Supreme Court in the recent judgment of Mr. R.D. Hattangadiv. M/s Pest Control (India) Pvt. Ltd. & Ors. : [1995]1SCR75 has dealt with the propositions that were raised on similar facts. The facts of the case would indicate that the appellant was a practicing Advocate before the accident. He was also a Judge of the City Civil Court for some time until he resigned in 1964. The appellant used to appear in various Courts including the High Court and the Supreme Court and because of the accident he became disabled and was unable to resume practice. The Tribunal awarded total compensation of Rs. 26,25,992 together with interest @12% p.a. from the date of application till realisation. The High Court modified the award of the Tribunal and reduced the compensation to Rs. 8,57,352.00 as well as reduced the rate of interest from 12% p.a. to 6% p.a. The appeal was filed by The appellant/claimant in the Supreme Court which ultimately assessed the compensation under different heads. The basis for award of damages in such cases has to be assessed separately as pecuniary damages and special damages. The concept is English Concept explained in the judgment in the following paragraphs which refer to the English Concept as well:

(9) 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 is 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 a ppredate 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 non-pecuniary damages are concerned, they 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.

(10) It cannot be disputed that because of the accident the appellant who was an active practicing lawyer has become paraplegic on account of injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a life long handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by the Courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury 'so far as money can compensate' because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.

(11) In the case *Ward v. James*, 1965 (1) All E.R. 563 it was said:

'ALTHOUGH you cannot give a man so gravely injured much for his 'lost years', you can, however, compensate him for his loss during his shortened span, that is, during his expected 'years of survival'. You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and Juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money.'

(12) In its very

nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

(13) This Court in the case of C.K. Subramonia Iyer and Ors. v. T Kunhikuttan Nair and Ors., : [1970]2SCR688 in connection with the Fatal Accidents Act has observed:

'IN assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable.' (14) In Halsbury's Laws of England, 4th Edition, Vol. 12 regarding non pecuniary loss at page 446 it has been said :- 'NON-PECUNIARY loss: the pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the Courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases'

(6) The position of law is settled and there is no dispute in the Indian Law which is based on the assessment of damages under the English Law that head under which the Court should consider the assessment of damages may be formulated as follows: (a) Expenses already incurred for treatment. (b) Cost of caring for the rest of life (future expenses). (c) Pain and sufferings including. Disability suffered. (d) Loss of amenities and enjoyment of life (e) Loss of earnings including probable future earnings. (f) Loss of expectation of life etc. 7. The Courts are faced always with almost impossible task of assessing a sum of money which the law

can recognise as fair and reasonable compensation to a young man who had everything to live for, for the loss of virtually everything which makes life worthliving. 'It is a melancholy and unenjoyable task but the Court must do best to discharge it' as has been recognised in the case of *Cutts & Am. v. Chumley* 6- Am., [1967] 1 W.L.R. 742. The facts of the present case present a very pathetic reading. The appellant who is a young man of 20 years and was doing his business of property broker was suddenly put in an unfortunate situation of being looked after by others on account of this accident which caused disability of mind and body. The Tribunal has assessed the evidence on record and has clearly held that the appellant remained hospitalised for quite some time and his leg was shortened by one inch. He also remained in coma for about 5 months. There is weakness in all the four limbs due to head and multiple bone injuries and he has lost the power of speech. He was admitted in different hospitals and was kept on special diet for about one and a half years which cost Rs. 60 to 70' per day. The plea that the appellant had to be looked after with the help of an attendant who was paid Rs. 50.00 per day as he was not in a position to walk properly cannot be lost sight of. The physiotherapy which is one of the acknowledged mode of treatment in such cases is required to be pursued for a long duration. There is also a finding that the appellant has become permanent disabled and the medical evidence on record is a pointer to this direction. In this situation and on the basis of evidence and facts available on record, the Tribunal should have awarded the amounts which were claimed under the different heads in the following manner:(a) The appellant has claimed Rs. 40,000.00 incurred on treatment till the date of filing the petition before the Tribunal and a sum of Rs.50,000.00 with regard to future treatment expenses that will include the cost of caring for the rest of life. The Tribunal has merely awarded Rs.12,000.00 on account of treatment and medicines and Rs. 20,000.00 as general damages. There is evidence available on record that The appellant was admitted in different hospitals and was in coma for such period. The medicines had to be administered and the special diet obviously has to be fed to a gravely ill person for a long period. The appellant was not in a position to walk properly, he lost his memory and was undergoing physiotherapy as well. The claim was reduced merely on the ground that there was no medical expert's evidence to the current and future treatment of the appellant. The facts

speaking for itself and it was not necessary for the Tribunal to be so mathematical on these questions. It is not possible to obtain receipts for every small help which was to be rendered to an invalid person. The appellant is, therefore, held entitled to the full claims i.e. Rs. 40,000.00 and Rs.50,000.00 with regard to expenses already incurred for the treatment as well as for the future expenses respectively.(b) The appellant has next claimed a sum of Rs. 50,000.00 for pain and suffering undergone by him and a sum of Rs. 1 lakh for loss of amenities and enjoyment of life. The compensation for pain and suffering and loss of amenities of life has to be considered on the basis of the facts and special circumstances of the case. The age of the claimant, the unusual deprivation he has suffered, the effect thereof on his future life have been recognised to be such circumstances which will have bearing on the ultimate award of compensation' under these heads. The amount of compensation as pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. The appellant was a young man and he was a property broker and he had a reasonable expectation in life to prosper whereas this unfortunate accident has rendered him permanently disabled with brain damage and loss of memory. He is to be helped by the attendants to move about and cannot even feed himself. It is also not denied that he is incapable of leading an independent life as he has lost power of speech and there is weakness in all the four limbs of his body. He has accordingly become permanently disabled. The facts of the present case are of comparable nature to the facts in the case of Mr. R.D. Hattangadi where the claim on these counts were allowed. It will meet the requirements of justice if the appellant is awarded a sum of Rs. 50,000.00 for pain and suffering undergone by him and a further sum of Rs. 1 lakh for loss of amenities and enjoyment of life respectively. 'These amounts will also cover relief for disability suffered by the appellant.(e) The Tribunal has next allowed the claim for conveyance expenses as well as for special diet to the extent of Rs. 10,000.00 each. The appellant has not placed any material evidence on record to reiterate that more amount was liable to be awarded under these two heads. The amounts so awarded are accordingly affirmed.(d) The next head which is to be considered is the claim of the appellant for loss of earning including future loss of earning, a sum claimed in this regard is a consolidated figure of Rs. 4 lakhs. The Tribunal has considered these jointly and

on that basis has only awarded a sum of Rs. 96,000.00 by assessing the income of the deceased at Rs. 1,000.00 per month and using a multiplier of 8, the figure of Rs. 96,000.00 has been arrived at. The appellant was self-employed and was doing his business of property broker and it is stated that he was earning a sum of Rs. 2,000.00 per month. The prospects were good and there is evidence on record with regard to the income of the appellant and the Tribunal has not disbelieved the statement of such witnesses. The figure of Rs. 1,000.00 has been arrived at after alleged allowance for exaggeration in such matters when no corroborative documentary evidence was available. The learned Judge has not considered loss of current earnings of the appellant as well as the likelihood of future prospects in case the appellant was not rendered invalid as a result of this accident. The multiplier adopted is without any basis. therefore, the compensation in the sum of Rs. 96,000.00 for loss of earnings which will cover the future earnings as well is rather on the low side. In the facts and circumstances of the case, it will be in the interest of justice if the award under this head is enhanced by a further sum of Rs. 96,000/which will take into consideration the current earnings of the appellant as well as loss of future earnings. The award under this head is modified accordingly.8. In the ultimate analysis the appellant is held entitled to the amounts under different heads which may be reproduced as follows:

1. Expenses already incurred on the treatment of the appellant till the date of filing the petition
2. Future medical expenses
3. Pain and suffering suffered by the appellant.
4. Loss of enjoyment and amenities of life
5. Conveyances expenses etc.
6. Loss of earnings including future earnings (Rs. 96,000 x 2) Total Rs. 40,000.00
- Rs. 50,000.00
- Rs. 50,000.00
- Rs. 1,00,000.00
- Rs. 20,000.00
- future earnings (Rs. 96,000 x 2) Rs. 1,92,000.00
- Total Rs. 4,52,000.00

9. The appellant is, therefore, held entitled to the total claim under different heads as referred to above in the sum of Rs. 4,52,000.00. He shall further be entitled to interest @ 15% per annum from the date of the application till realisation. The amount which has already been disbursed to the appellant shall be taken into account in computation of the amount which is now held payable. The interest shall be paid over the amount which has become payable on the date of the award and not on the amount which is to be paid for expenditure to be incurred in future. The appellant shall not be entitled to interest over such amount. This is on the basis of the judgment of the

Supreme Court in Mr. R.D. Hattangadi V. M/s Pest Control(India) Pvt. Ltd. & Ors. (supra). The question now arises as to whether some order can be made to protect the interest of the appellant as he is permanently disabled. Taking an overall view of the facts of the present case it will be in the interest of justice and for the benefit of the appellant that 50% of the amount including interest which is now held payable to the appellant shall be invested in a fixed deposit receipt or in Unit Trust of India or any other Government securities for the period of five years. The monthly or quarterly interest accruing there from may be used for the welfare and treatment of the appellant. The appeal is allowed in the above terms with costs which are quantified at Rs. 5000.00.

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