

Sri. Benson George Vs. Reliance General Insurance Co. Ltd. & Anr.

Civil Appeal No. 1540 of 2022
2022-01-01 | M.R. SHAH · B.V. NAGARATHNA
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Full judgment text

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[Civil Appeal No. 1540 of 2022]

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 28.09.2020 passed by the High Court of Karnataka at Bengaluru in M.F.A. No.3183 of 2018 (MV), the original claimant has preferred the present appeal with the prayer to enhance the amount of compensation.

2. In a vehicular accident which occurred on 01.01.2013 the claimant sustained grievous brain injuries. He underwent brain surgery. Though he was discharged from the Hospital, he remained in coma even till the claim petition was filed. At the relevant time the claimant was working as a Process Supervisor in Deutsche Bank and earning Rs.4,59,425/per annum. That at the time of accident he was aged 29 years. That the claimant through his next friend i.e. his mother filed a claim petition before the Motor Accident Claims Tribunal. That the Learned Tribunal awarded Rs.94,37,300/on the different heads as under:

1.

Pain and sufferings

Rs.1,30,000-00

2.

Loss of income during laid up period

Rs.1,36,000-00

3.

Medical expenses

Rs.9,91,869-00

4.

Loss of future income due to permanent disability

Rs.69,48,631-00

5.

Loss of future amenities and happiness

Rs. 1,00,000-00

6.

Attendant charges

Rs.9,20,800-00

7.

Extra nutritious food and conveyance expenses

Rs.1,60,000-00

8.

Future medical expenses

Rs.50,000-00

Total

Rs.94,37,300-00

The learned Tribunal awarded interest at the rate of 9% per annum from the date of petition till realization.

2.1 Feeling aggrieved and dissatisfied with the judgment and award passed by the learned Tribunal awarding a total sum of Rs.94,37,300/towards the compensation with 9% interest both, the Insurance Company as well as the original claimant preferred appeals before the High Court. By the impugned common judgment and order, the High Court has partly allowed the appeal preferred by the claimant and has enhanced the amount of compensation from 94,37,300/to Rs.1,24,94,333/under different heads as under:

1

Pain and suffering

Rs. 2,00,000/-

2

Medical expenses

Rs. 9,91,869/-

3

Loss of future income due to permanent disability

Rs. 88,02,464/-

4

Loss of future amenities and happiness

Rs. 1,00,000/-

5

Attendant charges

Rs. 20,40,000/-

6

Extra nutritious food and conveyance expenses

Rs. 1,60,000/-

7

Future medical expenses

Rs. 2,00,000/-

Total

Rs.1,24, 94,333/-

The High Court has however, reduced the interest from 9% per annum as awarded by the learned Tribunal to the interest at the rate of 6% per annum. 2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court in not awarding full claim as prayed for, the original claimant has preferred the present appeal to enhance the amount of compensation.

3. Learned counsel appearing on behalf of the claimant has vehemently submitted that in the facts and circumstances of the case the High Court has committed a grave error in awarding Rs.2,00,000/only under the head pain and suffering and Rs.1,00,000/only under the head of loss of future amenities and happiness.

3.1 It is vehemently submitted by learned counsel appearing on behalf of the claimant that in the accident the claimant sustained grievous brain injuries. He was hospitalized from 01.01.2013 to 15.03.2013 in St. John's Hospital and from 16.03.2013 to 03.05.2013 in Brain & Spine Centre. He has undergone three major brain operations. It is submitted that thereafter all throughout he is in coma and is bedridden.

It is submitted therefore that in the facts and circumstances of the case, the High Court has erred in awarding Rs.2,00,000/only under the head pain and suffering. Therefore, it is prayed to enhance the amount of compensation under the head pain and suffering suitably, considering the period of hospitalization, the grievous brain injuries sustained by the claimant and that he underwent multiple operations.

3.2 It is further submitted by learned counsel appearing for the claimant that in the vehicular accident the claimant has suffered 100% disability and is completely bedridden. It is submitted that with this disability he will have to live a miserable life till his death. He will not be in a position to enjoy life and therefore the High Court has committed a grave error in awarding Rs.1,00,000/only towards loss of amenities and happiness. It is submitted that the High Court has committed a grave error in reducing the amount of interest from 9% per annum to 6% per annum. Making the above submissions it is prayed to allow the present appeal and to enhance the amount of compensation accordingly.

4. Present appeal is vehemently opposed by Ms. Prerna Mehta learned counsel appearing on behalf of the Insurance Company.

4.1 Relying upon the decision of this Court in the case of Raj Kumar vs. Ajay Kumar and Anr., (2011) 1 SCC 343, it is submitted that as held by this Court, when compensation is awarded by treating the loss of future earning capacity as 100% the need to award compensation separately under the 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.

4.2 It is submitted that therefore in the facts and circumstances of the case no error has been committed by the High Court in awarding Rs.1,00,000/towards loss of amenities and happiness.

4.3 It is further submitted by learned counsel appearing on behalf of the Insurance Company that decision of this Court in the case of Raj Kumar (supra) has been subsequently considered and followed by this Court in the case of Lalan D. alias Lal and Anr. vs. Oriental Insurance Company Limited, (2020) 9 SCC 805.

4.4 It is also contended by learned counsel for the Insurance Company that in the facts and circumstances of the case the High Court has not committed any error in reducing the interest from 9% per annum to 6% per annum.

5. We have learned counsel for the respective parties at length.

6. It is not in dispute and it has come on record that in a vehicular accident the claimant sustained grievous brain injuries. That he was hospitalized for a number of months. That he undergone MRI, CT scans and Xrays. That he sustained right temporal SDH, multiple hemorrhagic contusions on temporal lobe, left parietooccipital lobe, left parietal lobe and bilateral frontal lobe, hemorrhagic contusions left thalamic region s/o grade II diffuse axonal injury, moderate SAH in right sylvian cistern, moderate diffuse cerebral edema, multiple comminuted and variably depressed fracture in left squamous temporal and left parietal bone, bilateral occipital bone fracture, right suboccipital SDH.

Finally diagnosed that traumatic brain injury sequelae/ p frontotemporoparietal hemicraniectomy and right lower limb deep vein thrombosis. That the claimant underwent multiple surgeries. Left frontotemporoparietal decompressive hemicraniectomy with lax duroplasty done on 02.01.2013. He underwent Percutaneous Endoscopic Gastrotomy under GA. Since the petitioner sustained very severe injuries to the Brain, he was shifted to the Brain & Spine Centre, Chemmanakary, Kerala, where he was admitted from 16.03.2013 to 03.05.2013. He underwent right side VP shunting (Chabra medium pressure regular) on 25.03.2013 under GA. That the claimant is still in coma and totally bedridden.

7. Considering the prolonged hospitalization and medical treatment and that the claimant underwent multiple surgeries, we are of the opinion that the High Court has erred in awarding Rs.2,00,000/only under the head pain and suffering. The pain, suffering and trauma suffered by the claimant cannot be compensated in terms of the money. However, still it will be a solace to award suitable compensation under

different heads including the pain, shock and suffering, loss of amenities and happiness of life.

7.1 In the facts and circumstances of the case due to the prolonged hospitalization and the multiple brain injuries/injuries sustained by the claimant and that he is still in coma and is bedridden, we are of the opinion that if the amount of compensation under the head of pain, shock and suffering is enhanced to Rs.10,00,000/(Rupees Ten Lakhs), it can be said to be a reasonable amount under the head pain, shock and suffering.

7.2 Similarly, the amount of Rs.1,00,000/awarded by the High Court under the head loss of amenities and happiness can also be said to be on lower side. As observed hereinabove no amount can compensate the loss of amenities and happiness more particularly a person who is in coma since number of years and is bedridden for the entire life. In the facts and circumstances of the case, we are of the opinion that if the amount of compensation under the head loss of amenities and happiness is enhanced to Rs.10,00,000/(Rupees Ten Lakhs) from that of Rs.1,00,000/as awarded by the High Court, it can be said to be a reasonable amount under the head loss of amenities and happiness.

8. Now with regard to reliance placed upon the decisions of this Court in the case of Raj Kumar (supra) and Lalan D. alias Lal (supra), relied upon by learned counsel appearing on behalf of the Insurance Company is concerned, we are of the opinion that the amount of compensation to be awarded under the heads, pain and suffering and loss of amenities and happiness, there cannot be straight jacket formula.

It depends upon the facts and circumstances of each case and it varies from person to person who has suffered due to the accident. So far as awarding compensation on the head of pain, shock and suffering is concerned, multiple factors are required to be considered namely, prolonged hospitalization; the grievous injuries sustained; the operations underwent and the consequent pain, discomfort and suffering.

8.1 Similarly, loss of amenities and happiness suffered by the claimant and his family members also depend upon various factors, including the position of the claimant postaccident and whether, he is in a position to enjoy life and/or happiness which he was enjoying prior to the accident. To what extent the claimant has lost the amenities in life and the happiness will depend on the facts of each case. Therefore, in the facts and circumstances of the present case when the claimant is in coma even after a period of eight long years and that he will have to be permanently bedridden during his entire life, as observed above the amount of compensation awarded under the head loss of amenities and happiness of Rs.1,00,000/only is unreasonable and meagre.

8.2 Now so far as the impugned judgment and order passed by the High Court reducing the amount of interest from 9% to 6% per annum is concerned, in the peculiar facts and circumstances of the case, the same is not required to be interfered with by this Court in exercise of powers under Article 136 of the Constitution of India.

9. In view of the above and for the reasons stated above, the present appeal is allowed in part. The impugned judgment and order passed by the High Court is modified to the extent and it is held that the original claimant shall be entitled to a total sum of Rs.1,41,94,333/with interest at the rate of 6% per annum from the date of filing the claim petition till realization. The enhanced amount of compensation shall be deposited by the respondent - Insurance Company before the learned Tribunal within a period of four weeks from today, failing which, it shall carry interest at the rate of 7.5% per annum.

On such deposit, the learned Tribunal is hereby directed to ensure that the amount of compensation is invested in long term interest bearing deposits in different Nationalized Banks or Post Office so that the amount of compensation can be used for the claimant and the same is not flittered away. Present appeal is accordingly partly allowed to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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