

Master Ayush Vs. The Branch Manager, Reliance General Insurance Co. Ltd. & Anr.

Civil Appeal Nos. 2205-2206 of 2022 arising out of SLP (Civil) Nos. 7238-39 of 2021
2022-01-01 | Hemant Gupta, J.
Repository ID: F2J-C-1770

Full judgment text

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[Civil Appeal Nos. 2205-2206 of 2022 arising out of SLP (Civil) Nos. 7238-39 of 2021]

Hemant Gupta, J.

1. The present appeal has been preferred by a 5 years' old victim of road accident which occurred on 21.9.2010, challenging the order of the High Court dated 7.9.2020 awarding a compensation of Rs.13,46,805/-, as against Rs. 18,24,000/- awarded by the learned Motor Accident Claims Tribunal1.
2. The grievance is with respect to the inadequate amount of compensation on account of the injuries suffered by the appellant. The appellant is a paraplegic patient. The appellant has examined Dr. Amithish Narayana as PW-2 and Dr. S. Adanthya as PW-3. Dr. Adanthya is a medical specialist from National Institute of Mental Health & Neurosciences, Bangalore. The discharge summary issued by the hospital is Exh. P/10.

As per the discharge certificate, the appellant is not able to move both his legs and had complete sensory loss in the legs, urinary incontinence, bowel constipation and bed sore. The appellant was aged about 5 years as on the date of the accident, hence has lost his childhood and is dependent on others for his routine work. PW-2 Dr. Amithish Narayana has issued disability certificate Exh.P/12. He is the Head of the Department at the Kasturba Medical College Hospital, Mangalore. The said certificate reads as thus:

This is to certify that Master Ayush V/8yrs S/o Vedava (Resident of BC Road) is a known case of Traumatic Paraplegia following T 10-11 spinal cord lesion due to RTA. He is not able to walk due to poor motor and sensory recovery in LL muscles.

He shows significant sinking astasia attitude and collapses on standing. As per the Disability certificate, he has 100% permanent physical impairment and will not be able to walk. Since following therapy, partial recovery has taken place in both motor and sensory aspects up to pelvic girdle level. Further recovery is impossible.

Therefore he is been advised to use Advanced Reciprocating Gait Orthosis (ARGO) with bilateral elbow crutches. After the use of Advanced Reciprocating Gait Orthosis (ARGO) with bilateral elbow crutches he can perform independent ambulation.

This is a great achievement for his future life as this device gives him controlled mobility capacity. With best wishes and blessings for his good progress.

Sd/- Dr. Amitesh Narayan Professor & HOD Department of Physiotherapy K.M.C. Hospital Ambedkar Circle, Mangalore-575001 Email: Mob: 9448039380"

3. The High Court and the Tribunal assessed the compensation under different heads as produced below:

4. Learned counsel for the appellant argued that the medical expenses itself were to the tune of Rs.5,73,700/- as per Ex. P11, whereas the High Court has only awarded a sum of Rs.1,61,805/-. The High Court had maintained awarding a sum of Rs 5,00,000/- for future medical expenses, i.e., towards purchase of device to be used by the appellant, but as per the statement of PW2- Dr. Amitesh Narayana, the device bears weight only up to 25 kilograms and has to be replaced every 5 years.

The conveyance charges were awarded by the Tribunal as Rs.20,000/- which was enhanced to Rs.70,000/- by the High Court. However, it was contended that the enhancement is still less than the taxi expenses incurred by the appellant. The Tribunal rejected the claim of taxi expenses produced as EX P-13 amounting to Rs. 1,51,500/- on the ground that the taxi driver had not been produced and also that why the appellant was taken by a taxi when other modes of transport were available. Still further, the appellant has been given Rs.70,000/- as attendant charges and Rs.2,25,000/- towards disability which are wholly inadequate.

5. PW-1- Krishna Sapalya is the father of the appellant who was working as Secretary, Gram Panchayat. The learned Tribunal has observed that the father has not placed any material to show his occupation or income. We do not agree with such finding of the Tribunal as once he has stated that he is a Secretary of Gram Panchayat, he has disclosed his occupation. As a Secretary of Gram Panchayat, he is a government servant.

6. It was also argued that in a judgment reported as *Kajal v. Jagdish Chand and Others*², the injured was a 12 years old girl who had suffered an injury to the extent that her IQ got less than 20% as compared to a child of her age and the medical board had assessed her social age to be only of a 9-months' old child. This Court had recognized that Schedule II of the Act could be used as a guide for the multiplier to be applied in each case. This Court in the aforesaid case held as under:

"6. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, the compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant.

The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages.

12. The assessment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guesswork and conjecture. An assessment, as best as can, in the circumstances, should be made.

27. One factor which must be kept in mind while assessing the compensation in a case like the present one is that the claim can be awarded only once. The claimant cannot come back to court for enhancement of award at a later stage praying that something extra has been spent. Therefore, the courts or the Tribunals assessing the compensation in a case of 100% disability, especially where there is mental disability also, should take a liberal view of the matter when awarding the compensation.

While awarding this amount, we are not only taking the physical disability but also the mental disability and various other factors. This child will remain bedridden for life. Her mental age will be that of a nine-month-old child. Effectively, while her body grows, she will remain a small baby. We are dealing with a girl who will physically become a woman but will mentally remain a 9-month-old child. This girl will miss out playing with her friends.

She cannot communicate; she cannot enjoy the pleasures of life; she cannot even be amused by watching cartoons or films; she will miss out the fun of childhood, the excitement of youth; the pleasures of a marital life; she cannot have children who she can love, let alone grandchildren. She will have no pleasure. Her's is a vegetable existence. Therefore, we feel in the peculiar facts and circumstances of the case even after taking a very conservative view of the matter an amount payable for the pain and suffering of this child should be at least Rs 15,00,000."

7. The High Court had assessed, in the aforesaid case, the notional income of the victim as Rs.15,000/- p.a. which was not found to be justified by this Court. It was observed that the girl would be entitled to minimum wages payable to a skilled workman. The appellant was from the State of Haryana. The minimum wages in that State on the date of accident were Rs.4846/- per month. In the present appeal, the minimum wages for 2010-11 in the State of Karnataka for employments not covered under any of the scheduled employments can be ascertained from the following extract of notification for minimum wages published in the Gazette on 19.02.2007:

"24. Employment not covered in any of the Scheduled Employments

Notification No. KAE 79 LMW 2005 dated 17.03.2006 Published in Gazette dated 19.02.2007 Cost of Living Allowance to be paid over and above 2703 points Cost of Living Index: 3944-2703=1241 points Minimum wages and VDA from 01-04-2010 to 31-03-2011

VDA: All Categories of employees: 3 paise per point per day over and above 2703 points."

8. Hence, as per the above extract, the minimum wages payable to a skilled workman in 2010-11 is to the tune of Rs. 3708.70. In this view, the minimum wages as on the date of accident is rounded off to Rs.3700/-. The compensation, therefore, is to be assessed on the basis of the said minimum wages on the assumption that the appellant would have been able to earn after attaining majority.

9. In addition to the skilled minimum wages, the appellant would be also entitled to 40% for future prospects in view of the judgment of this Court in *National Insurance Company Limited v. Pranay Sethi & Ors*³.

10. Thus, the compensation works out to be Rs.3700/- plus 40%, which amounts to Rs.5180/- per month. The multiplier of 18 would be applicable in view of the age of the appellant. The loss of future earnings due to the Permanent Disability for life thus works out to be Rs.11,18,880/-, i.e., $(3700+1480=5180) \times 12 \times 18$.

11. As per the medical certificate produced by the appellant, with Advanced Reciprocating Gait Orthosis (ARGO) with bilateral elbow crutches, the appellant can perform independent ambulation. Therefore, the condition of the appellant is not entirely comparable to Kajal who was confined to bed with mental age of 9 months' old child. The appellant herein is not able to move his both legs and had complete sensory loss in the legs, urinary incontinence and bowel constipation and bed sore.

12. The determination of damages in personal injury cases is not easy. The mental and physical loss cannot be computed in terms of money but there is no other way to compensate the victim except by payment of just compensation. Therefore, we find that in view of the physical condition, the appellant is entitled to one attendant for the rest of his life though he may be able to walk with the help of assistant device. The device also requires to be replaced every 5 years. Therefore, it is reasonable to award cost of 2 devices i.e., Rs.10 lakhs. The appellant has not only lost his childhood but also adult life.

Therefore, loss of marriage prospects would also be required to be awarded. The learned Tribunal has rejected the claim of taxi expenses for the reason that the taxi driver has not been produced. It is impossible to produce the numerous taxi drivers. Still further, the Tribunal should have realized the condition of the child who had complete sensory loss in the legs. Therefore, if the parents of the child have taken him in a taxi, probably that was the only option available to them. Accordingly, we award a sum of Rs.2 lakhs as conveyance charges.

13. No compensation is warranted to be payable under the heading "food and nourishment or towards loss of childhood" as it stands subsumed in the compensation assessed under the other different heads. In view of the judgment in *Kajal* and other principles of determination of compensation, the amount payable would be as under:

14. Hence, the compensation comes out to be Rs. 49,93,000/- along with interest already awarded by the Tribunal and affirmed by the High Court i.e. 7.5% p.a. from the date of filing of the claim application till realization.

15. Since the appellant is a minor, in view of the judgment of this Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas and Others*⁴, the amount of Rs.10,00,000/- would be disbursed to the father of the appellant as his guardian. If however, an amount more than Rs.10,00,000/- has already been disbursed, the said amount shall not be adjusted. The rest of the amount would be invested in one or more Fixed Deposits Receipts so as to attract the maximum rate of interest.

The interest amount shall be payable to the guardian of the appellant every month. It shall be open to the guardian, during the minority of the appellant, to seek orders for withdrawal of the amount on the basis of medical opinion, if any major medical expenses are required to be incurred. 16. The appeals thus stand allowed accordingly with costs throughout.

1 For short, the 'Tribunal'

2 (2020) 4 SCC 413

3 (2017) 16 SCC 680

4 (1994) 2 SCC 176

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

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