

**K. SURESH v. NEW INDIA ASSURANCE CO. LTD. AND
ANOTHER.**

CITATION: (2012) 12 SCC 274
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. 7603 of 2012
(Arising out of SLP (C) No. 3487 of 2011)

DECIDED on - 19 October, 2012

BENCH - K.S. RADHAKRISHNAN, DIPAK MISRA

FACT

If we unfurl the facts, the claimant or the appellant, on 11/3/2002 about 4:00 pm was hit by an auto vehicle from behind, when he was riding his vehicle. The registration number of vehicle by which he was hit was TN-9 C 7755, it was been reported that the driver of this motor vehicle was driving in a very negligent manner, he was rash driving in such a manner that he hit the appellant and he seriously injured him. The negligence of the driver caused the appellant an accident where he sustained a triple fracture in the spinal cord, fracture in the left leg neck of femur, fracture in the right-hand shoulder, deep wound, and developing injuries over the right-left thigh and multiple injuries all of the body.

After the accident, the claimant was admitted to M.R. Hospital where he was getting his treatment. After the treatment, the dislocation of the bones got reduced, pedicle screws were inserted into pedicles of D11 vertebra and pedicle screws were put into pedicles of L1 vertebra. Two screws were on the left thigh were fixed using a rod each. He was hospitalized for almost 1 month. The victim had numbness below the knee joint and was facing a problem to stand and sit comfortably. He was suffering badly. The person who was injured has been constantly getting physiotherapy treatment as he was facing difficulty in carrying out his normal activities. A disability certificate contained as Ex. P4 was filed before the tribunal which presented permanent disability at 75%. The tribunal, as it appears from the compensation, had also Assessed the permanent disability at 75% as fixed by PW-4. The tribunal had awarded Rs. 25,00,000/- under various heads, namely, transport charges, medical expenses, pain and sufferings suffered by family members of the claimant, the inability of the appellant to participate in public functions, loss of marital life, pain and permanent disability and loss of earning capacity.

Before the High Court, big objections were raised regarding the percentage of disability, the claimant was referred to the Medical Board and it was found that he had fracture which had healed with continuous of pain in the back with root involvement causing grade IV power in the left lower limb and, accordingly, the Board fixed the permanent disability at 40%. The High Court referred to the concept of “just compensation” and said that the quantum of damages

fixed should be in proportionate to the injuries caused no other injuries or expense should be added. It referred to certain authorities that Rs. 2,00,000/- towards medical expenses, Rs. 5,000/- each for transport charges and nourishment, Rs. 2,50,000/- towards pain and suffering, Rs. 50,000/- for medical expenses and Rs. 4,68,000/- towards loss of earning money capacity. The high court gave a figure of Rs. 9,78,000/- as compensation, which they filtered many charges from the tribunal. The High Court decreased the interest rate to 7.5% from 9% as given by the tribunal. Be it marked, the judgment and order dated 27/1/2010 passed by the High Court of Judicature at Madras.

Mr. Vipin Nair, counsel appearing for the appellant, had said that the High Court has wrongly held that there cannot be a grant of compensation under two criteria, namely, “permanent disability” and “loss of earning money power”. He claimed that the tribunal had appreciated the evidence on record and fixed a certain sum of money under various heads but the High Court on unacceptable reasons has deleted the same. It is also canvassed by him that the High Court without ascribing any cogent reasons has reduced the expenses for continuous treatment from Rs. 2,00,000/- to Rs. 50,000/- as a result of which the amount had been substantially reduced and the concept of “just compensation” has lost its real characteristics.

WARD V. JAMES

It had been expressed thus: -“Although you cannot give a man injured much for his ‘lost years’, you can, however, award him for his loss during his minimized span, that is, during his expected ‘years of life’. You can compensate him for his loss of income during that time, and for the cost of treatment, nursing. He may, have a brain injury, be remained unconscious for the rest of his days, or, owing to a back injury, be unable to get up from his bed. He has stray everything that makes life worthwhile. Money is no good to him at this time. Yet judges have to do the best they can and give him what they think is fair and inequity.”

MRS. HELEN C. REBELLO AND OTHERS V. MAHARASHTRA

State Road Transport Corp. and another while dealing with the concept of “just compensation”, it has been ruled that the word ‘just’, as its nomenclature, defines equitability, fairness, and reasonableness having large outer field. The largeness is, of course, not arbitrary; it is limited by the moral sense which is fair, reasonable if it exceeds; it is termed as unfair, unreasonable. The field of wider caution of the tribunal has to be within the said limitations. It is required to make an award deciding the amount of compensation which is set to be “just and reasonable”, for compensation for loss of limbs or life can hardly be weighed in golden scales as has been stated in “State of Haryana and another v. Jasbir Kaur and others”

HATTANGADI V. PEST CONTROL (INDIA) PVT. LTD. AND OTHERS

“9. Broadly speaking while fixing an amount of award payable to a victim of an accident, the loss has to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas no pecuniary damages are those which are incapable of

being assessed by arithmetical calculations. In order to appreciate two concepts, pecuniary damages may include expenses incurred by the claimant: (i) need of medical attendance; (ii) loss of earning of profit or money up to the date of trial; (iii) material loss. So far non-pecuniary damages are concerned, they may include (i) compensation for mental and physical shock,; (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 or age of life, i.e., on occurrence of injury the normal longevity of the person concerned is reduced; (iv) discomfort, disappointment, frustration and mental stress in life.”

CONCLUSION

The bench observed that permanent disability can be either partial or total, but the compensation should be decided under the phase or the amount of money the person could have earned incapacity. The Court said that the reduction of additional medical expenses from 2,00,000/- to 50,000/- is totally incorrect, despite ample evidence of the necessity of medical expenses in near future. It is demonstrable that pedicle screws were put into pedicles of D11 vertebra; pedicle screws were passed into pedicles of the L1 vertebra, and two screws put into the left thigh were connected using a rod each. Those maybe need to remove or scan from time to time depending upon other aspects. That apart, there is regular pain and as medically advised physiotherapy is necessary, and hence, regular treatment has to be availed of. Thus, the High Court was not justified in reducing the given amount. It was stated by judges that, in this kind of serious injuries there should be compensation also for pecuniary injuries, which includes pain and suffering also lost quality of life. The court said the deletion of additional transport charge was not justified. However, the court said it is restricted to the amount said before. The high court deleted amount 2,00,000 and 3,00,000 for mental agony and incapable to attend public functions, as 2,50,000 is already been paid for permanent disability, so the decision is totally justified an no interference was called. Total 13,48,000/- was amount was been decided by the court with 7.5% interest from the date of application till the date of payment. The court gave compensation in just manner.

REFERENCES

- [1] <https://indiankanoon.org/doc/167305296/>
- [2] <https://www.casemine.com/judgement/us/59147f35add7b0493445db55>
- [3] <https://indiankanoon.org/doc/1340758/>
- [4] <https://www.legalauthority.in/judgement/r-d-hattangadi-vs-pest-control-india-pvt-ltd-27531>