

KAVITA V. DEEPAK AND ORS.

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5945 OF 2012

(Arising out of SLP (C) No. 7396 of 2011)

- Navneet Bhardwaj

Court – Supreme Court of India

Bench – G.S. Singhvi, Sudhansu Jyoti Mukhopadaya

Decided on – 22nd August, 2012

Relevant Sections – Section - 166 of the Motor Vehicles Act, 1988; Sections - 279, 337 and 338 of the Indian Penal Code, 1860.

INTRODUCTION

Compensation? Just compensation? Permanent disability heads under which compensation to be awarded? Loss of earning capacity, reiterated, in a different head from pain and suffering and medical expenses. Neurological deformity, victim virtually if have we becoming a vegetable requiring treatment throughout life. Victim had to give up partnership in a business earning Rs 12,000. Victim lost her memory and capacity of hearing and the had spent about Rs 10.5 lakhs on medical treatment. Present mental state of appellant claimant was of a six-year old and requiring constant physiotherapy and support of one attendant at all times.

Tribunal and High Court granting a lump sum compensation failing to take into consideration loss of income during period of treatment when appellant was totally incapacitated and also disregarding pain and suffering of victim, escalation in a personally cost of medical treatment, physiotherapy and nursing. Approach of Tribunal and High Court, strongly deprecated. Held, even if income of appellant is taken to be Rs 2000, loss of income during period of treatment would be Rs 1,47,000 approximately. Applying multiplier of 17 for the 30-year-old, future loss of earning calculated at Rs 3,67,200. Assuming claimant's life

expectancy to be it would be appropriate to award attendant charges Rs 2000 p.m. and physiotherapy expenses @ Rs 3000, Sum awarded for physical and mental pain enhanced to Rs 3,00,000 and another Rs 3,00,000 awarded under heads of loss of amenities and loss of life expectancy. Compensation already awarded by Tribunal and High Court enhanced to a total of about Rs 34.4 lakhs to be paid within 3 months by demand draft at appellant claimant's residence deducting the amount already paid.

FACTS

The Courts while determining the quantum of compensation, either for permanently or temporarily disabled persons, must make effort to adequately compensate them not merely for physical injury and treatment but also for loss of earning, inability to lead a normal life and to enjoy life's amenities.

That in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses.

JUDGEMENT BY JUSTICE SHRI. G.S.

Feeling dissatisfied with the enhancement granted by the High Court in the amount of compensation awarded by the Motor Accident Claims Tribunal for short the Tribunal to the appellant has preferred this appeal. In the accident which occurred on 2.5.2004 the appellant suffered grievous injuries. She was initially treated at Government hospital Ratnam and then at Bhandari Hospital Indore. On 4.5.2004, she was admitted in hospital. She remained in Intensive Care Unit from 4.5.2004 to 25.5.2004 and in the private ward as per the medical advice given at Indore she was taken to Mumbai Chennai and finally to Delhi for treatment. At the time of accident, the appellant's age was about 30 years and she was working partner

in the Tirupati Enterprises. At Bhandari Hospital Indore and under treatment by Dr. Rajesh ji, Dr Srikant ji, Dr Parag Aggarwal ji and Dr. Sunil ji. At Bombay she was taking the treatment under by Dr. B. S. Singhal ji, Dr. Bhagwati ji, Dr. K. K. Garg ji, Dr. Anukant ji, Dr. Khandilkar ji, Dr. Kenny and Dr. Bhatt. The Disability Certificate issued and signature issued by Dr. Sunil Athwale, who was Neuro Physician at Bhandari Hospital, Indore reads as under:

DISABILITY CERTIFICATE

This is to certify that Smt. Kavita Singhal w/o Mr. Deepak Singhal R/o 100 old Agrawal nagar Indore aged 31 yrs. met with the aa mid night on Ratnam - Indore State Highway Road. She was taken to Indore on wheels & was given artificial 02 on the way which was many kilometers. We reached Indore nearly and was admitted in Bhandari hospital. Scan was done nearly after 10 hours of injury. Onwards she is under my treatment and the patient is experienced as below First MR Study of the and the report of the same reveals Multiple hyperintense signals are noted in left basal ganglia, right frontal periventricular white matter, left thalamus & right base frontal region with areas of magnetic susceptibility in it suggesting hemorrhage. FLAIR hyperintense signals are noted diffusely in corpus callosum Follow up scan reveals that complete resolution of the posterior inter hemispheric sub dual collection noted in left occipital partial region. Old hemorrhagic products noted in the left basal ganglia, left anterior thalamus, right frontal periventricular white matter and right base frontal region mild decrease in size as compared to old study especially in right basal ganglia. Diffuse axonal injury noted in corpus callosum, cingulated gyrus periventricular white matter noted mild decrease as compared to old study She was discharged from in a vegetative stage, with a RT for feeding. That time she was unable to communicate in, anyway. She was undergoing extensive Physiotherapy there and was advised the same to continue.

The appellant filed a petition through her husband - Shri Deepak Singhal under Section 166 of the Motor Vehicles Act, 1988 for award of compensation to the tune of Rs.85 lakhs by alleging that the accident was caused due to rash and negligent driving of the truck owned by respondent No.1 and driven by respondent. She alleged that the truck dashed against the Maruti Esteem car in which she was travelling and as a result of the accident she suffered injuries to her head, mouth, right ear and other parts of the body and consequentially she has become disabled from doing her routine work. In the written statement filed on behalf of the insurance company, it was pleaded that the accident was not caused due to rash and negligent driving of the truck and that the driver was not holding a valid and effective driving licence

on the date of accident. The driver of the truck was prosecuted for offences under Sections 279, 337 and 338 IPC. During the trial, he made confession that the accident was caused due to his rash and negligent driving. The trial Court convicted the driver and imposed a fine of not mention and in default to undergo three months imprisonment. After recording evidence of the parties, the Tribunal passed award and ordained the respondents to pay total compensation with interest at the rate not fixed The Tribunal relied upon the statements of the appellant's husband Shri Deepak Singhal, Shri Push Pender Garg, who was driving the Car and two other occupants, namely, Prashant Agarwal and Renu, the Charge Sheet filed in the criminal case, the confession of the driver and the judgment of the trial Court and concluded that the accident took place due to rash and negligent driving of the truck In cannot be disputed that because of the accident the appellant who was an active practicing lawyer has become paraplegic on account of the 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 lifelong handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by 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. When compensation is to be awarded for pain and suffering and loss of amenity of life the special circumstances of the claimant have in the have to be taken into account including his age the unusual 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. Learned counsel for the insurance company argued that the enhancement granted by the High Court is just fair and reasonable and does not require to be further enhanced.