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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal No.815 of 2004

Beer Narayan Singh, son of Lal Singh, aged about 20 years, Caste Gond, R/o Village Bakna, P.S. Shrinagar, Tahsil Surajpur, District Surguja, Chhattisgarh

---- Appellant

versus

1. Ghanshyam, son of Bachchuram, aged about 24 years resident of Shrinagar, P.S. Shrinagar, Tahsil Surajpur, District Surguja, Chhattisgarh
- 2A. Sumanti Bai, Wd/o late Asharam, aged about 65 years,
- 2B. Lalit Mohan Sahu, son of late Asharam, aged about 45 years,
Both are R/o Village Umapur, Post Nivragudi, P.S. Ramanujnagar, District Surajpur, Chhattisgarh
3. Gurudayal, son of Karansay, aged 70 years,
4. Anand Kumar, son of Shivnarayan, aged 60 years,
5. Smt. Samudri Bai, W/o Alamsay, aged 35 years,
6. Smt. Kalawati, W/o Dwarika Prasad, aged 45 years,
Non-applicants No.2 to 6 belong to Caste Sahu, R/o Village Umapur, P.S. Shrinagar, Tahsil Surajpur, District Surguja, Chhattisgarh
7. Branch Manager, National Insurance Company Limited, Divisional Office Raipur, Branch Bilaspur, Chhattisgarh

---- Respondents

and

Miscellaneous Appeal No.978 of 2004

- 1(a) Sumanti Bai, W/o Late Asharam, aged about 60 years, Caste Sahu,
- 1(b) Lalit Mohan Sahu, S/o Late Asharam, aged about 45 years, Caste Sahu
Both are R/o Umapur, Post Nivragudi, Police Station Ramanujnagar, District Surajpur, Chhattisgarh
2. Gurudayal, son of Karansai, aged about 70 years,
3. Anand Kumar, son of Shivnarayan, aged about 60 years,
4. Smt. Samudri Bai, W/o Alamsai, aged about 35 years,
5. Smt. Kalawati, W/o Dwarika Prasad, aged about 45 years,
All Caste of Sahu, R/o Village Umapur, P.S. Shrinagar, Tahsil Surajpur, District Surguja, Chhattisgarh

---- Appellants

versus

1. Birnarayan Singh, son of Lal Singh, aged about 20 years, Caste Gond, R/o Village Bakna, P.S. Shrinagar, Tahsil Surajpur, District Surguja, Chhattisgarh
2. Ghanshyam, son of Bachchuram, aged about 24 years, R/o Shrinagar, P.S. Shrinagar, Tahsil Surajpur, District Surguja, Chhattisgarh
3. National Insurance Company Ltd., through Branch Manager, Mandal Office, Raipur, Branch Bilaspur, Chhattisgarh

---- Respondents

For Respective Appellants	: Shri D.N. Prajapati and Shri Atanu Ghosh, Advocates
For Respondent/Insurance Company	: Shri B.N. Nande, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

22.7.2016

1. The above-mentioned two appeals are being disposed of by this common order since they arise out of a one and same award dated 15.5.2004 passed in Claim Case No.92 of 2002 by the Additional Motor Accidents Claims Tribunal, Baikunthpur, District Korla.
2. The undisputed facts are that Claimant Beer Narayan Singh was travelling on a tractor bearing registration No.MP 27 B 3422 or trolley bearing registration No.MP 27 B 3424. The Claimant received injuries in the accident and according to him his right hand was amputated below the shoulder and, therefore, he claimed compensation. The Learned Claims Tribunal assessed the income of the Claimant/injured at Rs.60/- per day, i.e., Rs.1,800/- per month and held that the loss of physical disablement of the Claimant was 50% and calculating the loss of earning on account of the amputation at Rs.61,200/-, awarded total compensation of Rs.76,200/- including Rs.15,000/- for medical expenses. The Claims Tribunal has exonerated the Insurance Company from liability of payment of compensation. During the pendency of the appeals, the owner had died and his legal representatives have been brought on record.
3. Claimant Beer Narayan Singh has filed Miscellaneous Appeal No.815 of 2004 claiming enhancement of the compensation and Owners of the tractor and trolley have filed Miscellaneous Appeal No.978 of 2004, wherein the challenge is made both to the quantum of compensation awarded by the Claims Tribunal and to the exoneration of the Insurance Company from liability of payment of compensation.

4. The first issue for determination is whether the compensation awarded by the Claims Tribunal is just and proper.

5. The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act, 1988 are well settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as, (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. The damages can be pecuniary as well as non-pecuniary, but all have to be assessed in rupees and paisa.

6. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Motor Vehicles 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 him. Such compensation is what is termed as just compensation. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, 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. The compensation or damages assessed for the personal injuries should be substantial damages to compensate the injured for the deprivation suffered by him throughout his life. They should not be just token damages. There are numerous cases where the principles for grant of compensation have been enunciated. It would be relevant to quote pertinent observations from a few.

7. The following observations of Lord Morris in his speech in **H. West & Son Ltd. v. Shephard, 1958-65 ACJ 504 (HL, England)**, are very pertinent:

“Money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards.”

8. Lord Denning while speaking for the Court of Appeal in the case of **Ward v. James, (1965) 1 All ER 563**, laid down the following three basic principles to be followed in like cases:

“Firstly, accessibility: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases; otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good.”

9. 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 guess work and conjecture. An assessment, as best as can, in the circumstances, should be made.

10. In the case of **Mediana, (1900) AC 113, Lord Halsbury**, it is held thus:

“Of course the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. But, nevertheless, the law recognizes that as a topic upon which damages may be given.”

11. In **Perry v. Cleaver, 1969 ACJ 363 (HL, England)**, Lord Morris of Borth-y-Gest held thus:

“To compensate in money for pain and for physical consequences is invariably difficult but no other process can be devised than that of making a monetary assessment.”

12. In **Phillips v. Western Railway Co., (1874) 4 QBD 406**, Field, J., while emphasizing that damages must be full and adequate, held thus: “You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always

recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all. He has done no wrong, he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered.” Besides, the Tribunals should always remember that the measures of damages in all these cases “should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure”. The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to “hold up his head among his neighbours and say with their approval that he has done the fair thing”, should be kept in mind by the court in determining compensation in personal injury cases.

13. Mc Gregor on Damages, 14th Edn., para 1157, referring to heads of damages in personal injury actions states thus:

“The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the courts have sub-divided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life.”

14. In Concord of India Insurance Co. Ltd. v. Nirmala Devi, 1980 ACJ 55 (SC), the Apex Court held thus:

“The determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.”

15. In R.D. Hattangadi v. Pest Control (India) Pvt. Ltd., 1995 ACJ 366 (SC), speaking about the heads of compensation, the Apex Court held thus:

“Broadly speaking, while fixing the 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 are 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 appreciate 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 as non-pecuniary damages are concerned, they shall include:

(i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in the 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 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.”

16. In Rajkumar v. Ajay Kumar, (2011) 1 SCC 343, the Apex Court laid down the heads for which compensation is to be awarded for personal injuries, as follows:

“6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalization,

medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

17. In **Sanjay Verma v. Haryana Roadways, (2014) 3 SCC 210**, the Apex Court granted compensation under the heads of medical expenses, future treatment, pain and suffering, cost of attendance etc.

18. I now proceed to determine just compensation payable under the Motor Vehicles Act by applying the aforesaid principles.

19. In the instant case, the accident took place on 11.1.1999. Claimant

Beer Narayan Singh appeared in the witness-box as PW-1 and the Claims Tribunal while recording the statement of the Claimant has observed that right arm has been amputated below the shoulder. Therefore, I proceed to decide the case on the basis that the amputation has been proved. We must bear in mind that the Claimant was not doing a desk job. He was working as a labourer. It is not necessary that in every case, the percentage of disability should be equal to the loss of earning. Each case has to be decided on its own facts. To give an example if a person is employed in a desk job in a bank and both his legs are amputated, if he continues to do his job, there may not be any loss of his earning. He may be granted compensation for other heads. However, in case of a labourer, the loss of a limb virtually makes him 100% incapable to work. Normally, a person, who works as a labourer is uneducated and he only knows how to do manual labour and loss of a limb or an arm means loss of 100% earning capacity.

20. The Employees' Compensation Act, 1923 (henceforth 'the Act of 1923') deals with the injuries to workmen. As per Schedule I of the Act of 1923, if the amputation is below the shoulder with stump less than 8 inches (20.32 cms.) from tip of acromion, the loss of earning capacity is to be calculated at 80%. In my view, it would be proper to follow the table even in this case and, therefore, loss of earning capacity of the Claimant is assessed at 80%.

21. The Claimant was earning Rs.60/- per day, i.e., Rs.1,800/- per month. He was only 20 years of age. In **Sarla Verma (Smt.) v. Delhi Transport Corporation, (2009) 6 SCC 121**, the Apex Court held that in such a situation, 50% should be added to the wages to take into consideration future prospects of the Claimant. If 50% is added, the income comes to Rs.2,700/-. 80% of Rs.2,700/- works out to Rs.2,160/- per month or Rs.25,920/- per year. Since the Claimant was 20 years of age, the multiplier should be 18 and the compensation works out to

Rs.4,66,560/-, which is rounded off to Rs.4,67,000/-.

22. The Claimant has been awarded Rs.15,000/- towards medical expenses, which is just and reasonable. The Claimant has not been paid a single penny for pain and suffering. A Claimant who has lost his arm in an accident must be paid some amount for pain and suffering. Accordingly, the Claimant is awarded Rs.30,000/- for pain and suffering.

23. The Claimant has also not been awarded any amount for future discomfort and loss of amenities. The Claimant was only 20 years of age at the time of accident. He will live rest of his life like a cripple. In society, he will never be treated as a normal human being. He cannot enjoy many pursuits of life which a normal human being does. He cannot even ride a bicycle. He is deprived of many activities of life, which a normal person can perform. Therefore, I award a sum of Rs.1,50,000/- towards future discomfort and loss of amenities of life. The total compensation works out to Rs.6,62,000/-. The Claimant is also entitled to simple interest on this amount @ 9% per annum from the date of filing of the claim petition before the Claims Tribunal till full payment of the award amount.

24. The next question arises for adjudication is as to who is liable to pay compensation.

25. Admittedly, the Claimant was travelling on a tractor. On behalf of the owners of the tractor, it is urged that he was travelling on the trolley. Whether he was travelling on the tractor or on the trolley attached with the tractor, such liability is not covered either under the provisions of the Motor Vehicles Act or under the terms of the policy of insurance.

26. The policy of insurance, which is Ex.D-3, clearly shows that there was no coverage for any passenger and it also clearly states that it is for tractor and trolley and it is an "Act" only policy meaning thereby that it only covers driver of the tractor and trolley, which is necessary to meet the requirement of the Motor Vehicles Act and no extra coverage was there. I

also find from the policy that it has been issued for driving the tractor and trolley for agricultural purposes only.

27. As far as no passenger is permitted to be carried in the tractor or even in the trolley attached with the tractor is concerned, the tractor and the trolley were registered for agricultural purposes which only means that only agricultural produce could be carried in the tractor and trolley. A passenger is not supposed to be carried in the tractor or trolley as there is no sitting capacity available in the tractor or trolley except for the driver. Therefore, the insurance company cannot be held liable for payment of compensation in a case of suffering injury or death of a person, who was travelling in the tractor or trolley as an unauthorised or gratuitous passenger.

28. Even in the registration certificate, the sitting capacity including the driver is shown to be one. Therefore, the insurance company was rightly absolved of the liability to pay compensation.

29. It is also held that the owner alone shall be liable to pay the compensation. However, since the owner has died, his legal heirs can only be held liable to the extent of the estate of the deceased inherited by them.

30. In view of the above discussion, Miscellaneous Appeal No.815 of 2004 filed by Claimant Beer Narayan Singh is allowed and the compensation is enhanced from Rs.76,200/- to Rs.6,62,000/- along with the interest as aforesaid. Miscellaneous Appeal No.978 of 2004 filed by the owner is dismissed. No costs.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE