

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA No.2394 of 2013

JUDGMENT:

This appeal is arising out of the order and decree, dated 26.07.2013, in M.V.O.P.No.754 of 2010 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge), Nizamabad (for short 'the Tribunal').

2. The appellant is the petitioner and the respondents are the respondents in the above referred O.P.

3. The petitioner, who is aged about 9 years, filed the O.P. under Section 166(1)(a) of the Motor Vehicles Act, 1988 read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989 claiming compensation of Rs.3,00,000/- on account of the injuries sustained by her in a motor vehicle accident. Since the petitioner is a minor, she is represented by her mother.

4. The brief facts of the case are that on 31.05.2010 at about 9:00 pm when the petitioner was going by walk by the side of the road at Mamidipally village bus stand, the driver of the van bearing No.AP-25-TV-0269 being driven in a rash and negligent manner, dashed against her and caused injuries. She was shifted to Government Hospital, Armoor, and from there she was shifted to Osmania General Hospital, Hyderabad. She was treated as inpatient from 01.06.2010 to 03.06.2010 and she underwent operations. She had continued her treatment in Srinivasa Hospital, Nizamabad and she incurred expenditure of Rs.1,00,000/- for her treatment. She lost sight to her left eye and was unable to do any work and she became disabled permanently.

5. On consideration of the evidence of all the witnesses, the Tribunal has awarded compensation of Rs.1,03,100/-. Dissatisfied with the quantum of compensation, this appeal has been preferred.

6. Heard Sri Azar Sravan Kumar, learned counsel for the appellant and Sri T.Narsi Reddy, learned counsel for the respondents.

7. Learned counsel for the petitioner submitted that the petitioner was unable to see properly and she has lost her vision in her left eye permanently. She had suffered permanent disability. She is unable to attend any work normally as before the accident. It is further submitted that though the petitioner has received four simple injuries and one grievous injury, the Tribunal has not awarded adequate compensation for the injuries suffered by her.

8. Learned counsel for the respondents submitted that the Tribunal had awarded Rs.35,000/- towards pain and suffering, including the compensation for injuries. The learned counsel referred to the evidence of PW2 in para 7.3 of the order, which reads as follows:

“The evidence of PW2 is that at the relevant time he was working as Civil Assistant Surgeon in GHH, Nizamabad. On 31.05.2010 he examined the petitioner and found on her the following injuries:-

- 1) fresh laceration, 5 cm x 3 cm x 2 cm, forehead, left side,
- 2) fresh deep laceration with multiple abrasions on face and cheek, left side
- 3) abrasions, fresh, on right fore arm
- 4) abrasion, fresh, on both knees and
- 5) tenderness over left maxilla, zygoma

The petitioner informed him that she received the injuries in RTA. CT scan was done. It showed fracture left zygoma. He referred the petitioner to OGH for further management and expert treatment. The petitioner paid Rs.500/-. He opined that injury Nos.1 to 4 are simple in nature and injury No.5 is grievous in nature. He issued Ex.A3. In the cross-examination he stated that as per the CT scan, the brain was normal. He denied the suggestions that the petitioner received simple injuries and she did not receive any grievous injuries and that Ex.A3 certificate, is not correct.”

9. Learned counsel for the petitioner submits that the petitioner suffered permanent disability, but the Tribunal held that there is no satisfactory evidence adduced to accept the permanent disability. As a matter of fact, there is no medical evidence in support of the contention of the learned counsel for the petitioner with regard to the permanent disability. Hence, there is no need to interfere with the finding of the Tribunal in this regard.

10. Learned counsel for the petitioner submits that the petitioner has suffered a scar on her face and she lost her aesthetic look and the Tribunal has awarded Rs.50,000/- towards disfiguration on her face, which is inadequate. He referred paras 21 to 25, 28, 40, 41 and 47 of a decision of the Hon'ble Supreme Court in **Rekha Jain v. National Insurance Co. Ltd.**¹, which read as follows:

“21. *Lord Morris of Borth-y-Gest in Parry v. Cleaver*, 1969 ACJ 363 (HL, England), has said:

"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".

(Emphasis laid by the court)

22. The necessity that the damages should be full and adequate was stressed by the Court of Queen's Bench in *Fair v. London and North Western Railway Company* (1869) 21 LT 326. In *Rushton v. National Coal Board* (1953) 1 QB 495 at p.499, *Singleton*, L.J. has said that:

"When damages have to be assessed in a case of this kind there are many elements for consideration: the pain and suffering undergone and that which may occur in the future; the loss of some of the amenities of life; the fact that a man with an injury of this kind will always require some measure of help, even though he may be able to earn considerable money. These are some of the matters which have to be taken into consideration, and another is the fact that his earnings will probably be less than they were before."

(Emphasis laid by the Court)

23. In *Fowler v. Grace*, (1970) 114 Sol Jo 193, *Edmund Davies*, L.J., has said that:

"It is the manifest duty of the Tribunal to give as perfect a sum as was within its power'. There are many losses which cannot easily be expressed in terms of money. If a

¹ 2013 ACJ 2161

person, in an accident, loses his sight, hearing or smelling faculty or a limb, value of such deprivation cannot be assessed in terms of market value because there is no market value for the personal asset which has been lost in the accident, and there is no easy way of expressing its equivalent in terms of money. Nevertheless a valuation in terms of money must be made, because, otherwise, the law would be sterile and not able to give any remedy at all. Although accuracy and certainty were frequently unobtainable, a fair assessment must be made. Although undoubtedly there are difficulties and uncertainties in assessing damages in personal injury cases, that fact should not preclude an assessment as best as can, in the circumstances be made."

(Emphasis laid by the Court)

24. In *re: the Mediana*, (1900) AC 113 at p.116, the plaintiffs were deprived of the use of their own lightship, but sustained no pecuniary loss as another lightship was kept in reserve. Yet, it was held that the plaintiffs were entitled to substantial damages for the loss of the use of their ship for a period, and Lord Halsbury L.C. answered the objection that assessment was too uncertain by observing that:

"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 recognises that as a topic upon which damages may be given.

In personal injury cases, the Court is constantly required to form an estimate of chances and risks which cannot be determined with precision. It is because, the law will disregard possibilities which are slight or chances which are nebulous; otherwise, all the circumstances of the situation must be taken into account, whether they relate to the future which the plaintiff would have enjoyed if the accident had not happened, or to the future of his injuries and his earning power after the accident. Damages are compensation for an injury or loss, that is to say, the full equivalent of money so far as the nature of money admits; and difficulty or uncertainty does not prevent an assessment."

(Emphasis laid by the Court)

25. It is well-settled principle that in granting compensation for personal injury, the injured has to be compensated (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special

damages. In personal injury cases the two main elements are the personal loss and pecuniary loss. *Chief Justice Cockburn in Fair's case*, (1869) 21 LT 326, distinguished the above two aspects thus:

"In assessing the compensation the jury should take into account two things, first, the pecuniary loss the plaintiff sustains by the accident : secondly, the injury he sustains in his person, or his physical capacity of enjoying life. When they come to the consideration of the pecuniary loss they have to take into account not only his present loss, but his incapacity to earn a future improved income".

28. *Lord Reid in Baker v. Willoughby*, 1970 ACJ 259 (HL, England), has said:

"(8) ...A man is not compensated for the physical injury; he is compensated for the loss which he suffers as a result of that injury. His loss is not in having a stiff leg; it is in his inability to lead a full life, his inability to enjoy those amenities which depend on freedom of movement and his inability to earn as much as he used to earn or could have earned..."

40. In *Nizams Institute of Medical Sciences v. Prasanath S. Dhananka*, 2010 ACJ 38 (SC), this Court has observed as under:

"(39) We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The adequate compensation that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned... At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. *The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.* We can also visualise the anxiety of the complainant and his parents for the future after the latter, as must all of us, inevitably fade away. We, have, therefore computed the compensation keeping in mind that his brilliant career has been cut short and there is, as of now, no possibility of improvement in his condition, the compensation will ensure a steady and reasonable income to him for a time when he is unable to earn for himself.

(Emphasis supplied)

41. In this regard, in *Baker’s* case, 1970 ACJ 259 (HL, England), it has been stated by Lord Reid that a man is not compensated for the physical injury; he is compensated for the loss which he suffers as a result of that injury. Therefore, the functional disability is a forceful alteration of career option of the appellant who has already undergone physical and mental injuries because of the accident. It would amount to adding distress to injury if one is forced to work with difficulty to earn his/her livelihood so as to reduce the burden of the wrongdoer in terms of compensation.

47. Before parting with the judgment, it would be just and necessary for this Court to make observation that the Motor Accidents Claims Tribunals and the Appellate Courts should keep in view the rights of the claimants under the provisions of the M.V. Act to determine the compensation claims of the claimants by considering the facts of each case and the legal position laid down by this Court on relevant aspects.”

11. This is a case of injuries. The appellant was a girl aged about 6 years. She suffered one grievous injury to eye, and four simple injuries. She spend Rs.3 lakhs and the Tribunal awarded Rs.3,01,000/-. In view of the above said decision, the compensation awarded by the Tribunal is inadequate. Therefore, the compensation awarded by the Tribunal is enhanced, as shown in the tabular form, as the appellant has suffered injury to her eye and she lost her vision due to the accident.

Sl. No.	Name of Head	Compensation awarded by Tribunal	Compensation awarded by this Court
1.	One grievous injury, four simple injuries and pain and suffering	Rs.35,000/-	Rs.80,000/-
2.	Medical bills	Rs.2,100/-	Rs.2,100/-
3.	Extra-nourishment	Rs.16,000/-	Rs.16,000/-
4.	Disfiguration	Rs.50,000/-	Rs.75,000/-
	Total	Rs.1,03,100/-	Rs.1,73,100/-

12. Accordingly, the appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.1,03,100/- to Rs.1,73,100/- with subsequent interest at the rate of 7.5% per annum from the date of petition till realization. The respondents are directed to deposit the balance amount, within two months from the date of receipt of a copy of this order. On such deposit, the petitioner is permitted to withdraw the same. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

Date : 21.02.2017
ssp

GUDISEVA SHYAM PRASAD,J

