

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

MACMA No. 890 of 2010

JUDGMENT:

This appeal is arising out of the order dated 12.04.2010 in O.P.No.595 of 2007 on the file of the Motor Accidents Claims Tribunal (Before the Additional District Judge), Anantapur.

2. The appellant filed Original Petition under Section 166 and 163-A of the Motor Vehicles Act, 1988, claiming compensation of Rs.12,00,000/- on account of the injuries sustained by him in the motor vehicle accident occurred on 14.09.2005.

3. Brief facts of the case are that on 14.09.2005, the appellant had driven the APSRTC bus bearing No.AP-11Z-4190 from Anantapur to Kurnool, and from there the Co-driver had driven the bus from Kurnool to Hyderabad, and when the bus reached near Buthupur on NH-7 road at 93KM, at about 5:45 AM, the Co-driver had driven the bus in a rash and negligent manner, and dashed against a lorry. The petitioner sustained multiple fractures to his left leg, and left hand, and was admitted in Government Hospital, Mahaboobnagar, and from there he was shifted various hospital like APSRTC Hospital, Tarnaka, and NIMS Hospital, at Hyderabad. The APSRTC has borne the medical expenditure for the treatment of petitioner. Due to injuries suffered by him, he is unable to discharge his duties as driver, APSRTC paid him half salary for six months, thereafter salary was not paid. With these averments, the petitioner filed the aforesaid claim petition seeking compensation of Rs.12,00,000/- against respondents 1 and 2, the Depot Manager, and Managing Director of APSRTC, respectively.

4. The respondents 1 and 2 filed written statement denying the allegations in the claim petition, and put the petitioner to strict proof of all the allegations made in the claim petition.

5. The Tribunal, on consideration of the evidence on record has awarded a compensation of Rs.5,15,820/- with interest at 7.5% per annum from the date of petition till date of realisation.

6. Being aggrieved by the award, the appellant-claimant filed this appeal for enhancement of compensation.

7. Heard Sri M. Parma Reddy, appearing on behalf of Sri J. Narayan Swamy, counsel for the appellant; and Sri Srinivasa Rao, counsel representing Sri Aravala Rama Rao, for APSRTC.

8. It is appropriate to refer to the case of *Rekha Jain v. National Insurance Co. Ltd.*¹ for the purpose of assessing compensation in this case. The observations of the apex Court read as under:

“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

¹ 2013 ACJ 2161

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 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.”

9. Learned counsel for the appellant submits that the Tribunal went wrong in calculating the compensation by deducting 1/3rd of the income towards personal expenditure which is not permissible by law.

10. Learned counsel for the respondent also fairly conceded that the Tribunal ought not to have deducted 1/3rd of the income towards personal expenditure while assessing compensation.

11. It is pertinent to note that, time and again, the Hon'ble Apex Court has held in *Rekha Jain* (1 supra) and several judgments not to deduct 1/3rd of the income towards personal expenditure in cases of injury. In spite of catena of decisions, the Tribunal has wrongly awarded the compensation by deducting the 1/3rd from the income of the appellant. The Tribunal has taken the salary of the appellant as Rs.10,200/-, and after deducting Rs.1,453 (which are compulsory deductions like Professional Tax, LIC, SRBS and SPT) arrived at Rs.8,767/- and basing on that, it calculated the compensation.

12. As per the judgment rendered by the apex Court in *Sarla Verma and Ors. V. Delhi Transport Corporation and Anr*², the multiplier applicable to the age of the appellant, who is 52 year old at the time of accident, is '11'. On application of the multiplier '11', the future earnings come to Rs.8,767x12x11= Rs.11,57,244. As the disability suffered by the appellant is 60%, loss of future earnings would be Rs.11,57,244 x 60/100, which comes to Rs.6,94,346/-.

13. As far as other heads are concerned, the Tribunal granted Rs.50,000/- under the Head 'Pain and Suffering' which does not require interference as it is reasonable.

² (2009) 6 SCC 121

14. The Tribunal granted Rs.3,000/- towards extra nourishment which is very low. Therefore, the same is enhanced to Rs.10,000/-.

15. The Tribunal has not awarded compensation towards attendant charges, transport charges. In this case, the petitioner would not have gone alone, so he would have incurred some expenditure for attendant and he would have incurred transport charges also. Therefore, an amount of Rs.10,000/- is awarded under those Heads.

16. Learned counsel for the appellant further contended that the Tribunal has not awarded any amount towards medical expenditure, and therefore requested for awarding some amount towards medical expenditure.

17. Per contra, learned counsel for the respondent-APSRTC contended that the appellant himself has averred in the claim petition that all the medical expenses were paid by the APSRTC, and the findings of the Tribunal in paragraph (iv) under Issue No.2 of the impugned Judgment, read as under:

“.... Ex.A8 is the letter from NIMHS Hospital. The petitioner filed medical bills under Ex.A10 for Rs.21,396/-. So far as treatment at APSRTC Hospital, Tarnaka and NIMHS Hospital the entire expenditure is met by the APSRTC. He filed Ex.A10 medical bills as if he incurred Rs.21,396/-. When APSRTC met all medical expenditure of the petitioner why he purchased medicines under Ex.A10 bills. So in these circumstances, no amount can be granted to the petitioner towards medical bills. Even in the main petition, the petitioner has not claimed any amount for medical expenses because the expenditure was met by the APSRTC. He has clearly stated in the petition the APSRTC met all the medical expenses.”

18. It is contended by the counsel for the respondent that the Tribunal has observed that the appellant is not entitled for any medical expenditure as he had taken treatment in the APSRTC hospital.

19. In view of the above observation of the Tribunal, and keeping in view the rationale in the decision in Rekha Jain (1 supra), this Court is not inclined to grant any medical expenditure to the appellant. In view of the foregoing reasons, the following compensation is awarded as shown in the tabular format.

S.No	Head	Amount claimed	Compensation Awarded by the Tribunal	Compensation enhanced
1.	Loss of future earnings		Rs.4,62,820/-	Rs.6,94,346
2.	Pain & suffering		Rs.50,000/-	Rs.50,000/-
3.	Extra nourishment		Rs.3,000/-	Rs.10,000/-
4.	Attendant and transport charges			Rs.10,000/-
	Total		Rs.5,15,820/-	Rs.7,64,346/-

20. In the result, the appeal is partly allowed, by enhancing the compensation awarded by the Tribunal from Rs.5,15,820/- to Rs.7,64,346/-, with interest at 7.5% per annum from the date of petition till realization. The respondents are directed to deposit the compensation within two months from the date of receipt of a copy of this order and, on such deposit, the appellant is permitted to withdraw the entire amount. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDI SEVA SHYAM PRASAD, J

08th February, 2017

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THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD



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