

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A No.1127 of 2006

JUDGMENT : (per Hon'ble Sri Justice C.Praveen Kumar)

1) Challenging the Award dated 07.03.2006 passed in O.P.No.588 of 2002 by the IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad, the second respondent i.e., M/s. National Insurance Company Limited preferred the present appeal under Section 173 of the M.V. Act.

2) For the sake of convenience, the parties hereinafter will be referred to as arrayed in O.P.

3) The facts in issue are as under:-

3.1) The minor-petitioner represented by her father and natural guardian preferred an application under Section 166 of the M.V.Act claiming compensation against the respondents 1 to 3, who are the owner of the School Van bearing No.A.P.28.T.5250 in which the injured-petitioner was traveling, its insurer and the owner of the lorry bearing No.A.P.9U.5887, claiming an amount of Rs.50,05,204/- initially, which was subsequently enhanced to Rs.1,74,45,204/- with

interest at 18% p.a., from the date of the accident till the date of realization of compensation.

3.2) The petitioner/injured, who was 16 years at the time of the accident was studying X class in Mahesh Vidya Bhavan School at Shivarampally. On 29.02.2000 while the petitioner was going to school in school van owned by respondent No.1, the driver of the said van drove the vehicle in a rash and negligent manner, as a result of which dashed against a lorry bearing No.A.P.9U.5887 which was coming in opposite direction. As a result of the impact, the driver of the school van and one child died on the spot, while some of the students received injuries. Immediately, the petitioner/injured was shifted to nearby hospital i.e., Raghavendra Hospital. On coming to know about the incident, a case in Cr.No.69 of 2000 came to be registered at Shamshabad police station against the driver of the van. Having regard to the nature of the injuries sustained by the petitioner, she was shifted to Apollo Hospital, Jubilee Hills, where the Doctor found the injuries as cervical spinal trauma, fracture dislocation of C3 over C4 with Quadriplegia of 0/5 power. The Doctors also found that the petitioner lost sensation and power of retention of urine. The X-rays and MRI taken, confirmed that the petitioner suffered fracture dislocation and also major cervical spinal-cord injury. During the course of the treatment, the petitioner suffered respiratory problem, underwent tracheotomy suction and lung collapse of left side

necessitated bronchial aspiration. The petitioner was also found to have suffered head injury, fractures to both hands and legs, laceration and abrasion to abdomen, eye injury and laceration to scalp and other injuries. She was in hospital as inpatient from 29.02.2000 to 16.06.2000. It is said that she was in ICC unit for a period of 55 days and during that period number of surgeries came to be performed on the petitioner. At the time of discharge, there is deformity at C4 and C5 of the cervical spine injury which resulted in, inability to keep the cervical brace and she cannot withstand any major surgery. The medicines prescribed were brought from foreign countries for the use of the petitioner. Though medicines were imported from Geneva of Switzerland at the cost of Rs.1,26,000/-, the Doctors felt that there would be no further improvement and that the petitioner has to remain on bed forever. After her discharge from Apollo hospital, the petitioner developed complications, pursuant to which she was taken to NIMS, Hyderabad on 26.07.2000. Again operations came to be conducted on the petitioner and was discharged on 12.08.2000 with an advice to follow up the treatment. About Rs.52,433/- was spent at NIMS, Hyderabad. Since there was no control power and strength to the lower and upper limbs, she cannot raise herself and even she cannot sit, stand or move and for which she was also advised physiotherapy and treatment to be continued.

4) The application, which is filed in support of the claim petition, contains various expenses incurred from time to time and the agony which the family members have undergone and also the pain and trauma which the petitioner is undergoing till date apart from the expenditure incurred towards various things. Taking the expenditure, mental trauma and the recurring expenditure which is to be incurred, the Tribunal awarded a sum of Rs.1,80,12,600/- with interest @ 10% p.a. on the pecuniary damages from the date of petition till the date of realization. Challenging the same, the present appeal came to be filed.

5) Sri K.Subba Rao, learned counsel for the appellant fairly stated across the bar that he is not disputing the manner in which the accident took place and also the injuries and treatment taken by the injured. He only disputes the quantum of amount granted under certain counts. According to him, having made a claim for enhancement from Rs.50,05,204/- to Rs.1,74,45,204/-, the Court could not have awarded more than the said amount. He would further contend that even in case of 100% disability, which is equivalent to death, the court should award only 1/3rd towards future prospects. He would further submit that the compensation awarded under certain counts are overlapped. According to him, having awarded compensation towards mental and physical shock, pain and suffering of past and future, the court need not have awarded damages for

expectation of life and compensation towards inconvenience, hardship, discomfort, disappointment, disfigurement of 100%. Coming to the future medical treatment surgeries, surgical instruments, he would submit that having awarded Rs.51,00,000/- under the said count, it could not have awarded interest on the said amount. He further submits that when amounts are already awarded towards costs of surgical instruments and attendant charges, awarding an amount of Rs.4,00,000/- towards motorized wheel chair is illegal.

6) On the other hand, the learned counsel for the respondent herein took us to the various paragraphs of the judgments and contended that no interest was awarded only on future expenses and in view of the judgment of this Court in **Pola Bhadramma v. G.Kumar and another**¹ and judgment of the Apex Court in **Sanjay Batham v. Munnalal Parihar and others**², there is no overlapping of the amounts granted. He would further contend that the court took into consideration the prevailing circumstances as on the date of the judgment i.e., on 07.03.2006 and then awarded the said amount, which if calculated with the present day law, the petitioner would be entitled to much more than what has been awarded by the trial court.

7) Coming to the first ground raised by the learned counsel for the appellant that the claimant had made an application for

¹ 2010(6) ALD 335 (DB)

² (2011) 10 SCC 665

enhancement but the court ought not to have awarded more than the amount claimed under enhancement. It is to be noted that the original claim petition was made in the year 2002 and the application for enhancement came to be made on 05.02.2005. After a full-fledged trial, the judgment was pronounced on 07.03.2006. Taking into consideration the escalation of costs, more particularly with regard to the future treatment, which the petitioner has to undergo from time to time and having regard to the increase in costs of medication and other treatment, the court only enhanced the claim about Rs.4,00,000/- which in near future cannot be said to be more. Even otherwise, the Apex Court on more than one occasion has held that this being a beneficial legislation the court can award more than what has been claimed by the claimant in the application. In *Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another*³, the Apex Court while referring to *Nagappa Vs. Gurudayal Singh*⁴ held as under:

"It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in *Nagappa v. Gurudayal Singh*(2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."

³ (2011) 10 SCC 756

⁴ 2003 ACJ 12 (SC)

8) In view of the Judgment of the Apex Court referred to above the claimant is entitled to claim more amount than what has been claimed. Further the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimant is a paramount consideration the Courts should always endeavour to extend the benefit to the claimant to a just and reasonable extent.

9) Having regard to the above, we are not in agreement to consider the argument of counsel for the appellant that the court erred in awarding more than the claim made.

10) The second ground raised by the learned counsel for the appellant is with regard to deduction of 1/3rd towards future expenses. He relied on the judgment of the Supreme Court in **New India Assurance Co. Ltd., v. Charlie and another (decided on 29.03.2005)**. He placed reliance on the following paragraphs :-

"The assessment is split into two parts. The first part comprises damages for the period between death and trial. The multiplicand is multiplied by the number of years which have elapsed between those two dates. Interest at one-half the short-term investment rate is also awarded on that multiplicand. The second part is damages for the period from the trial onwards. For that period, the number of years which have based on the number of years that the expectancy would probably have lasted; central to that calculation is the probable length of the deceased's working life at the date of death." As to the multiplier, Halsbury states:

However, the multiplier is a figure considerably less than the number of years taken as the duration of the expectancy. Since the dependants can invest their damages, the lump sum award in respect of future loss must be discounted to reflect their receipt of interest on invested funds, the intention being that the

dependants will each year draw interest and some capital (the interest element decreasing and the capital drawings increasing with the passage of years), so that they are compensated each year for their annual loss, and the fund will be exhausted at the age which the court assesses to be the correct age, having regard to all contingencies. The contingencies of life such as illness, disability and unemployment have to be taken into account. Actuarial evidence is admissible, but the courts do not encourage such evidence. The calculation depends on selecting an assumed rate of interest. In practice about 4 or 5 percent is selected, and inflation is disregarded. It is assumed that the return on fixed interest bearing securities is so much higher than 4 to 5 per cent that rough and ready allowance for inflation is thereby made. The multiplier may be increased where the plaintiff is a high tax payer. The multiplicand is based on the rate of wages at the date of trial. No interest is allowed on the total figure". In case, where the injured has suffered 100% the logic applicable to a deceased can, in appropriate cases, taking note of all relevant factors be reasonably applied."

11) Dealing with the said aspect, a Division Bench of this Court in **Pola Bhadramma's case (one supra)** observed as under:-

"19. Therefore the notional sum of contribution of house wife to the family can always be the basis for determining pecuniary loss. While doing so, the traditional method of deducting 25% or 50% towards personal expenditure is dispensed with. Applying the same, we deem it appropriate to assume the age of appellant as 46 years, her contribution to the family would be Rs.3,000/- per month. By reason of the accident, family lost her services and, therefore, applying the multiplier 13 as per *Sarla Verma v. Delhi Transport Corporation*, 2009(3) ALD 83 (SC) = (2009) 6 SCC 121, and without deducting any amount towards personal expenditure, an amount of Rs.4,68,000/- can be awarded under this head loss and future earnings. In appropriate cases, the Tribunal can even award loss of past earnings, prospective loss of earnings in addition to loss of earnings capacity. But in this case, there is no evidence as to appellant's likely earnings in future. Therefore, we are not inclined to award any amount under these heads.

12) Apart from that the Apex Court in *Raj Kumar v. Ajay Kumar and another*⁵ categorically held as under :-

"27. In the case of an injured claimant with a disability, what is calculated is the future loss of earning of the claimant, payable to the claimant, (as contrasted from loss of dependency calculated in a fatal accident, where the dependent family members of the deceased are the claimants). Therefore there is no need to deduct one-third or any other percentage from out of the income, towards the personal and living expenses."

13) Having regard to the above, the Court held that there is no need to deduct 1/3rd or any other percentage from out of the income, towards the personal and living expenses. Without deducting any personal and living expenses, the court calculated compensation. Therefore, having regard to the judgment of the Apex Court in **Rajkumar's case**, we feel that the trial court was right in calculating the income without deducting 1/3rd towards future prospects.

14) Coming to the next ground raised by the learned counsel for the appellant with regard to granting interest on future medical expenses, he placed on record the judgment of the Apex Court in **R.D.Hattangadi v. Pest Control (India) Pvt. Ltd. And others**⁶, to show that the court ought not to have awarded interest on the amounts that was awarded towards future medical expenses. He referred to paragraph 18 of the said judgment, which reads as under:-

⁵ (2011) 1 SCC 343

⁶ 1995 ACJ 366

"18. So far the direction of the High Court regarding payment of interest at the rate of 6 per cent over the total amount held to be payable to the appellant is concerned, it has to be modified. The High Court should have clarified that the interest shall not be payable over the amount directed to be paid to the appellant in respect of future expenditures under different heads. It need not be pointed out that interest is to be paid over the amount which has become payable on the date of award and not which is to be paid for expenditures to be incurred in future. As such we direct that appellant shall not be entitled to interest over such amount."

15) Learned counsel for the respondent took us through the operative portion of the judgment, wherein the trial court after referring to the judgment in R.D.Hattangadi's case, observed as under:-

"64. It has been held in R.D.Hattangadi's case reported in 1995 ACJ 366 that "it need not be pointed out that interest is to be paid even the amount which has become payable on the date of award are nor for expenditures to be incurred in future. The petitioner is therefore entitled for interest for some of the non pecuniary damages awarded such as for pain and suffering amounting to Rs.20,00,000/-, permanent disability and disfiguration, loss of amenities of life amounting to Rs.5,00,000/- compensation for inconvenience and expectation of life amount to Rs.10,00,000/- loss of earning amount to Rs.24,48,000/-. She is not entitled to interest on the provision for future medical expenses and physiotherapy and the motorized wheel chair as it is not yet purchased as per the evidence."

16) From the above, it is clear that even the Tribunal did not award any interest on the amounts awarded towards future medical expenses.

17) The question now would be "Whether there is any overlapping in the amounts awarded under other counts?"

18) It is to be noted here that the basis for assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as she was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of lifetime's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases and that is now recognized mode as to the proper measure of compensation is taking an appropriate multiplier of an appropriate multiplicand. (**Arvind Kumar Mishra v. New India Assurance Co. Ltd. 2010 ACJ 2867**)

19) Keeping the observations made by the Apex Court, we shall now consider "whether there was any overlapping in the amounts awarded towards compensation?".

20) The Apex Court in **Rajkumar v. Ajay Kumar and another**⁷ observed the heads under which the compensation is awarded in personal injury cases.

"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."

21) In **Pola Bhadramma v. G. Kumar and another**⁸ a Division Bench of this court while dealing with heads of damages in cases of personal injuries, awarded amounts both towards pecuniary and non-pecuniary loss. Under the pecuniary loss the Court awarded lumpsum or periodical payment, loss of earning capacity and medical expenses

⁷ (2011) 1 SCC 343

⁸ 2010(6) ALD 335 (DB)

(including expenses for services) and other pecuniary loss (e.g., car for private use, pension rights, barriers to obtain health insurance, loss of opportunity of enhancing reputation, loss of opportunity to enjoy hobbies). In non-pecuniary loss, the Court awarded compensation towards pain and suffering, loss of amenities, loss of expectation of life, disfigurement, discomfort and inconvenience apart from granting of compensation towards future medical expenses. The Division Bench also awarded compensation towards physiotherapy, nursing and attendant charges.

22) Having regard to the judgments of the Apex court referred to above, we intend to see as to whether there was any overlapping in the amounts awarded towards compensation. In the instant case, the trial court while dealing with compensation towards the non-pecuniary damages, awarded damages towards mental and physical shock, pain and suffering already suffered and likely to be suffered in future and having considering the nature of injuries and loss of amenities of life, on account of injuries the claimant would suffer, loss in expectation of life, inconvenience and hardship caused due to 100% permanent disability, mental stress in life, provision for future physiotherapy, attendant charges and special diet and also for future medical treatment surgeries surgical instruments.

23) Much comment has been made by the learned counsel for the appellant with regard to providing motorized wheel chair, when already an amount of Rs.3.5 lakhs was awarded towards cost of instrument. It is to be noted that the cost of instruments and attendant charges which are dealt with para 34 of the judgment relate to the instruments which are used at the time of physiotherapy and also the attendant charges at the time of said physiotherapy. Exs.P-18, P-19 and P-20 are the documents produced to show the expenses incurred for appointing physiotherapist to take care and the requirement of the injured in the morning and evening apart from two more employees were appointed to look out the injured during day and night time. Therefore, a sum of about Rs.3,35,000/- which has been awarded under the said count does not include the motorized wheel chair, which was purchased and used later. According to the respondent, the purchase of motorized wheel chair will help to manage with one attendant. P.W.1 being a victim of accident unable to do anything on her own because of the injuries which sustained made her immobile. Therefore, we feel that the amounts awarded under the said counts do not overlapped with each other.

24) The other grounds, on which the overlapping was said to have been made is with regard to awarding compensation towards damages for expectation of life and sufferings in past and in future. As referred to earlier, a Division Bench of this Court considered the said

issue and awarded compensation under both the said counts including loss of amenities of life. In view of the Division Bench judgment of this Court, which is referred to above, we feel that there is no overlapping in the quantum of compensation awarded under both the counts and cannot be equated as one and the same as they stand on two different sufferings. It is also to be noted here that infact the trial court did not award any amounts towards loss of marital life and sufferance due to the same. But, however, we do not want go into the said aspect in this appeal, which is filed by the Insurance company.

25) The last contention raised by the learned counsel for the appellant is with regard to interest of 10% on the compensation awarded. In order to deal with the same, it would be useful to refer paragraph 67 of the judgment of the Claims Tribunal, which is as under:-

"67) On such deposit, the petitioner is entitled to withdraw an amount of Rs.14,67,600/- (Rs. Fourteen lakhs and sixty seven thousand and six hundred only) with interest and costs which is awarded under pecuniary damages and non pecuniary damages immediately. However, the balance of Rs.1,65,45,000/- (Rs. One crore sixty five lakhs and forty five thousand only) with interest @ 10% p.a. on Rs.69,48,000/- from the date of petition shall be kept in fixed deposit for a period of five years in any Nationalized Bank in twin cities of Hyderabad and Secunderabad and father of the petitioner is entitled to withdraw the interest accrued thereunder every month for the benefit and necessities of the injured petitioner. The father of the petitioner is entitled to approach the court for drawal of any additional amount by way of a separate petition. The Advocate fee is fixed as Rs.5,000/-. The petitioner shall pay the addl. Court fee. The office is directed to prepare the decree only after the additional court fee is paid."

26) Though at first blush the interest awarded on the amount appeared to be on higher side, but it is not a matter of rule that in all cases interest of only 6% or 7% has to be awarded as contended by the learned counsel for the appellant. On the other hand, the learned counsel for the respondent/claimant would contend that during the said period interest on fixed deposits was around 10%, hence the court awarded the said amount.

27) Having regard to the facts and circumstances in issue and taking into consideration the expenditure which the guardian of the claimant is still undergoing treatment apart from the mental torture to entire family since she still immobile as on today we are not inclined to interfere with the quantum of interest as awarded by the trial court.

28) Accordingly, M.A.C.M.A., is dismissed. No costs. Miscellaneous Petitions, pending if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

Dt:14.12.2017
GM