

Virendar Kumar Vs Gyani Ram etc.

Court: Delhi High Court

Date of Decision: July 25, 1974

Citation: (1974) RLR 656

Hon'ble Judges: H.L. Anand, J

Bench: Single Bench

Advocate: G.R. Chopra, C.M. Kohli and D.D. Chawla, for the Appellant;

Judgement

H.L. Anand, J.

(1) The only question that this appeal u/s 110 (d) of the Motor Vehicles Act, 1939 (hereinafter called "the Act") raises is as to the quantum of

compensation to which the appellant is entitled on account of general damages as a result of the loss of the left arm as a result of accident and involves a

difficult as indeed a painful exercise as to the valuation in monetary terms of pain, loss of happiness and diminution of earning capacity in cases of

accident. (After narrating facts in paras 2 to 4 that appellant a student was seriously injured by bus of Respondent 2 & 3 and filed claim for Rs.

75,000.00 and Tribunal granted him only Rs. 10,835, the judgment proceeds)

(2) Learned counsel for the appellant justified the enhancement of compensation on account of general damages on the ground that having regard

to the shock, physical pain, loss of studies and adverse affect on future prospects and on the earning capacity of the appellant on account of

amputation of the left arm and the psychological impact of it on the future happiness and enjoyment of life of the appellant, the compensation

awarded on account of general damages by the Tribunal was atrociously low. Learned counsel further contended that the Tribunal had ignored the

serious handicap from which the appellant would suffer in the rest of his life as a result of the loss of the left arm. On the other hand, learned

counsel for the respondents sought to justify the quantification of general damages by the Tribunal and particularly laid stress on the principle laid

down by various courts to regulate the interference in appeal in the Award of compensation by the Tribunal and contended that inasmuch as the

general damages awarded in the present case were consistent with the circumstances of the case it could not be said to be so low as to justify in

interference in appeal.

(3) A review of the works of prominent authors on the law relating to damages and of the course of judicial decisions leads one to an irresistible

conclusion that the task of ascertaining the quantum of general damages is a difficult and perplexing one, primarily because there is no exact or

uniform rule for measuring the value, either of the human life or of any particular limb, and the assessment of damages for the loss of one or the

other could not be arrived at by any precise mathematical calculation. A man who is physically injured in an accident ordinarily suffers more than a

mere pecuniary loss. He may, for example, lose function of a part of his body; he may be permanently or temporarily, disfigured, he may experience

pain, suffering and agony; his enjoyment of life may be impaired as a result of the accident and he may be totally or partially, whether permanently

or temporarily, disabled and, above all, the loss of any part of the body may generally have an adverse psychological effect on his entire future and

happiness. The task of evaluating these consequences of an accident is a very complex one for how does one go about fixing in terms of money or

laying down a tariff, as it were, for, any of the aforesaid consequences of an accident. There is no doubt that life is a valuable asset and so are the

various parts of the human body but the task of putting a value on any part of the body or to determine the extent of loss of happiness or capacity

to work presents a difficult and a painful problem. However, difficult the problem of compensation for pecuniary losses may be, the basis of

assessment have always been clear that award of the Tribunal seeks to put the injured, in the economic position, he would have in but for the

accident. The compensation on this restitutionary basis is, however, impossible in the case of non-pecuniary losses because it is not possible to get

an order for the defendant to re-deliver the plaintiff the leg or an eye which he has lost nor is it possible for a court to adopt a formula by which

mental pain, agony and anguish, that is suffered by the victim, could be obliterated. Similarly the loss of happiness or partial or total earning

capacity could not be supplied nor could days be added to a life which has been irretrievably shortened. Restitution in integrum in its ordinary

meaning would be impossible in such a case. Courts have, Therefore, in general confined their attention to the award of what may appear to the

court to be fair and reasonable compensation or what in the circumstances appeared to it to be just.

(4) It is well settled that the appellate court would not ordinarily substitute its own quantification for that of the Tribunal if what the Tribunal has

awarded to the victim appeared to be reasonable even though the appellate court may on its own reckoning be inclined to award a larger amount.

As a rule, courts have interfered in appeal in the quantification of damages only where the compensation appeared to the court either to be

atrociously low or so high as to be out of all proportion to the injury sought to be compensated.

(5) After hearing learned counsel for the parties and after giving my earnest consideration to the matter, I am of the view that the award of Rs.

7,000.00 as compensation on account of general damages on account of physical & mental pain, loss of the left arm & its various adverse

consequences on the future life and happiness of the appellant is atrociously low and must be suitably enhanced to meet the ends of justice.

(6) The appellant admittedly remained in hospital almost continuously from April 16, 1964 until the middle of November, 1964. suffered

considerable pain and agony throughout this period and even later until July 18, 1965, and lost his arm on account of amputation. The appellant

was young student, is the son of a fairly well placed public servant and even though an average student according to the finding of the Tribunal,

certainly had prospects of good education with the means available to him and his future prospect of education, happiness in life, earning capacity,

active outdoor life has been considerably impaired on account of loss of left arm. Although there are imponderables in assessing the future of a

person it would not be difficult to imagine that the young man in his position would in the normal course of events have had a happy and full life

even if according to the reckoning of the Tribunal he may not be able to achieve his ambition to be an engineer. Even his present academic

accomplishment could not necessarily be a true index of his success in life for it is not unknown that some third-rate students have achieved great

heights in life, while quite a few first class students have proved failure.

(7) In assessing general damages at Rs. 7,000.00 in spite of the total impairment of the left arm and impairment in the earning capacity, the pain,

suffering caused on that account, the psychological impact that it would have on his future prosperity and happiness, the handicap from which the

appellant was bound to suffer during the rest of his life, and the complex which the victim would never be able to shake off during his entire life on

account of loss of a limb, the Tribunal appears to have ignored the gravity of the loss and its impact on the future happiness and earning capacity of

the appellant. Life may be very uncertain and the future of a youngman may be quite bleak in the conditions today in this country and there may be

considerable devaluation of human life but even so to assess the general damages of Rs. 7,000.00 on the facts and circumstances of this case

would appear to be atrociously low for all that the appellant has undergone and is likely to suffer financially, physically and psychologically.

(8) While it is not possible to lay down a national tariff with regard to the value of a particular limb, some indication is provided by the provisions of

the Workmen's Compensation Act, 1923 which provides for loss of a limb as one of the injuries which results in permanent partial disablement

and according to part Ii of Schedule I to the Act would result in 80 to 90 per cent of loss of earning capacity entitling a workman covered by that

Act in terms of Schedule Iv of the Act to compensation varying from Rs. 10,000 to Rs. 15,000.00 if earning between Rs. 300.00 to Rs. 400.00

p.m. These provisions are not strictly applicable to cases under the Act because they deal with wage-earners whose wages do not exceed Rs.

400.00 p.m. and the compensation is apparently based on the loss of earning capacity to the exclusion of other adverse consequences of an

accident, but Schedule Ii gives an indication of the legislative mind when applied to questions of compensation on account of disablement in such

cases and the national monetary compensation for that in relation to various income groups.

(9) In determining fair and reasonable compensation on account of general damage it is not possible to ignore the imperative that the compensation

must be relative to the prevailing social and economic conditions and awards made in such cases must keep pace with the growing inflation, ever-

increasing cost of living and the consequent devaluation of the real worth of the rupee. Even the meagre amount awarded in 1967, which has not as

yet been paid, would, if paid in 1974, represent in terms of real value only a part of it.

(10) Having regard to all the circumstances of this case, I am of the view that just and fair compensation on account of general damages as a result

of loss of the left arm and its various adverse, consequences would be Rs. 30,000.00 and the appellant is entitled to an additional sum of Rs.

13,000.00 on account of general damages.

(11) In the result, I accept the appeal and modify the Award enhancing the general damages to Rs. 20,000.00 and the total amount, to which the

appellant would be entitled including Rs. 3,835.00 as special damages, to Rs. 23,835.00. The appellant would also have his costs in this appeal.