

Sardar Paramjit Singh Narang Vs Ranbir Singh and Others

Court: Delhi High Court

Date of Decision: Sept. 10, 2012

Hon'ble Judges: G.P. Mittal, J

Bench: Single Bench

Advocate: Ramesh Kumar, for the Appellant; Yashpal Rangi, Advocate for the Respondent No. 2, for the Respondent

Final Decision: Allowed

Judgement

G.P. Mittal, J.

The Appeal is for enhancement of compensation of Rs. 5,52,148/-awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Paramjit Singh Narang who suffered injuries in a motor vehicle accident which occurred on 04.08.1997. On the

fateful day, that is, 04.08.1997, the Appellant along with the other members of his family was travelling in a maruti van. They were on their way

back from Patiala and had reached Kurukshetra. A Haryana Roadways bus No. HR-47-2354 driven by the First Respondent in a rash and

negligent manner dashed against the maruti van, as a result of which the Appellant and the other family occupants of the maruti van suffered serious

injuries which proved fatal in case of Smt. Krishnawati and Wazir Singh who succumbed to their injuries on 08.04.1998 and 15.08.1997

respectively.

2. In the absence of any Appeal by the driver or the owner (Haryana Roadways), the finding on negligence has attained finality.

3. Appellant Paramjeet Singh suffered crush injuries on his right hand and there was loss of upper bone. He (the Appellant) was admitted in Jaipur

Golden Hospital from 05.08.1997 to 27.08.1997. Debridement of the wound was carried out and after surgery, external fixator was applied on

05.08.1997. Fixator was removed on 11.08.1997 and debridement was done on 11.08.1997 which was repeated before discharge. He was

again admitted in this very Hospital on 10.09.1997 and was discharged on 22.09.1997 where he again underwent surgery. The Appellant

remained under treatment in AIIMS, Sama Nursing Home, Sir Ganga Ram Hospital as is evident from the documents Ex.PW2/64 to

Ex.PW2/318. He suffered permanent disability to the extent of 45% on account of fracture of shaft femur (R) with flail elbow with wrist drop (Rt)

as per the disability certificate Ex.PW2/117 issued by Dr. Ram Manohar Lohia Hospital. It was proved that at the time of the accident, the

Appellant had an income of Rs. 70,000/- per annum. He was awarded a compensation of Rs. 5,52,148/- which is tabulated hereunder:

Sl. No. Compensation under various Awarded by the Claims

heads Tribunal

1. Medical Treatment /Purchase Rs. 2,25,000/-

of Medicines

2. Loss of Income Rs. 35,148/-

3. Permanent Disability Rs. 2,00,000/-

4. Special Diet Rs. 35,000/-

5. Conveyance Rs. 7,000/-

6. Mental Torture, Pain and Rs. 50,000/-

Suffering

Total Rs. 5,52,148/-

4. The following contentions are raised on behalf of the Appellant:

(i) The compensation awarded towards loss of earning capacity is inadequate and insufficient.

(ii) No compensation was awarded towards future treatment, though the Appellant was to undergo successive surgeries even after the award made

by the Claims Tribunal.

(iii) The compensation awarded towards non-pecuniary damages and conveyance is on the lower side.

(iv) The compensation awarded towards loss of income is very low keeping in view the injuries suffered and the period of hospitalization.

5. On the other hand, the learned counsel for the Respondent No. 2 supports the award on the ground that the compensation awarded is just and

reasonable. In view of the evidence led by the Appellant during pendency of the Appeal, it is stated that in view of the report Mark "B" of Dr. J.S.

Ranyal, a maximum sum of Rs. 2,00,000/- may be awarded even if future treatment/surgery is to be done in a private hospital.

6. The trend of the Superior Courts is to award full and fair compensation. In the case of Raj Kumar Vs. Ajay Kumar and Another, , the Supreme

Court observed that the object of awarding damages is to make good the loss suffered as a result of the wrong done as far as money can do in a

fair, reasonable and equitable manner. Paras 5 and 6 of the report are extracted hereunder:-

5. The provision of the Motor Vehicles Act, 1988 ("the Act" for short) makes it clear that the award must be just, which means that compensation

should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to

make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal

shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to

the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss

which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those

normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See

C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, , R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, and

Baker v. Willoughby, 1970 AC 467.

7. In Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another, , the Supreme Court dealt with the case of disability of an

engineering student. The Supreme Court observed that while awarding compensation in personal injury cases, an attempt should be made to put

the injured in the same position as he was as far as money is concerned. In para 9 of the report, the Supreme Court held as under:

9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis

of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he 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.

8. In Nizam Institute of Medical Sciences Vs. Prasanth S. Dhananka and Others, , the Supreme Court emphasized that cases of serious injuries in

motor vehicle accident are worse than the death cases because the victim and his family suffers throughout life. Para 90 of the report is extracted

hereunder:-

90. 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.

9. In *Kavita v. Deepak & Ors.*, Civil Appeal No. 5945/2012 decided on 22.08.2012, the Supreme Court laid down that an attempt should

always be made to award adequate compensation not only for physical injury and treatment but also for the loss of earning and inability to lead a

normal life and enjoy the amenities, which would have been enjoyed but for the disability caused due to the accident.

10. In *Raj Kumar* the Supreme Court reiterated the heads under which compensation is awarded in personal injury cases as under:-

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.

11. Now, I turn to the facts of this case.

FUTURE TREATMENT:

12. A certificate Mark "B" dated 12.02.2004 was issued by Dr. J.S. Ranyal, which is extracted hereunder:

This pt has been under my treatment since 1997 for treatment of injuries sustained in R.T.A. At present he has only proximal 2''' of (R) humerus,

rest of the bone was lost at the time of accident.

He shall need vascularised fibular graft to replace (R) humerus, and later replace the elbow joint.

This might entail an expenditure of about Rs. 2 lac.

13. With regard to his future treatment, the Appellant filed his affidavit Mark "A" and produced the certificates issued by Dr. Rajeev K. Sharma

and Dr. J.S. Ranyal. In cross-examination, the witness deposed that he took medication upto to May, 2005 and restarted it again in August 2007

on account of infection.

14. Dr. J.S. Ranyal, proved his certificate Mark "B". In his statement as AW2, Dr. J.S. Ranyal testified that in February 2004, he issued a

certificate that two surgeries were required to be performed on the Appellant which could entail an expenditure of Rs. 2 Lakhs. He stated that if

these two surgeries are re-performed today, the expenditure would be Rs. 4-5 Lakhs. In cross-examination, the witness stated that the surgeries

could be performed in any specialised Government Hospital, but the surgeries cannot be performed in every Government Hospital. He stated that

he could not give the expenditure if the surgeries are performed in a Government Hospital. Similarly, AW3 Dr. Rajeev Kumar also proved his

certificate AW3/2 whereby he advised surgery for Ilizarov Fixation and Bone Grafting and opined a tentative expenditure of Rs. 3,00,000/- as on

25.01.2005.

15. It may be seen that immediately after the accident, the Appellant got himself admitted in Jaipur Golden Hospital. He was treated in private

hospitals, that is, Indraprastha Apollo Hospitals, Sama Nursing Home and Sir Ganga Ram Hospital. In cross-examination, the testimony of AW2

Dr. J.S. Ranyal and AW3 Dr. Rajeev Kumar could not be shattered that the Appellant needed Ilizarov Fixation with or without bone grafting.

These certificates were issued in the year 2004 and 2005 which gave the tentative cost of the treatment as Rs. 2,00,000/- and 3,00,000/-

respectively. The cost of the surgeries was given as Rs. 4-5 lakhs in his examination on 09.08.2010 by AW2. The Appellant cannot be compelled

to undergo surgery in a Government Hospital particularly when he received all the treatment prior to the award was in renowned private hospitals.

Thus, I award him a sum of Rs. 4,00,000/- towards his future treatment as on 09.08.2010.

LOSS OF EARNING CAPACITY:

16. As stated earlier, the Appellant had suffered 45% disability on account of crush injuries on right arm, fracture of shaft femur (R) with flail elbow

with wrist drop (Rt). Because of loss of strength in the right hand, the Appellant would be unable to do any work with the same. The Claims

Tribunal awarded him a lump sum compensation of Rs. 2,00,000/- towards loss of earning capacity. The Appellant was earning about Rs.

70,000/- per annum at the time of the accident. The Income Tax Return Ex.PW2/10 Shows that he returned an Income Tax of Rs. 72985/- in the

A.Y. 1999-00. It is, therefore, evident that the Appellant suffered loss of earning capacity at least to the extent of 45%. Since he was in settled

business and was 44 years, he was entitled to an addition of 30% on the basis of the judgment of the Supreme Court in Santosh Devi Vs. National

Insurance Company Ltd. and Others, . The loss of earning capacity thus comes to Rs. 5,48,730/- (Rs. 70000/- -3,000/- (Income Tax) + 30%

(future prospects/inflation) x 14 x 45%).

NON-PECUNIARY DAMAGES:

17. The Claims Tribunal awarded a compensation of Rs. 50,000/-towards pain and suffering which is very low considering that the Appellant had

to undergo successive surgeries in various hospitals. The same is raised to Rs. 75,000/-.

18. No compensation was awarded to the Appellant towards loss of amenities in life and disfigurement. Keeping in view the observations of the

Supreme Court in Govind Yadav Vs. The New India Insurance Company Limited, and the disability suffered and the fact that this accident

occurred in the year 1997, I would award a sum of Rs. 75,000/- towards loss of amenities, loss of expectations and disfigurement. The

compensation of Rs. 7,000/-awarded towards conveyance is raised to Rs. 15,000/-.

19. The overall compensation is recomputed hereunder:

Sl. No. Compensation under various Awarded by the Awarded by this

heads Claims Tribunal Court

1. Medical Treatment /Purchase Rs. 2,25,000/- Rs. 2,25,000/-

of Medicines

2. Loss of Income Rs. 35,148/- Rs. 35,148/-

3. Loss of Earning Rs. 2,00,000/- Rs. 5,48,730/-

Capacity/Permanent Disability

4. Special Diet Rs. 35,000/- Rs. 35,000/-

5. Conveyance Rs. 7,000/- Rs. 15,000/-

6. Pain and Suffering/ Mental Rs. 50,000/- Rs. 75,000/-

Torture

7. Loss of Amenities in Life and - Rs. 75,000/-

Disfigurement

8. Future Treatment - Rs. 4,00,000/-

Total Rs. 5,52,148/- Rs. 14,08,878/-

20. The enhanced compensation of Rs. 4,56,730/- shall carry interest @ 7.5% from the date of the filing of the Petition till its payment.

21. The compensation of Rs. 4,00,000/- awarded towards future treatment shall carry interest @ 7.5% per annum from 01.01.2011.

22. The enhanced compensation as stated in paras 21 and 22 above along with interest shall be deposited by the Respondent No. 2 in UCO

Bank, Delhi High Court Branch within six weeks.

23. Out of the awarded compensation, a sum of Rs. 1,00,000/- shall be released immediately on deposit. A sum of Rs. 5,00,000/- shall be

released as and when a certificate is produced before the Registrar General of this Court stating that the Appellant's surgery has been fixed in the

Hospital. Rest of the amount shall be held in fixed deposit for a period of two years, four years and six years in equal proportion.

24. The Appeal is allowed in above terms. Pending Applications stand disposed of.