

(1994) 09 KL CK 0037

High Court Of Kerala

Case No: None

Kerala State Road Transport
Corporation

APPELLANT

Vs

Feethambaran Rep. by his Next
Friends Sukhmmari

RESPONDENT

Date of Decision: Sept. 2, 1994

Citation: (1994) 2 ACC 683

Hon'ble Judges: V.V. Kamet, J; M.M. Praeed Pilay, J

Bench: Division Bench

Judgement

V.V. Kamet, J.

The question that is raised in this appeal by the Road Transport Corporation is as to whether certain facets of claim for damages have to be considered by the Court as distinct and separate from each other or whether by reason of their overlapping nature could be said to be merging with each other. In fact the learned Counsel for the Corporation contended that the question gets concluded in this context by the judgment of this Court. 1994 (2) KLJ 269 Shajart v. N. Raman Pillai and Ors. However, on going through the decision with the help of the learned Counsel, with special reference to paragraph 13 thereof, it is more than clear that this Court endorsed the finding of not giving separate compensation on distinct heads as perfectly correct, observing that there is no further justification to pay any amount by way of compensation for permanent disability. Carefully considering the observations having factual aspect, we now proceed to consider the position ourselves.

2. The incident takes us to January 10, 1989 with regard to the involvement of the bus KLX 5698. The bus came from east to west and knocked down a cyclist (the claimant) causing serious injuries to his head and brain, throwing him to the northern side at the place of the incident. The place is Vaikom Kacherikavala Road. But nothing turns on these facts for the purposes of this appeal.

3. The proceeding was initiated before the Motor Accidents Claims Tribunal, Kottayam wherein the petitioner (claimant) claimed compensation of Rs. 2 lakhs. He broadly alleged that he is rendered useless for life as the result of the injury to his brain of such a position that there is no scope for improvement. He was running a cycle shop at Vaikom and thereby earning Rs. 150/- per day. He claimed the above amount of compensation on the basis of certain classifications.

4. The Tribunal accepted that his monthly earnings are Rs. 1000/-. The Tribunal applied multiplier of 8 on the basis of the life span of 70 years.

5. We are called upon the consider, on the basis of the submissions of the appellant answered by the Counsel for the respondent (claimant), with reference to three heads, viz. (1) pain and suffering, (2) permanent disability, and (3) loss of earning power. The Tribunal has awarded Rs. 10,0000/- on the first count, Rs. 75000/- on the second count and Rs. 75,000/- again on the third count. The Tribunal ultimately passed an award for Rs. 1,74,601/- with interest at 12% per annum from the date of the application (May 23, 1989) till realisation with proportionate costs.

6. The first question to be answered is as to whether these are distinct and separate heads under which the Tribunal or the Court dealing with the question of compensation can award separate and independent amounts of compensation, or whether because of their overlapping nature can be considered with reference to the cumulative approach. The position which is urged by the learned Counsel for the claimant is well supported by the decisions in the context. The decisions cited are of this Court 1986 KLT 874; Keleppan v. Vijayan and of the Allahabad High Court AIR 1974 All 74, Dr. Singh v. Agra Contomen, together with the two other decisions of the Allahabad High Court 1989 ACJ 221 Padmanabhan Nair Vs. C.A. Abraham and Others, Padmanabhan Nair v. C.A. Abraham, with regard to the general approach of the Court towards the question of compensation.

7. In addition thereto, the learned Counsel also submitted that what is required to be considered is the award of the total frame submitted by the claimant and not its classification to the character with regard to the claims on different heads leading to the totality. In other words, the learned Counsel submitted that in the event of the Court being unable to award more amount of damages on any of the heads by reason of the claim being for a lesser amount, it is always open to the Court to consider the higher claim made for its award with reference to some other item of the heads in the entire classification, keeping in mind that ultimately the Court can award only the amount which has been claimed by way of the total claim and cannot exceed the total claim in any event, clearly having liberty to re-shuffle the amounts under the head with reference to some other head. For this proposition the Counsel relied on the decision of the Madhya Pradesh High Court. Udairam Vs. Mohammad Usman and Others,

8. The general approach with regard to the law is that the general nature of award of damages relates to the ascertainment of the considerations to make good the sufferer to the extent that payment of money can remedy. This is the only remedy for the wrong done to him, knowing full well that the original position is incapable of restoration. The law must endeavour to give a fair equivalent in money keeping before it two main elements, viz., personal loss and pecuniary loss. The award of compensation for damages cannot be considered either punitive or in the nature of a reward. The Court keeps before it that it cannot keep the plaintiff back again to his original position, but keeps in mind a reasonable commonsense that this is the only occasion on which compensation can be given. The Court must keep in mind that the plaintiff can never sue again and come before the Court with a second round. The question of award of compensation and realisation of his needs has to be considered as a question to be decided once and for all. The Court has to keep in mind that he has done nothing wrong. He has suffered a wrong at the hands of the defendant and the Court has to take care to give him what is known as full and fair compensation for what he has suffered. In awarding the amount of compensation and award of damages, in a case where the claimant has claimed comparatively less on the finding of the Court, the situation cannot be a difficulty because it is not necessary for the claimant to specify the claim amount under separate heads while claiming damages. The general principle is that the award amount does not exceed the total amount of the claim, if it could be awarded by the Tribunal. It is not necessary for the claimant to specify the claim amount under separate heads. It is sufficient that the effect of the consolidation with reference to the total award of the claim does not exceed the total claim in the original application.

9. With this background if we have to consider the specific submissions, which are at the cost of repetition that the award of Rs. 75,000/- for permanent disability as well as a further amount of Rs. 75,000/- for loss of earning power is unjustifiable, inasmuch as it is a mere duplication. The learned Counsel in simplifying the submission urged that the Tribunal, particularly in paragraph 15 of the award held that in fact on the count of permanent disability, the claimant would be entitled to Rs. 96,000/- and has awarded Rs. 75,000/- on account of the claim being confined to that amount. The learned Counsel submitted that once the compensation is awarded on account of permanent disability, the loss of earning power has no separate existence with reference to the claim because the loss of earning power is an inevitable consequence of permanent disability. The learned Counsel, in fairness it must be stated, did not dispute the award of Rs. 10,000/- with regard to the pain and suffering. Alternatively the learned Counsel submitted that the difference of Rs. 21,000/- ($96,000-75,000=21,000$) could be awarded on the other count of loss of earning power. Of course, it must be stated in fairness to the learned Counsel that this was an alternative submission on the assumption of his being unsuccessful on the first count.

10. The legal approach to the submission of this merging element is that the classification relating to the award of damages is made under two heads-general and special. The first one flows from the concept of negligence where all aspects of negligence are required to be proved. At the same time specific allegations are not necessary and compelling in regard to them in the statement of the claimant. However, in the claim for damages there are some specific items for the plaintiff to allege which require positive pleadings. Even then it is understood they do flow from the initial negligence in any way. In the process the claim for personal injury is based on the distinction between damages which are capable of substantial pecuniary assessment as distinct from others in the nature of loss of earnings, legal expenses, loss of pecuniary rights and such other losses which can include reduction of prospects of marriages. In the process the classification of the first to the injury itself and consequence relating thereto based on the aspect of negligence, vis-a-vis the consequence of injury. The injury results in disability either of a permanent character or of a partial character. The other aspects which get distinct head flow from the consequence of the situation. In the process of assessment, the injury itself is a proper subject of compensation and the damages are required to be awarded with reference to an injury, quite apart from pain and suffering, even though there is no resultant disability. If there is a disability, that also in the process becomes an object or classification for award of damages. The situation cannot be beyond contemplation in a given setting that the injury attributable to the negligence may not have any consequence on the earning capacity in future or even to the enjoyment of life in future. In such a situation the Court will not be confronted with the situation of the problem of award of compensation with regard to the consequence of the injury. In other words, the law of negligence spells out that the injury by itself becomes the subject matter of award of compensation in the first instance. Thereafter the consequence of the injury becomes the subject matter of award of compensation next thereafter. These two aspects have a direct relation with the negligence connected thereto. There is yet a third aspect with regard to the consequence on future life of the claimant. That is the loss of earning capacity and the suffering with reference to the future life also.

11. In the process, in considering compensation, several factors get placed for consideration individually for their own assessment in terms of money. They are pain and suffering, duration of pain, the state of consciousness, physical strain and mental distress, illustratively depending on the factual situations. The question with regard to the award of compensation with reference to these aspects becomes the concern of the Court and the Court has to take into consideration impairment-loss resulting from the incident as such. However, the loss of earning capacity or amenities, the situation rendering the claimants with problems in future would have a separate reference to the question of damages. In the process the Court gets concerned with relevant aspects such as previous state of health and personal circumstances of the claimant. Whatever is possible, with the best efforts of

measuring of these aspects in terms of money becomes the concern of the Court and the Court has to deal with these aspects in the light of the pleadings, independently and separately.

12. With these aspects available to us, for their applicability to the factual matrix it will be seen that as a result of the negligence brought on record beyond a shadow of doubt, the claimant has been completely disabled. The Tribunal has recorded a positive finding with reference to the condition of the claimant that the claimant is only in a position to open the mouth to take the food offered to him. The patient is only semi-conscious and his recovery is certified to be very slow and grossly incomplete. The Tribunal has also held that the claimant is permanently disabled as a result of the accident. The Tribunal has also recorded a finding that he would be entitled to Rs. 96,000/- . However, as the claim is restricted to Rs. 75,000/- on this count, the Tribunal has awarded Rs. 75,000/- . We have to approach appreciation of the solitary submission that additional award of Rs. 75,000/- for loss of earning power by keeping before us the above positive and undisputed findings with regard to the condition of the claimant. There is no doubt that pain and suffering, permanent disability and loss of earning power are independent and separate items of claim. On the basis of the legal position available to us from the decision cited at the bar, it is not possible to accept the submission of the learned Counsel that the award of Rs. 75000/- for loss of earning power is in the nature of an unnecessary duplication. There is no dispute that apart from the claimant having been a permanent disabled as a result of the accident, he has no active future left for him. Considering the evidence on record we have no answer as to why the claimant is living. There is no meaning of his life if it is a life of a completely disabled person. This need not detain us to hold that the loss of earning power has its own distinct and separate existence for a claim. We have before us the claimant who was running a cycle shop, who has been rendered good for nothing for any aspect of human life. The multiplier resorted to by the Tribunal is also more than modest being the multiplier of 8. Keeping the judicial guidelines reproduced hereinbefore that the claimant would not be before us for a second time, we do not think that we should agree with and accept the submission of the learned Counsel that the award of Rs. 75,000/- is only by way of duplication.

13. The learned Counsel alternatively submitted, as stated above, that Rs. 21,000/- can be shifted to this count because the award of Rs. 75,000/- on this count is unjustifiable. It is also not possible to accept this submission of the learned Counsel. As it is, the calculation is not disputed. The claimant was earning Rs. 150/- per day (although the Tribunal has held it to be Rs. 40/- per day) and his life has been rendered to be of complete non-use. We do not find any reason to accept the said submission.

14. We would like to end the judgment with the direction of the Supreme Court that there is no justification for niggardliness in compensation.

In the result this appeal stands dismissed, in the circumstances there shall be no order as to costs.