

Ganesh Kumar Vs United India Insurance Co. Ltd.

Court: High Court Of Kerala

Date of Decision: Aug. 19, 2015

Hon'ble Judges: T.R. Ramachandran Nair, J; K.P. Jyothindranath, J

Bench: Division Bench

Advocate: Jacob Sebastian, for the Appellant

Judgement

T.R. Ramachandran Nair, J

Both these appeals arise from the same award of the Motor Accidents Claims Tribunal, Ottapalam in O.P.

(M.V.) No. 252/2007. M.A.C.A.1853/2011 is filed by the claimant and MACA 908/2012 is filed by the Insurance Company.

2. We heard learned counsel for the appellant Sri. Jacob Sebastian and Smt. Preethy R. Nair and learned Senior Counsel for the Insurance

Company Sri. Mathews Jacob.

3. The accident in this case happened on 5.5.2006 at 12.30 p.m. near Kerala Varma College bus stop, Thrissur. The claimant was riding on his

motorcycle bearing registration No. KL 9J 482 from his residence to Thrissur. He was travelling in connection with his job as a Medical

Representative (Brand Executive). The offending vehicle was a jeep bearing registration No. KL 8X 8642 driven by the second respondent before

the Tribunal. Due to the hit against the motorcycle the appellant sustained very serious injuries and he claimed a total amount of Rs. 50 lakhs as

compensation. The Tribunal below has granted total amount of Rs. 23,01,025/-; out of which, Rs. 15,87,525/- represent the medical expenses.

4. Learned counsel for the appellant submitted that the Tribunal has committed major faults with regard to the assessment of compensation, by

fixing a reduced amount as salary in spite of positive evidence, documentary and oral to support the claim raised by the appellant. It is submitted

that he was appointed as per Ext.A14 appointment letter. The District Manager of the Company was examined as PW4. It is submitted that

Ext.A14 will show that he was offered a total amount of Rs. 14,700/- per month and the appointment letter is dated 4.5.2005. Apart from the said

amount he was entitled for daily allowance at the rate provided in the appointment letter. He was also eligible for incentive of 5% of total sales and

the benefits like provident fund, gratuity and bonus. It is submitted that the evidence of PW4 will show that the appellant would have been getting a

further amount of Rs. 7,000/- to Rs. 8,000/- per month. But the Tribunal by ignoring all these items of evidence fixed a notional amount of Rs.

10,000/- as emoluments per month which cannot be justified. It is submitted that the injuries sustained by the appellant are mainly fracture tooth,

fracture nasal bone and fracture C4, C5 and C6, abrasions, lacerations etc. He was treated as inpatient for a total period of 783 days in different

hospitals. The hospitals wherein he was treated include EMS Hospital, Perintalmanna, Indo-American Hospital, Vaikom, Life Care Clinic,

Ernakulam, Lakshmi Hospital, Ernakulam as well as Sunrise Hospital, Ernakulam. It is submitted that the condition of the appellant will show that

he is a quadriplegia patient and is completely laid up, unable to move himself. In such a situation, he is depending upon two bystanders which

arrangement has to be continued for the entire life period. The same has resulted in causing innumerable health problems to him which require

continuous and constant medical examination. It is submitted that these aspects were not properly assessed by the Tribunal and only meagre

amounts have been granted under various heads including bystander's expenses, pain and suffering, loss of amenities and conveniences,

transportation expenses etc. It is also submitted that the appellant has produced additional bills before this Court as Annexure A2. Another

important submission made by the learned counsel is that the Tribunal discarded the disability certificate issued by the doctor who treated him

which showed that he had assessed the permanent disability as 90%. But the same has been drastically reduced to 20% after discarding his

certificate. It is submitted that being a person with spinal cord injury where the appellant is unable to move about and do any normal duties in his

life and also engage himself in any profitable employment the functional disability will have to be reckoned as 100% itself.

5. Learned counsel further invited our attention to the certificate issued by the Medical Board which has been produced along with the additional

documents before this Court along with I.A. 2928/2015. It is issued by the Medical Board attached to the District Hospital, Palakkad and the

permanent physical disability is assessed as 75%. We mark the certificate as Ext.A25.

6. Learned counsel therefore submitted that a due provision will have to be made for various items including bystander's expenses which are

continuing, pain and suffering as well as a reasonable amount for future treatment. Particular reference is made to the decision of the Apex Court in

Sanjay Verma Vs. Haryana Roadways, (2014) 1 ACC 473 : (2014) ACJ 692 : AIR 2014 SC 995 : (2014) AIRSCW 856 : (2014) 2 JT 384 :

(2014) 1 RCR(Civil) 914 : (2014) 1 SCALE 682 : (2014) 3 SCC 210 to contend that in a like case where due to fracture of spinal cord resulting

in paralysis of the whole body of an injured aged only 25 the Apex Court has enhanced the amount of compensation by providing Rs. 3 lakhs for

future treatment, bystander's expenses Rs. 2 lakhs and pain and suffering and mental agony Rs. 3 lakhs.

7. Learned Senior Counsel for the Insurance Company Sri. Mathews Jacob submitted that the fixation of monthly income at Rs. 10,000/- cannot

be faulted, since the appellant/claimant did not produce any confirmation letter before the Tribunal. Ext.A14 shows that he was on probation and

the oral evidence of PW4 could not therefore improve the case of the claimant. It is submitted that the appellant could have produced the pay slips

showing the receipt of monthly salary. In the absence of any documentary evidence, learned Senior Counsel submitted that the assessment of

allowances or incentives at Rs. 7,000/- to 8,000/- as deposed by the witness PW4 cannot be accepted. Therefore, it is submitted that the

claimant's case for enhancement of the monthly income cannot be supported. It is also submitted that the Tribunal has assessed a reasonable

amount towards compensation under various heads, in the appeal filed by the Insurance Company the main challenge is regarding the monthly

income fixed.

8. We have considered the rival submissions.

9. The situation of the appellant can be gauged from the series of medical certificates and discharge summaries produced by the appellant which

have been marked as Ext.A8 series. It appears that he was treated in different hospitals. The certificates show that he had been treated during

different spells which details have been recorded in the award of the Tribunal in paragraph 7 itself. The details with regard to the injuries and the

fractures suffered have been recorded in each of the certificates. From the certificate issued by the Brain and Spine Centre, Vaikom for the period

10.5.2006 to 14.7.2006, it can be seen that it was a case of fracture of C5 and C6 with cord changes. The situation of the patient is also clear

from the same. He had undergone different treatment procedures. He was advised to have physio and occupational therapy at home for any

improvement of his health. The similar details are available from the series of certificates. We will also refer to the discharge summary issued from

the Sunrise Hospital, Palarivattom wherein he was admitted on 23.2.2010 and discharged on 10.3.2010. The final diagnosis is recorded as

paraplegia with level of sensory loss T10". Under the column history and physical findings it is stated that it is a case of post traumatic

quadriplegia (fracture cervical spine) in 2006. Partial recovery of upper limb muscles. The advice on discharge is to avoid supine position

continuously for more than 10 minutes. It is also recorded as against the column hospital courses that the patient had an uneventful recovery.

Therefore, it will be safe to conclude that the appellant/claimant is totally paralysed. The certificates also will evidence that he has been undergone

treatment for rehabilitation in the Life Care Clinic, Ernakulam. Of course he is undergoing physiotherapy as well as occupational therapy.

10. The situation of the appellant/claimant therefore will definitely lead to the conclusion that he is totally paralysed and cannot perform any normal

duties by himself and he will have to depend upon for his daily needs others and he cannot indulge himself in any physical activities. That resulted in

100% disability.

11. The argument on both sides with regard to the monthly salary, will have to be considered with regard to the documentary evidence Ext.A14,

which is the appointment letter. There the total salary per month recorded is Rs. 14,700/-. The company namely Emcure Pharmaceuticals Limited

has appointed him as a Brad Executive to be based at Thrissur with effect from 4.5.2005. Of course, the period of probation is shown as six

months and the appellant did not produce any confirmation letter. The evidence of PW4 will show that even as on the date of accident he was

continuing in their service. Of course, his evidence as regards the additional allowances which were being received by the appellant is not

supported by any documentary evidence. Going by the appointment letter itself he is entitled for a daily allowance on three counts; head quarter

Rs. 120/-, Ex-headquarter Rs. 130/-, Out-station Rs. 250/-. He will also be entitled for incentives of 5% for the total sales. But the data to

support the incentive is not available before us.

12. After having considered the arguments on both sides, according to us, the monthly income can be reasonably fixed at Rs. 14,000/-. We have

not considered the various aspects which may result in future increase of salary since it is a personal injury case, even though the learned counsel

submitted that the in the decision in Sanjay Verma's case (cited supra) considered that element also.

13. The claimant was aged 26 at the time of the accident and therefore the multiplier going by the judgment in Smt. Sarla Verma and Others Vs.

Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE

129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 will be 17. For the

purpose of assessment of compensation towards loss of earning power and permanent disability, we are taking the functional disability as 100%

itself. The situation of the appellant requires the help of a constant bystander at least. The appellant has examined PWs 1 & 2 who are stated to be

the bystanders helping him even from the first day he was in the hospital. Series of vouchers have been produced to support the claim for adequate

amount. They have been marked as Ext.A1. But the Tribunal did not accept the same since it was felt that they have not been issued in an orderly

manner.

14. The accident occurred in the year 2006. Therefore, for the period of hospitalisation a reasonable amount can be granted towards bystander"s

expenses, which we fix at Rs. 200/- per day and we grant an amount of Rs. 1,50,000/- on the said account for 783 days.

15. The next aspect is regarding the transportation expenses where that total claim was Rs. 50,000/- and what is granted by the Tribunal is Rs.

20,000/-. The learned counsel invited our attention to Exts.A12, A18 and A23 trip sheets and the total amount going by the same will

approximately come to Rs. 77,000/-. The Tribunal has fixed the same at Rs. 20,000/- and we fix the same at Rs. 30,000/-. As far as pain and

suffering is concerned, what is granted by the Tribunal is only Rs. 25,000/-. The appellant had suffered very serious injuries, had been under

continuous treatment and the same situation is continuing even now. Therefore, we fix an amount of Rs. 1 lakh towards pain and suffering, which

will be reasonable. As far as expenses for bystander"s through out his life is concerned, we are justified in granting an amount of Rs. 2 lakhs. The

same is granted at the light of the fact that he is unable to do his normal avocation including answering of any calls of nature, taking food and other

activities. As far as loss of amenities and enjoyment in life is concerned, the injuries have resulted in denying the entire pleasures of life to him. He

will not be able to move about from the bed and the situation shows that he is confined to bed through out. We fix a reasonable amount of Rs. 2

lakhs towards loss of amenities and loss of enjoyment in life. For future treatment also we provide an amount of Rs. 1 lakh because he has to

undergo physiotherapy treatment as well as treatment for bedsore and other health problems. As far as amount towards permanent disability is

concerned, the same will have to be calculated by adopting the multiplier of 17 and by fixing an amount of Rs. 14,000/- as salary per month.

16. We therefore, re-fix the compensation in the following manner:

17. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation except for the amounts

granted for future treatment and bystander's expenses granted (Rs. 2 lakhs). For those two items interest is liable to be paid from the date of

award of the Tribunal namely 3.8.2011.

18. The Insurance Company has been found liable by the Tribunal to satisfy the award, which we confirm. Out of the total enhanced compensation

granted by this court, 50% of the same will be deposited in a nationalised bank for a period of five years and we permit the appellant to withdraw

the balance amount along with its interest. There will be a direction to the Insurance Company to deposit the amount of compensation with interest,

less the amount already deposited, before the Tribunal within a period of three months. The appellant will have to pay court fee for the amount

awarded by this Court over and above the claim which will be recovered by the Tribunal once the amount is deposited by the Insurance Company.

19. We also permit the appellant to withdraw the interest on the deposit made in the nationalized bank on a quarterly basis.

M.A.C.A.1853/2011 is thus allowed and M.A.C.A. 948/2013 is dismissed.

There will be no order as to costs in the appeal.