

Sarita Vs Union of India (UOI) and Another

Court: Madhya Pradesh High Court

Date of Decision: Aug. 25, 1988

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 96

Citation: (1989) 1 ACC 121 : (1989) ACJ 817

Hon'ble Judges: P.C. Pathak, J

Bench: Single Bench

Judgement

P.C. Pathak, J.

This is an appeal u/s 96 C.P.C. by claimant plaintiff for enhancement of compensation awarded by the trial Court.

2 Appellant Ku. Sarita, aged 8 years, filed a suit for compensation of Rs. 50,000/- on the allegation that on 8-5-1977, she met with an accident in

the train carrying coal for respondent No. 2 resulting in severance of her right leg from below her hip, half portion of her small finger, mutilation of

next adjoining finger and serious injuries on her back, head and extremities. There is a double railway track of M.P. Electricity Board (hereinafter

in short "the Board") from siding No. 5 for carrying coal from Gevara Road to Korba Power House. The track passes through N.C.D.C. Colliery.

On one side there are huts and hotels and on the other there is open land. The inhabitants of those huts and hotels use the open land for fetching

water, going to latrine and approach to mines. There is no level crossing or fencing of the track near the inhabited area.

3. The appellant/plaintiff lost her father long ago and has a widow mother and two sisters who live with Madanlal Agrawal (PW 1).

4. On 8-5-77 the train comprised of wagons of coal and a locomotive engine named "Hira" which was driven by D.R. Sahu (DW 1). At about

12.20 P.M. the train was standing on the track in front of appellant's house. She went to attend the call of nature on the other side of the track by

crossing underneath the wagons. While returning, when she had just put her steps to cross the track, the train suddenly moved without any whistle.

Her right leg came under the wheel and was severed 3.6 inch below the hip, right hand's little finger was out off and the adjoining finger was

twisted beside other serious injuries on head back etc. She was rushed to Korba hospital and was later shifted to Bilaspur hospital. She remained

bed ridden for 1-1/2 years. Though the injuries healed up, she became permanently disabled on account of loss of her right leg She can limp only

with the help of crutches. She also suffered partial disability on account of amputation of half of her little finger and mutilation of the next finger.

5. After service of notices on the respondents, she filed the suit on 14-12-77 in forma pauperis through her next friend mother Smt. Lilabai. She

claimed Rs. 30,000/- for pain and sufferings and Rs. 20,000/- for loss of amenities of life, mental distress and future maintenance.

6. The respondent/Union of India filed written statement that the engine belonged to the Board and therefore it was not liable for any

compensation. The Board through its written statement, while admitting that the plaintiff got injuries in the accident, denied that it was as a result of

negligence or carelessness of its driver. According to the Board, the train was already in motion when the plaintiff stumbled in between carelessly

and ignorantly and got herself injured. Under the circumstances to Board was not liable for any compensation.

7. The learned trial Court held that the driver of the engine was careless and moved the train without giving any whistle which resulted in the

accident. Compensation of Rs. 7000/- towards pain and suffering and Rs. 5000/- for permanent deformity total Rs. 12,000/- together with interest

@ Rs. 6% P.A. was awarded to the plaintiff. Hence this appeal is by plaintiff for enhancement of the compensation.

8. The Board did not file any appeal or cross objection against the decree. The finding of negligence of the Board's driver is thus not under

challenge and in my opinion rightly so in view of Krishna Goods Carriers (P) Ltd. Vs. Union of India, wherein the failure to give whistle before

starting the train was held to be an act of negligence.

9. Next question for determination is the quantum of compensation. Sarita Devi as PW 2 stated that her right leg was cut off. The learned trial

Court during his observation found that the right leg was amputated 6-7 inches below the hip joint. Her small finger of the right hand was amputated

half of its size and the next finger was twisted from below the nail. D.R. Sahu (DW 1) stated that in the date of incident when the train was in

motion at the speed of 2-3 kilometers per hour, he heard someone shouting to stop the train. He therefore brought the train to stand still. On going

to the spot, he found a severed leg lying under one of the wagons and the blood spilled all over. The victim by then had already been shifted to the

hospital on a Ricksha. Madanlal (PW 1) stated that Sarita was thrown away from the track. She sustained serious injuries as on back detailed

above and also head. Her three teeth were broken. Gita Devi (PW 3) stated that Sarita's right leg was severed and it took about 1-1/2 years for

healing of the wounds. She further stated that she is a widow and is being maintained by her husband's younger brother Madanlal (PW 1). Sarita

was a student of first standard. She claimed Rs. 30,000/- for pain and suffering, Rs. 20,000/- for loss of future amenities, marriage prospects etc.

10. In order to determine the quantum of compensation one can take the assistance of the cases decided under the Motor Vehicles Act 1939 and

other allied Acts. Under Railway Accident (Compensation) Rules, 1950 as amended by Amendment Rules 1984, for amputation below hip with

stump not exceeding 5 inch in length measured from the tip of great trochanter, the compensation payable is Rs. 80,000/- and for stump

exceeding 5 inch compensation of Rs. 70,000/- (Rules before 1984).

11. Counsel for the appellant relied on *Inder Lal v. Narendra Kumar and Ors.* 1985 ACJ 303 Raj. In this case a boy, aged about 6 years, met

with a tragic accident on 31-10-1970 by a truck and suffered amputation of left leg and on account of that, he was having a common passage for

stool and urine. The compensation of Rs. 31,875/- awarded by the Tribunal was enhanced in appeal to Rs. 50,000/-. In *Amul Ramchandra*

Gandhi v. Abhasbhai Kasambhai Diwan 1979 ACJ 460 Guj., a student aged 12 years had amputation of right leg with the result he was required

to use crutches and special shoes while going to school. The High Court awarded Rs. 25,000/- for pain and suffering and loss of enjoyment of

amenities of life and Rs. 45,000/- for future pecuniary loss. In somewhat similar facts, in *Darshani Devi v. Sheo Ram and Ors.* 1987 ACJ 931

(Rajasthan)) compensation of Rs. 56,000/- was awarded.

12. Learned Counsel for the respondent relied on *The Fazilka Dabwali Transport Co. Pvt. Ltd. Vs. Madan Lal*, in which the compensation of Rs.

12,000/- awarded by the High Court was affirmed in respect of injury resulting in amputation of leg. In other cases namely *New India Assurance*

Co. Ltd. v. Sumitra Devi and Ors. 1971 ACJ 58 Patna and *Sunil Kumar v. Roshanlal and Ors.* 1973 ACJ 41 (New Delhi), a sum of Rs. 20,000/-

was awarded to the claimant.

13. Learned Counsel for the Board submitted that unless compensation awarded was too low, the appeal Court should not interfere with quantum.

He relied on *Shankardas v. Municipal Council Manasa* 1979 (I) W N 23. There is no dispute to the proposition of law in the cited decision.

However, on going through the comparable cases, I find that the compensation awarded to the claimant is too low. In *Sanjiva Shetty v. Anantha*

AIR 1976 Karn 146, the compensation of Rs. 25,000/- was awarded. The appellant lost her leg which has resulted in permanent physical

disability. It was observed that in such cases, the damages to be awarded ought to be such as to set off the disability suffered for the rest of the life.

14. The disability in the present case is not only by amputation of one leg but also half of the little finger of right hand and partial disability of the

adjacent finger. The girl is member of Agrawal community and on the date of her evidence, she was studying class IV. Her uncle Madanlal runs a

Kirana shop. The learned trial Court expected her to complete her matriculation. One cannot also lose sight of the fact that she has lost her

marriage prospects. She is required to use crutches to attend obligations of her life. She remained in agony for about 1-1/2 years.

15. The cases relied on by the learned Counsel for the Board are in respect of accidents which took place sometime in sixties when the money had

higher value as compared to the value of money today. The High Court decision related to a case in which the accident was of the year 1964. The

Tribunal gave award in March 1964 which was enhanced by the High Court in appeal by judgment reported in Fazilka Dabwali Transport Co.

(Private) Ltd. Vs. Madan Lal, . Although the appeal against that judgment was filed by the owner of the vehicle in 1968, it was decided in January,

1977 by the Supreme Court. The other cases cited by counsel for Board also pertain the period of sixties.

16. Considering the alarming rate of inflation, and the comparable cases cited by the learned Counsel for the appellant, I am of the opinion that the

appellant is atleast entitled to Rs. 20,000/- as compensation for pain and suffering and further a sum of Rs. 15,000/- for the loss of amenities,

prospects of marriage etc. total Rs. 35,000/-. The learned trial Court awarded interest @ 6% from the date of judgment. In my opinion, interest

should have been awarded to the appellant from the date of suit i.e. 14-12-1977 till the date of realisation.

17. In view of the foregoing discussion, the appeal is partly allowed. The compensation awarded by the learned trial Court is enhanced to Rs.

35,000/- together with interest from the date of suit till the date of realisation with proportionate costs in both the Courts. The amount be kept in

fixed deposit in some bank with arrangements to pay quarterly interest to her through guardian, mother and the principal amount or any part thereof

shall not be withdrawn except under order of the trial Court. Counsel's fee according to schedule.