

(2010) 08 AP CK 0019

Andhra Pradesh High Court

Case No: C.M.A. No. 1016 of 2001

R. Upendra APPELLANT
Vs
A. Govardhan Reddy and RESPONDENT
Another

Date of Decision: Aug. 3, 2010

Citation: (2011) 8 RCR(Civil) 2780 : (2011) 1 TAC 101

Hon'ble Judges: G. Bhavani Prasad, J

Bench: Single Bench

Advocate: P. Ramakrishna Reddy, for the Appellant; Kota Subba Rao, for the respondent 2, for the Respondent

Judgement

G. Bhavani Prasad, J.

The appeal is directed against the award in O.P. No. 663 of 1993 on the file of the Motor Accidents Claims Tribunal, Nalgonda, dated 23-01-1998.

2. The Petitioner before the Tribunal was involved in a motor accident on 30-08-1993 at about 4 P.M. when lorry A.P. 13T 878, driven rashly and negligently in high speed, dashed against him, while he was going by walk at Bandameedi Chandupatla village. The Petitioner, aged 10 years, was returning from the school and suffered a crush injury on the left leg and injuries on the hands and other parts of the body. The Petitioner was also working as labourer earning Rs. 20/- per day and is the only son to his parents and immediately after the accident he was shifted to Government hospital, Suryapet and then to Osmania General Hospital, Hyderabad, where the left leg was amputated. Hence, he sued the owner and the insurer of the lorry for a compensation of Rs. 2,50,000/- in respect of the permanent disability suffered.

3. The owner of the lorry remained ex parte, while the insurer contested the claim putting the Petitioner to strict proof of all his allegations and denying the claims made by him.

4. The Tribunal framed issues on the responsibility for the accident and the entitlement of the Petitioner for compensation from the Respondents. During the enquiry, P.Ws.1 to 3 were examined and Exs.A.1 to A.7 and Ex.B.1 were marked.

5. The Tribunal rendered the impugned award firstly accepting the evidence of P.Ws.2 and 1, the injured and his mother, corroborated by the first information report Ex.A.1 and the copy of charge-sheet Ex.A.2 and concluding, in the absence of any evidence for the Respondents, that the rash and negligent driving of the lorry was the cause for the accident. The Tribunal went on to note that the physical observation of the Petitioner in open Court showed that there was amputation of left leg, which is corroborated by Exs.A.3, A.4 and A.7. The Tribunal further observed that amputation of the left leg of the young Petitioner not only caused permanent disability but also difficulty in earning his livelihood in future and he must have spent much money for treatment and other expenses. The Tribunal also took into account the uncertainty introduced into the life of the Petitioner and felt that ends of justice would be met, if a compensation of Rs. 1,00,000/- is granted to the Petitioner. As Ex.B.1 insurance policy was in subsistence, both the Respondents were made liable to pay the compensation with interest at 12 per cent per annum from the date of the petition till realization and proportionate costs.

6. The Petitioner was aggrieved by the said award and questioned the same in the present appeal contending that no compensation was awarded for pain and suffering or medical expenses or transportation or permanent disability or loss of amenities of life and physical comfort or loss of earnings, etc., and the meagre compensation did not even carry satisfactory rate of interest. The Petitioner, therefore, desired that the impugned award be modified by granting the entire compensation of Rs. 2,50,000/- as claimed.

7. Sri P. Ramakrishna Reddy, learned Counsel for the Appellant and Sri Kota Subba Rao, learned standing counsel for the 2nd Respondent are heard at length and none entered appearance for the 1st Respondent.

8. The conclusions of the Tribunal about the subsistence of Ex.B.1 insurance policy in respect of the lorry owned by the 1st Respondent and insured with the 2nd Respondent and also the rash and negligent driving of the lorry being the cause for the accident, are not challenged by either party and the said conclusions have become final. The joint and several liability of the Respondents to compensate the Petitioner justly and adequately cannot, therefore, be in dispute and it is only the quantum of compensation to be awarded that is in issue in this appeal.

9. Sri Kota Subba Rao, learned standing counsel for the insurer referred to a series of precedents on the question of assessment of compensation in such cases.

10. In *Fazilka Dabwali Transport Co. Pvt. Ltd. v. Madan Lal* 1977 A.C.J. 403, the Apex Court upheld the compensation of Rs. 12,000/- awarded to a boy, whose foot was amputated and whose other leg was also severely injured giving a permanent limp.

But it is seen from the decision that the quantum of compensation was so assessed purely as a matter of fact, not laying down any precedential guidelines in this regard.

11. In [Jai Bhagwan Vs. Laxman Singh and Others](#), the Apex Court compensated a permanent disability by amputation of the left leg above the knee for a person aged 22 years with a sum of Rs. 80,000/- and it was observed that both pecuniary and non-pecuniary losses resulting from the injury are to be compensated and assessment of damages is subject to rules of remoteness and mitigation. The Apex Court observed that "so far as money can compensate", reparation for the wrongful act against the injured party shall be given for all the natural and direct consequences of the wrongful act. The compensation should be "so far as money can compensate" in personal injury accidents and both pecuniary and non-pecuniary damages have to be awarded. Then the Apex Court arrived at the amount of compensation awarded in that case by comparing the situation with an earlier reported decision.

12. In [Suresh Chandra Vs. State of U.P. and Another](#), a labourer, aged 18 years, had his right leg amputated as a result of the accident and the Apex Court restored the compensation awarded by the Tribunal at Rs. 1,45,000/- negativing the view of the High Court with reference to the assessment of compensation under the Workmen's Compensation Act.

13. In [Nagappa Vs. Gurudayal Singh and Others](#), the Apex Court was considering the case of a poor agriculturist, who had his right leg amputated as a result of the accident and emphasized the need to determine just compensation from the evidence on record, despite the fact that the claimant has not precisely stated the amount of damages or compensation to which he is entitled. The precedents on the aspect were referred to and it was reiterated that in personal injury cases, there are three categories of general damages, viz., consolatory damages, compensatory damages and damages for loss of expectation of life. The Apex Court also noted that while calculating such damages, the Tribunal is required to have some guess work taking into account the inflation factor also and in that case, the Apex Court awarded an additional compensation of Rs. 1,00,000/-, while the High Court originally awarded Rs. 1,00,000/-.

14. In [Rajesh Kumar @ Raju Vs. Yudhvir Singh and Another](#), the injured was claimed to have suffered 60 per cent disability due to the alleged amputation of one-third of the lower limb and as the doctor, who issued the medical certificate, was not examined, the Apex Court refused to interfere with the judgment of the High Court and the award of the Tribunal, but even without such medical evidence, the Tribunal awarded Rs. 1,68,941/- as compensation and the High Court awarded a further sum of Rs. 84,800/-.

15. In Asraf Alli Vs. Naveen Hotels Ltd. and Another, the Apex Court was dealing with an injured, who suffered 70 per cent disability due to amputation of left leg below the knee etc., and the Apex Court referred to fixation of compensation under the Second Schedule to the Motor Vehicles Act, 1988 and awarded a compensation of Rs. 3,24,000/- towards loss of earning capacity as per the structured formula.

16. In Sunil Kumar v. Roshan Lal and Ors. 1973 A.C.J. 41, the High Court of Delhi was observing that the assessment of general damages for personal suffering, loss of enjoyment of life and the probable loss of future earnings, is never an easy task, more so when nothing has been brought on record to prove the prospects of the injured getting higher education even in the absence of the accident. Still the meagre sum awarded by the Tribunal was considered inadequate, as the injured had to remain dependent on Ors. and had permanently lost the hope of leading a normal active life with loss of one leg. The permanent impairment on the capacity of the injured to enjoy the fullness of his life was taken into account to enhance the damages to Rs. 28,000/-.

17. In Sanjiva Shetty v. Anantha and Ors. 1976 A.C.J. 261, the High Court of Karnataka also observed that when the injuries caused during the accident directly resulted in the amputation of one leg, further prospects in life were substantially affected entitling the injured to general damages and the compensation awarded by the Tribunal was reduced by the High Court.

18. In Inder Lal v. Narendra Kumar and Ors. 1985 ACJ 303, the Rajasthan High Court was dealing with an injured boy of six years, whose left leg was crushed and amputated and on facts, a compensation of Rs. 50,000/- was awarded. It was specifically observed that it is a pitiable and tragic case where the condition of the small boy is so pitiable that on account of the amputation, he is having a hell of life and any amount of monetary compensation is too trivial and low, being required to live a life worse than a chattel, always in mental agony, disturbance and disappointed as cursed as a result of the rashness and negligence of the driver.

19. In Devram Jamvat Vs. Divisional Controller, Maharashtra State Road Transport Corporation, Nanded, the Bombay High Court was also considering the case of a boy, whose right leg had to be amputated due to the accident and considering the quantum of compensation, it was observed that the injured would have to live only on the sympathy of Ors. and crippled life is considered more humiliating than death. On facts, a sum of Rs. 75,000/- was awarded as compensation.

20. In United India Fire and Genl. Ins. Co. Ltd. Vs. Pallapu Sridevi and Others, a learned Judge of this Court granted a sum of Rs. 91,000/- as compensation in a case of amputation of a leg of a young girl of seven years, again on facts.

21. In Rajiv Kumar Vs. P.R.T.C. and Another, a compensation of Rs. 75,000/- was awarded to a boy of eight years, whose leg was amputated. The Court observed that for determining the compensation, numerous factors are required to be taken into

consideration like the age of the injured, nature of the injuries, pain and suffering, replacement of limb, nature of medical treatment, general effect on health and efficiency, effect on marriage prospects, loss of earnings and other allied matters.

22. In [Mirza Mahboob Ali Baig Aslam Vs. Union of India \(UOI\)](#), a learned Judge of this Court awarded a compensation of Rs. 25,000/- to a boy of five years, whose left leg was amputated and the learned Judge referred to the precedents in such cases where different sums of compensation were awarded. But that was a case where there was no evidence regarding the treatment or expenses and the learned Judge himself observed the need to take into account the depreciation in the value of rupee in fixing the compensation.

23. In *Imtiaz v. National Insurance Company Limited and Ors.* 2001 ACJ 1033, the Apex Court awarded a compensation of Rs. 2,00,000/- to a boy, whose left leg was amputated below the knee and observed that even the quantum of compensation of Rs. 2,00,000/- appears to Their Lordships to be on lower side.

24. In [Chandra Prakash Vs. Mangal Singh and Others](#), the Rajasthan High Court was considering the case of a fourteen-year old boy, whose left leg was amputated at the place of knee, who will have to walk with an artificial leg throughout his life. For determining the quantum of compensation, pecuniary damages and special damages were considered including medical attendance, loss of earnings, other material losses, mental and physical shock, loss of amenities of life, loss of expectation of life, inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life. With reference to the precedents cited therein, the compensation was increased to Rs. 5,00,000/-.

25. In [Gita Devi Vs. Himachal Road Transport Corporation and Others](#), a girl, aged 10 years, had her right foot crushed in the accident resulting in amputation below the knee and the principles for determination of just compensation were reiterated. While noting that the damages may vary according to the gravity of the injuries sustained by the claimant in the accident, it was observed that there has to be a measure of calculated guess work and conjecture and an assessment, as best as can, in the circumstances, be made, has to be made. It was noted that the compensation for damages assessed for personal injuries should be substantial damages to compensate the injured for the deprivation suffered by her throughout her life and there should not be only token damages. The need to assess the compensation neither very conservatively nor very liberally was emphasized and the Court was advised to make a judicious attempt to award just compensation. On facts, the Court noted that though there was no evidence to show the medical expenses, the claimant became crippled, had her leg amputated and cannot function as a normal human being forever. She lost the joys of her childhood and her marital prospects were totally marred. Loss of future income was at the minimum of 40% of her estimated income and consequently, the compensation was enhanced to Rs. 4,00,000/-.

26. In Anoop Kumar Vs. Janrel Singh and Others, the injured was a boy, aged 4 years, whose left leg was amputated above the knee and the Madhya Pradesh High Court granted a total compensation of Rs. 5,00,000/- towards pain and suffering, loss of amenities of life and happiness, loss of marriage prospects, amputation, loss of expectation of life, medical expenses, extra nourishment, attendant and conveyance charges and future medical expenses.

27. In Sunil Kumar v. Ram Singh Gaud and Ors. 2008 (1) ALD 114 , the Apex Court deducted one-third of the estimated capacity of the injured to earn towards miscellaneous expenses, on the facts of the case before Their Lordships and it has to be noted that no principle has been laid down for guidance to consider deduction of any such miscellaneous expenses as a principle.

28. In Kore Gattaiah Vs. Singareni Collieries Company Ltd. and Others, the Apex Court was dealing with a 29 year old injured, whose right hand was severally injured and disabled and a compensation of Rs. 1,50,000/- awarded by the Tribunal was upheld by the Apex Court. The reasoning of the High Court in referring to the alleged contributory negligence of the injured and the probable exaggeration of the percentage of disability, was not accepted by the Apex Court.

29. Sri P. Ramakrishna Reddy, learned Counsel for the Appellant mainly relied on Fakkirappa Vs. Yallawwa and Another, in which a Division Bench of Karnataka High Court had formulated the principles for assessment of compensation with reference to the precedents cited before it and the basic thread that runs through the reasoning is that the Court should award to the injured person such a sum of money as will put him in the same position as he would have been in, if he had not sustained the injury, while at the same time, it is manifest and universally realized that no award of money can possibly compensate a man and renew a shattered human frame. It was held that the injured has to be compensated for pain and suffering, loss of amenities, shortened expectation of life, loss of earnings or earning capacity, medical treatment and other special damages. In that case, a compensation of Rs. 5,85,000/- was awarded for the injured, who suffered amputation of left leg below the knee.

30. The learned Counsel also relied on P. Purushotham Reddy Vs. Managing Director, PATC, Vellore, Tamil Nadu, in which the compensation was arrived at with reference to the gross salary of the injured and his age, whereas in the present case, there can be no certain basis to assess the future loss of earning capacity of the young boy.

31. K. Narahari Vs. U. Suresh Kumar and another, is also relied on for the Appellant, in which a compensation of Rs. 6,00,000/- was awarded, but that was a case where the claimant produced medical bills and bills for transport charges and the injured was a practising advocate, whose earnings and capacity to earn at a particular level were probablised by evidence on record before the Tribunal.

32. In R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, the injured was a 52 year old practising lawyer and with reference to the expenses which he incurred for the treatment and the possible expenses which he had to incur for the treatment in future apart from the loss of income, etc., the compensation was accordingly enhanced.

33. Thus, a close perusal of the various precedents relied on by the learned Counsel for both sides indicates that the assessment of just compensation in personal injury cases more depends on the facts and circumstances of each case, more particularly the nature of the injured, the nature of injuries, the age, the occupation, the social and financial background of the injured, the prospects in education or career or income and all other relevant personal factors relating to the injured necessarily guiding the assessment of compensation. Similarly, the magnitude and gravity of the injuries, the consequences which the injuries had inflicted on the physical and mental well-being and future life of the injured and all other relevant factors relating to the injuries would also influence the assessment of compensation. In cases where a limb or leg had to be amputated as a result of the accident, Courts have been uniformly liberal to the extent permissible in assessing the quantum of compensation to be awarded, while, at the same time, carefully avoiding any unjust enrichment of the victim under the guise of compensation. Assessment of compensation in personal injury cases of children always presents greater uncertainties, fluctuations and imponderables, which the Court should, in its wisdom and experience, try to get over keeping in view the ultimate object of attempting to place the injured in the same situation in which he would have been but for the accident by awarding just and adequate compensation.

34. Keeping these accepted principles in view, the compensation awarded in the present case is, undoubtedly, low, if not grossly inadequate and unjust. Even if there is no definite positive evidence about all the relevant circumstances, admittedly, the injured boy, aged 12 years, was a student and in the ordinary and natural course of human events with the right to education now becoming an enforceable right, the boy could have pursued his studies to their logical conclusion to earn a decent livelihood in future. The amputation of the leg, undoubtedly, would have a serious adverse impact on such future prospects. The injured was also claimed to be earning at that age as a labourer probably whenever he was free from his school and though no medical evidence has been produced by the claimant in proof of the treatment or the expenses or even the injury, the Tribunal had rightly observed that it had seen the injured Petitioner in flesh and blood and his amputated leg was not attributed to be the result of any other event than the accident in question. Ex.A.1 first information report and Ex.A.2 charge-sheet containing the result of investigation by the statutory investigating agency bear ample testimony to the truth of the claim of the boy suffering such amputation only due to the accident, further corroborated by Exs.A.3 to A.7 and even in the absence of any definite evidence, the amount of compensation should not have been restricted to Rs.

1,00,000/- and like the compensation awarded by the Apex Court in *Imtiaz v. National Insurance Company Limited and Ors.* (14 supra) in respect of an identical case, the compensation should have been granted in a lump sum of Rs. 2,00,000/-. When the Apex Court considered even such compensation of Rs. 2,00,000/- to be on a lower side in 2001, after nine years of inflation and corresponding decrease in value of the rupee, grant of such an amount to the Petitioner herein cannot be considered to be excessive or unreasonable. With reference to the principles laid down in various precedents above extracted, such assessment will probably meet the requirements of grant of pecuniary and non-pecuniary damages awardable in such cases and therefore, the impugned award has to be modified accordingly.

35. Sri Kota Subba Rao, learned standing counsel for the insurer also attempted to question the interest awarded by the Tribunal at 12 per cent per annum. But the same needs no disturbance at this distance of time, more so when grant of interest at such rate depended on the fMs and circumstances of the case and is not shown to be, *per se*, impermissible. In so far as the enhanced portion of compensation is concerned, in view of the distance of time from which such interest has to be paid, the same can be restricted to 6 per cent per annum.

36. Therefore, the award, dated 23-01-1998 in O.P. No. 663 of 1993 on the file of the Motor Accidents Claims Tribunal, Nalgonda is modified by awarding a further compensation of Rs. 1,00,000/- (Rupees one lakh only) with interest thereon at 6 per cent per annum from the date of the petition till the date of payment or deposit and proportionate costs and no further directions need be given at this distance of time regarding the disbursement of the compensation, more so, when the injured/Petitioner would have become a major by efflux of time. The appeal is allowed accordingly in part without costs.