2024 INSC 777

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. ..... OF 2024
(Arising out of S.L.P.(C) Nos. 3050 of 2023)

CHANDRAMANI NANDA ... Appellant(s)

VERSUS

SARAT CHANDRA SWAIN AND ANOTHER ... Respondent(s)

J U D G M E N T

Rajesh Bindal, J.

1. Leave granted.

2. The claimant, in a motor vehicle accident having suffered injuries, has filed the present appeal seeking enhancement of compensation. He is aggrieved by the order[1] passed by the High Court[2].

[1] Dated 24.08.2022 in MACA No.256 of 2019
[2] High Court of Orissa at Cuttack

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3. The facts as available on record are that on 16.01.2014 four persons occupying Verito Vibe Car bearing Registration No.OD-05-D-9596 were travelling from Sambalpur, Odisha to Cuttack. At about 01:30 pm, the offending Bus bearing Registration No.OD-14-A-1774 being driven at high speed struck against the said car on NH-55 near CPP Chawk, NALCO, Anugul, Odisha, as a result of which the occupants of the car suffered serious injuries. One of the occupants, Ranjan Rout, succumbed to the injuries on 31.05.2017. A police case bearing P.S. Case No.7/2014 was registered against the driver of the offending bus under Sections 279, 337 and 338 of IPC[3]. Three injured occupants of the car and the legal heirs of the deceased, Ranjan Rout filed different claim petitions, which were assigned to the Court of 2nd Additional District Judge-cum-3rd Motor Accident Claims Tribunal, Cuttack. The present appellant had filed petition[4] claiming compensation of ₹30,00,000/-. As all the claims had arisen from the same accident the Tribunal clubbed all the claim petitions and decided the same by a common Award[5].

[3] Indian Penal Code
[4] MAC Case No.176 of 2014
[5] Dated 15.01.2019

4. A perusal of the said Award passed by the Tribunal shows that registered owner of the offending bus did not appear despite service, hence, was proceeded against *ex parte*. The Insurance Company[6] contested the claim petitions. The Tribunal framed the following issues:

> "(i) Whether the claim applications are maintainable?
>
> (ii) Whether due to rash and/or negligent driving of the driver of the offending vehicle bearing registration No.OD-14-A-1774 the accident took place and in that accident deceased namely Ranjan Rout succumbed to injuries and other petitioners namely Dipti Ranjan Pattanayak, Santosh Baral, and Chandramani Nanda sustained injuries on their persons?
>
> (iii) Whether the petitioners are entitled to get the compensation and if so, what would be the extent?
>
> (iv) Whether both the Opposite Parties or either of them are/is liable to pay the compensation? and
>
> (v) To what other relief/s, if any, the respective petitioners are entitled?"

[6] National Insurance Company Limited

5. The Issue No.(ii) was decided in favour of the claimants. As far as entitlement of compensation is concerned, the claim of the present appellant was discussed under para '13' of the Award of the Tribunal. The evidence led to the effect that he sustained head injury, which was grievous in nature. The claimant was initially admitted in Angul Government Hospital and due to his serious condition, he was shifted to Ashwini Hospital, Cuttack for better treatment and remained admitted there from 16.01.2014 to 11.02.2014. During that period, he had undergone a major brain surgery. The mother of the appellant in her statement stated that due to the accident, her son (appellant) had become mentally unsound. He is not able to understand anything and is bedridden since then.

5.1 The appellant visited Ashwini Hospital for his follow up after surgery on 17.06.2014, 15.09.2014 and 25.07.2015. It was claimed that the mother of the appellant spent about ₹15,00,000/- on his treatment, which is still going on. However, total bills produced towards medical expenses were to the tune of ₹3,31,153/-. The aforesaid amount was awarded by the Tribunal. The Record Keeper of the Ashwini Hospital was also summoned in evidence who proved the medical record of the appellant, which mentioned that he had sustained grievous head injury fracture of C6 and T4 vertebra. He also produced the medical bills.

6. As far as the employment of the appellant is concerned, it was claimed that at the relevant point of time he was working as Branch Manager in Padma Infrastructure Private Limited and was earning salary of ₹22,000/- per month. However, the Tribunal referring to Income Tax return of the appellant (Ext.15)[7] assessed the income at ₹1,62,420/- per annum for the assessment year 2011-12 and that was made the basis for awarding compensation. His disability was assessed by the District Medical Board, Jagatsinghpur (Ext.13), according to which he was declared to be disabled to the extent of 60%. It is pertinent to note that the aforesaid assessment of disability of the appellant was conducted 02 years after the accident, meaning thereby, the disability was subsisting. It was claimed that on account of 60% disability suffered by the appellant, he had suffered 100% functional disability because of brain injury suffered by him. However, the Tribunal assessed the disability and loss in earning capacity only to the extent of 60%.

7. The age of the appellant was about 32 years at the time of the accident. Since the appellant fell in the age group between 31 to 35, multiplier 16 was applied for assessment of compensation,

[7] Inadvertently, recorded as Ext. 16 in the High Court and Tribunal's order.

referring to the judgment of this Court in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[8].

8. While assessing the compensation, the Tribunal, in addition to the loss of future income calculated at 60% disability, awarded ₹50,000/- on account of mental agony, pain and suffering, and loss of amenities, and further awarded ₹1,00,000/- for future medical expenses. The total compensation assessed was as under:

Head	Amount (in ₹)
Loss of future income (₹1,62,420 x 16 x 60/100)	15,59,232/-
Past medical expenditure including cost of medicine, special diet & the attendant	3,51,153/-
Mental agony, pain, suffering and loss of amenities	50,000/-
Future medical expenses	1,00,000/-
Total	**20,60,385/-**

along with interest @ 6% per annum

9. Aggrieved against the said award of the Tribunal, the present appellant as well as the Insurance Company preferred appeals[9] before the High Court. The High Court opined that the appellant had suffered 100% functional disability as against 60% assessed by the Tribunal because even if the disability from persistent

[8] (2009) 6 SCC 121, [2009] 5 SCR 1098, 2009 INSC 506
[9] MACA No.256 of 2019 by the appellant and MACA No.350 of 2021 by the Insurance Company

neurocognitive is 60%, such disability entails 100% loss of earning capacity. The High Court modified the Award of the Tribunal and enhanced the amount of compensation from ₹20,60,385/- to ₹30,99,873/-.

Head	Compensation (in ₹)
Loss of future income (₹ 1,62,420 x 16 x 100% disability)	25,98,720/-
Medical Expenditure	3,51,153/-
Mental agony and suffering	50,000/-
Future medical expenses	1,00,000/-
Total	**30,99,873/-**

along with interest @ 6% per annum

10 In the present SLP, the learned counsel for the appellant submitted that while assessing the compensation, the Tribunal as well as the High Court have failed to appreciate that the income claimed by appellant was ₹22,000/- per month i.e. ₹2,64,000/- per annum. However, the assessment of compensation was made by taking the income at ₹1,62,420/- per annum, which pertained to assessment year 2011-12 i.e. financial year 2010-11. It is to be noted that the accident had taken place on 16.01.2014, i.e. after 02 years from the said financial year.

10.1 It was further submitted that the amount of compensation should be enhanced by including factor of future prospect as it has not been considered by the Tribunal and High Court. Further, he should be awarded enhanced compensation under the head of future medical expenses as he would be required to incur medical expenses on a regular basis, and should also be granted compensation for an attendant.

10.2 Learned counsel for appellant also submitted that compensation on account of mental agony, pain and suffering and loss of amenities as assessed by the Tribunal is also on lower side as the appellant will undergo pain and suffering due to injuries and will go through mental agony throughout his life on account of brain injury.

11. On the other hand, learned counsel for the Insurance Company submitted that the assessment of compensation by the High Court is on the higher side. There is no scope of further enhancement specially keeping in view the fact that the appellant had claimed a sum of ₹30,00,000/- as compensation, and the High Court has already awarded more than that. However, still being reasonable, the Insurance Company did not prefer any appeal.

12. Heard learned counsel for the parties and perused the relevant materials on record.

13. For the purpose of clarification, the High Court enhanced the compensation to Rs. 30,99,873 from Rs. 20,60,385 as awarded by Tribunal. This was done by considering the functional disability at 100% as opposed to 60%, as assessed by the Tribunal.

14. On the issue of assessment of income, we are of the view that that an enhanced income should be considered for calculation of compensation. In this regard, the appellant has produced on record his income tax returns for the assessment years 2010-11 and 2011-12 as Exhibits 14 and 15, respectively. As per the records, for the assessment year 2010-11 (the financial year will be 2009-10), the income shown by the appellant was to the tune of ₹1,65,100/-. For the assessment year 2011-12 (the financial year will be 2010-11), the income was shown as ₹1,77,400/-. Further, as per the Salary Certificate Exhibit-22 placed on record by the appellant, he was working as Branch Manager for Padma Infrastructure and he was getting a consolidated salary of ₹22,000 one year prior to the date of accident. Now, it is to be noted that the accident took place on 16.01.2014, in the financial year 2013-14. If we calculate the annual income considering ₹22,000, it would come out to ₹2,64,000/- per annum. However, as per

the High Court and the Tribunal, the annual income is assessed at ₹1,62,420/-. However, both the courts below failed to consider the fact that there is a gap of approximately 02 years and 09 months between the said income tax returns and the date of accident. It can be seen that the income of the appellant, based on the income tax returns so produced on record is progressive, there is a possibility that he may have left his business and join service to improve his income. Thus, in our view, it would be reasonable to take the income of the appellant at ₹2,00,000/- per annum, i.e., ₹16,666.67 per month.

14.1 With respect to the multiplier, we do not find any error in the order passed by the High Court applying the multiplier of 16 considering the age of the appellant as 32 years on the date of the accident.

14.2 On the point of assessment of functional disability as 100% by the High Court as against 60% by the Tribunal, there is no challenge by the insurance company.

14.3 However, the Tribunal and the High Court both have failed to consider the fact that the appellant is also entitled for enhancement on account of future prospects. Hence, in line with the law laid down in **National Insurance Company Limited v. Pranay Sethi and**

Others[10], given the age of appellant was 32 years at the time of accident, he is entitled to 40% future prospects.

15. As far as award of amount on account of medical expenditure is concerned, we do not find any case to be made out for further enhancement, as the amount awarded is in tune with the bills placed by the appellant on record.

16. Coming to the compensation under the head of attendant, Tribunal awarded a meagre sum of ₹10,000/-. While this amount may have been awarded considering the cost of attendant charges incurred during the period of appellant's treatment, as he remained admitted in hospital for 25 days and had to undergo surgery post initial operation as well. However, now, considering the fact of mental disability to be suffered by appellant, who is now around 40 years old and the age of the mother who is above 60 years old, and will be appellant's primary caretaker, we are of the opinion that a reasonable amount for future attendant charges should also be awarded to the appellant.

17. In this regard, we have perused the statement of the appellant's mother (PW-3). As per her statement, initially they had engaged an attendant at ₹6,000 per month. However, he had left his

[10] (2017) 16 SCC 680, [2017] SCR 100, 2017 INSC 1068

services about a month before the mother was cross-examined on 23rd September, 2016. Further, the appellant's father works as a priest and have a meagre monthly income. Thus, it is the appellant's mother and other family members who are taking care of him. Considering the aforesaid facts, in our opinion, a lump sum amount of ₹1,00,000/- is reasonable and deserves to be awarded to the appellant on account of future attendant charges.

18. In addition to the above, appellant is also entitled to compensation on account of loss of marriage prospects. A perusal of the impugned award of the Tribunal and the High Court shows that nothing has been awarded to the appellant under this head. In our opinion, considering the law laid down by this Court on this issue, the appellant deserves to be awarded a sum of ₹1,00,000/- on this account.

19. Further, in our view, a compensation of ₹50,000/- on account of pain and suffering is also on lower side and the same deserves to be enhanced to ₹1,00,000/-. It is for the reason that on account of the injury suffered, the appellant has become mentally unstable, having disability of 60%, which indeed has resulted in 100% functional disability.

20. An argument is raised by learned counsel for the insurance company that the appellant has initially claimed a sum of ₹30,00,000/- and since the same having been awarded to him by the High Court, no further enhancement is possible. We cannot accept this argument and it is duly rejected. It is a settled proportion of law, that the amount of compensation claimed is not a bar for the Tribunal and the High Court to award more than what is claimed, provided it is found to be just and reasonable. It is the duty of the Court to assess fair compensation. Rough calculation made by the claimant is not a bar or the upper limit. Reference in this regard can be made to the judgment of this Court in the case of **Meena Devi vs. Nunu Chand Mahto**[11]**.**

21. For the reasons mentioned above, this appeal is allowed and the compensation awarded to the appellant is assessed in the following terms:

Head	Compensation (in ₹)
Annual Income	2,00,000
Annual Income after Future Prospects @ 40%	2,80,000
Loss of future income (₹2,80,000 x 16 x 100% disability)	44,80,000
Medical Expenditure	3,51,153
Future Attendant Cost	1,00,000

[11] (2023) 1 SCC 204, [2022] 18 SCR 449, 2022 INSC 1080

Loss of marriage prospects	1,00,000
Pain and suffering	1,00,000
Future medical expenses	1,00,000
Total	**52,31,153**

22. The total amount of compensation is rounded off to ₹52,31,000/-. The appellant will be entitled to get interest on the enhanced compensation at the rate of 6% as awarded by the High Court.

23. Accordingly, the appeal is allowed in the aforesaid terms while modifying the order of the High Court. Pending interlocutory applications (if any) shall stand disposed of.

.....J.
(J.K. MAHESHWARI)

.....J.
(RAJESH BINDAL)

New Delhi
October 15, 2024.

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