

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

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:: JUDGMENT ::

(1) Baby Bharati Vs. Harish Kumar & Ors.

S.B. CIVIL MISC. APPEAL NO.92/1995.

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(2) Kamla Bai Vs. Harish Kumar & Ors.

S.B. CIVIL MISC. APPEAL NO.93/1995.

..

(3) Sumer Chand Vs. Harish Kumar & Ors.

S.B. CIVIL MISC. APPEAL NO.100/1995.

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Against the common award dated 11.11.1994 made by the Motor Accidents Claims Tribunal, Sojat in Claim Case Nos.265/1992, 266/1992 and 270/1992 respectively.

Date of Judgment :: 31st July 2007.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Rajesh Panwar with
Mr. S.K. Sankhla, for the appellants.
Mr. R.K. Mehta, for the respondent-Insurer.

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BY THE COURT:

These three appeals, CMA Nos.92/1995, 93/1995 and 100/1995, preferred by the claimants against the common

award dated 11.11.1994 made by the Motor Accidents Claims Tribunal, Sojat in their respective Claim Cases No. 265/1992: Baby Bharati Vs. Harish Kumar & others; No.266/1992: Kamla Bai Vs. Harish Kumar & others; and No.270/1992: Sumer Chand Vs. Harish Kumar & others, seeking enhancement over the amount of compensation awarded by the Tribunal for the loss suffered by them due to the injuries sustained in the same vehicular accident have been heard together; and are taken up for disposal by this common judgment.

Background facts are that on 25.05.1988 the appellants along with other members of the family were travelling in a Maruti Van bearing registration No. RST 1679 going from Jaipur to Nakoda; at about 10:30 p.m., between Jaitaran and Prithvipura, the vehicle dashed against a roadside tree causing varying injuries to the occupants; and one of the injured Kumari Sonel (10 years), daughter of the appellant Sumer Chand succumbed. Against the driver, owner and insurer of the offending vehicle, the present appellants and other injured members of the family sought compensation for the loss suffered by them due to the injuries sustained in the accident; and the claimant Sumer Chand with his wife Lata Devi and son Amit Kumar sought compensation for demise of Kumari Sonel. The insurer put the claims for compensation so made in seven claim applications to contention; and the Tribunal proceeded

with separate trial of the claim cases after framing of necessary issues; in some of the cases, the individual claimants were examined and later on, the seven claim cases were consolidated. The present appellants, amongst others, examined the claimant Sumer Chand as AW-1; the claimant Baby Bharati as AW-2; M.C.Kumbhat, father of the claimant Baby Bharati and husband of the claimant Smt. Kamla Bai as AW-3; and the claimant Smt.Kamla Bai as AW-4. The non-applicants did not lead any evidence. Status of the documentary evidence as produced, and as omitted to be produced, by the claimants shall be discussed hereafter. By the award impugned, all the seven claim cases have been decided together; however, these appeals relate only to the three cases as already noticed.

By the common impugned award dated 11.11.1994, the learned Judge of the Tribunal proceeded to hold in issue No.1 that the accident occurred for rash and negligent driving of the Maruti Van by the non-applicant No.1 that caused bodily injuries to the occupants and resulted in demise of Kumari Sonel; and then proceeded to award compensation in relation to the three claim cases involved in the present three appeals on the observations and in the manner as follows:

In relation to the case of Baby Bharati [Claim Case No.265/1992: CMA No.92/1995], the learned Judge noticed her

statement of being a student of 9th Standard; that the accident occurred six years back; that she sustained fractures of the bones of both her legs; that her left leg was required to be operated 5-6 times and she was still under treatment; that she was earlier treated at Jodhpur and then at Madras; that the expenditure incurred on treatment was known to her father; that there was stiffness in her left leg, she could not squat properly, and was suffering pain upon walking a few paces. The learned Judge also noticed that she admitted in cross-examination of attending school regularly without any help; and stated that her leg was comparatively better but not restored to fitness. The learned Judge then noticed the statement of her father, AW-3 M.C. Kumbhat who referred to her treatment at Jodhpur from 26.05.1988 to 22.06.1988, her discharge certificate Ex.19, her having been transported to Madras on a stretcher in aeroplane, doctor's certificate for air transportation Ex.20, her discharge tickets at Madras Ex.21 and Ex.22, the bills of doctor's fees and medicines Ex.23 to Ex.33, and the doctor's certificate Ex.34; and who stated that substantial expenditure was already incurred on her treatment and was further likely to be incurred on future treatment; that some of the bills were lost; and that the aeroplane ticket was handed over to the Advocate Shri Indermal who has since expired and hence duplicate could not be produced; that the originals of the bills Ex.26 to 33 have

been lost; that the bills prior to 27.05.1994 were not available with him; and that the claimant had lost one year of her studies, i.e. the year 1988-89, due to the injuries. The learned Judge thereafter noted from the contents of the discharge certificate Ex.19 that the claimant remained admitted in the hospital from 26.05.1988 to 22.06.1988 and was operated on 26.05.1988. The learned Judge also noted the contents from the certificate Ex.20 that the doctor pointed out her being in plaster cast from nipple to both side toes and was free to travel by air but observed that it was not said if such travel was necessary for the patient. The learned Judge then noted from the discharge ticket Ex.21 of Vijay Hospital, Madras that the claimant remained hospitalised from 04.07.1988 to 25.07.1988; and purportedly reproduced some of the contents the discharge ticket Ex. 21. The learned Judge thereafter referred to the discharge summary of the claimant at the Madras Institute of Orthopaedics and Traumatology (Ex.22) for the period 26.05.1994 to 31.05.1994 and then to the various bills and receipts produced in relation to her treatment expenditure.

After this much of survey of the evidence on record, the learned Judge observed that the claimant had suffered injuries including fracture, has been treated at Jodhpur and Madras, no certificate was filed in relation to percentage of her disablement and air travel ticket was also not filed, and then observed that in

accordance with the guidelines available from the decision cited by the learned counsel for the claimant in the case of General Manager Kerala State Road Transport Vs. Sushamma Thomas, it would be appropriate to award compensation in the sum of Rs.45,000/- to the claimant Kumari Bharati.

In relation to the case of Smt. Kamla [Claim Case No.266/1992: CMA No.93/1995], the learned Judge again referred to her statement of admission at Mahatma Gandhi Hospital, Jodhpur from 26.05.1988 to 22.06.1988, of air transportation to Madras, of her further treatment at Vijay Hospital, Madras, of her having suffered fracture on pelvis, both legs and right hand, of her being unable to carry on with her daily routine and always requiring an attendant, of substantial expenditure on treatment, of having lost her income from knitting and tailoring, of her being regularly under pain and suffering, of her being continuously under treatment and recently been operated at Madras spending Rs.1.50 lacs, of the doctor having opined for transplantation of hip bone and of having given original air ticket of Madras travel to the lawyer Shri Indermal who had expired. With reference to the certificate Ex.1, the learned Judge found that she remained hospitalised at Mahatma Gandhi Hospital, Jodhpur from 26.05.1988 to 22.06.1988 and was operated on 04.06.1988. The learned Judge also referred to her discharge certificate Ex.1 of Miot

Hospital, Madras dated 09.06.1994, her admission certificate Ex.3 showing shortening of left limb by $\frac{3}{4}$ ", and to the various bills of expenditure. With reference to the bills so produced by the claimant and, after referring again to the decision of the Hon'ble Supreme Court in Sushamma Thomas, the learned Judge picked up a figure of Rs.1.50 lacs to be awarded to her towards compensation.

In relation to the case of the claimant Sumer Chand [Claim Case No.270/1992: CMA No.100/1995], the learned Judge referred to his statement about substantial treatment expenditure and similar expenses on air travel to Madras, of his having suffered fracture of left femur bone and at right hand, of his being a Chartered Accountant and having suffered loss in his practice for being unable to work properly, of having paid income tax on Rs.35,000/- in the year 1988, but now his earnings being Rs.30,000/- due to the loss of earning capacity, of the relevant documents including air ticket and bills of expenditure having been handed over to the lawyer Shri Indermal who had expired. The learned Judge referred to the discharge ticket Ex.14 showing that he remained hospitalised from 26.05.1988 to 22.06.1988 and was operated on 02.06.1988. However, the learned Judge observed that other expenditure was not established by relevant evidence nor percentage of disablement was established by any certificate;

but observing that the claimant had remained hospitalised, had been treated and had suffered mental agony too, the learned Judge again referred to the decision of the Hon'ble Supreme Court in the case of Susamma Thomas and then picked up a figure of Rs. 50,000/- to be awarded as lump sum compensation to the claimant.

In these appeals, the amount of compensation awarded in the aforesaid Claim Case Nos. 265/1992, 266/1992 and 270/1992 have been assailed being too low and inadequate. The insurer of the vehicle involved in the accident has opposed with the submissions that the award of compensation as made in each claim case cannot be said to be insufficient or inadequate looking to the period of incident and want of relevant evidence. It has also been suggested during the course of submissions by the learned counsel that the liability of the Insurance Company was limited as per the statute.

It may be pointed out that the feeble attempt made on the part of the insurer to suggest limited liability is fundamentally baseless. No such suggestion seems to have been made before the Tribunal nor has any evidence in that regard been adduced. The certificate of insurance, an admitted document, available at page C41/2 of the record of Claim Case No. 270/1992, makes it clear that the Insurance Company has taken extra premium of Rs.30/- per passenger for enhanced liability.

The suggestion on the part of the insurer about limitation on its liability deserves to be and is rejected.

Before dealing with the quantum of compensation in each case, this Court is constrained to express dissatisfaction, rather anguish, over the manner of dealing by Tribunal with cognate claim cases relating to the same incident. It is noticed that these seven claim cases relating to the same accident continued to be tried separately by the same Tribunal for sufficient length of time. AW-1 Sumer Chand was examined in his claim case No.270/1992 on 28.07.1994; and this very day, other claimants Bhanwari Bai, Lata Devi, and Amit Kumar were examined in their respective claim cases Nos.267/1992, 269/1992 and 271/1992 as AW-1. Then, on 28.07.1994 only, the Tribunal proceeded to pass an order in Claim Case No.270/1992 accepting an application of the learned counsel for the claimant for consolidating with it the other six claim cases. Thereafter, on 22.10.1994, the claimant Baby Bharati was examined as AW-2, her father M.C. Kumbhat was examined as AW-3 and the claimant Smt. Kamla Bai was examined as AW-4 and these statements are placed in the file of Claim Case No.270/1992. It is noticed that on 22.10.1994, several documents relating to the treatment of Smt. Kamla Bai were filed and were marked as exhibits (Ex. 2 to Ex. 17) but the counsel forwarded the same with a list of documents with reference to the claim case of

Baby Bharati and such documents relating to the claimant Smt. Kamla Bai are placed in the record of Claim Case No.265/1992 of Baby Bharati. Moreover, the documents referred by AW-4 Smt. Kamla Bai have been marked as Ex.1 to Ex.18 but prior to that, the documents relating to AW-1 Sumer Chand had already been marked as Ex.1 to Ex.14. Identification number of the witnesses and so also of the documents have got mixed up; and even the documents pertaining to one claimant are placed in the record of other case. It is definitely expected of the Tribunal to maintain the records in an intelligible manner rather than making them heap of confusions.

Be that as it may, having scanned through the material, whatever, placed on record and having examined each of the claim case in its totality, this Court is of opinion that in Claim Case No.266/1992 of the claimant Smt. Kamla Bai (CMA No.93/1995) and in Claim Case No.270/1992 of the claimant Sumer Chand (CMA No.100/1995) there is no scope for enhancement and these appeals deserve to be dismissed. However, the award of compensation in relation to Claim Case No.265/1992 of the claimant Baby Bharati (CMA No.92/1995) appears to be insufficient and deserves modification.

So far the claimant Smt. Kamla Bai is concerned, it is noticed from the discharge ticket Ex. 1 that she was admitted to Mahatma Gandhi Hospital, Jodhpur on 26.05.1988 and was

discharged on 21.06.1988 as she was resident of Madras and wanted to take further treatment at Madras. She had sustained injuries, inter alia, of fracture of left hip bone and at the neck of femur bone but neither the MLC X-Ray reports have been produced nor any bills towards treatment expenditure then incurred have been produced. The claimant has not produced any document to show the treatment undergone after getting herself shifted to Madras from Jodhpur in the month of June 1988. Of the documentary evidence produced by her, the document nearest to the point of time of incident is only of the year 1991, i.e., Ex. 3 dated 29.06.1991 from the Madras Institute of Orthopaedics & Traumatology (placed at page C30/3 of the record of Claim Case No.265/1992 of Baby Bharati), contents whereof read as under:

"Complains of pain Lt hip off and on – 4 months duration.

History of injury to the Lt hip 3 years ago following which she sustained intercapsular fracture neck of femur which was internally stabilised with Lag screw and S.P. Plate. Patient did not have any pain following the surgery till 4 months ago.

The pain is mainly on getting up and down from the sitting position, turning in bed and less on walking.
Not a known diabetic nor hypertensive.

On Examination:

Healed scar of surgery.
Transtrochanteric tenderness present.
Movements of the hip-flexion, extension full range.
Internal rotation – restricted and painless.

Lt lower limb: Shortening $\frac{3}{4}$ "

X-Ray Lt hip AP & Lowenstein's view.

X-ray shows evidence of superior segmental collapse of the femoral head.
The fracture is well united.

I have advised:
- removal of implants."

The claimant has then produced other documents relating to her treatment in the months of May-June 1994; and from the discharge summary of Miot Hospital Limited (Ex. 2) it appears that Freeman Arthroplasty of the left hip was carried out on 09.06.1994 after X-ray pelvis showed avascular necrosis of the femoral head (vide Ex. 4). The document Ex. 3 is of the year 1991 and later treatment documents are of the year 1994. Though the document Ex. 3 shows shortening of the left lower limb by $\frac{3}{4}$ " but records that the fracture was well united and that she did not have any pain after surgery till 4 months ago. From the overall evidence on record, it is difficult to make out that the later treatment of the year 1994 is referable only to the injuries sustained in the accident in question.

The Tribunal has proceeded to award compensation to the claimant Smt. Kamla in the sum of Rs.1.50 lacs particularly in view of some receipts from Miot Hospital Limited like Ex.5 and Ex.6 which are in the sum of Rs.50,000/- each towards operation charges and Ex.10 in the sum of Rs.10,070/- and

Ex.11 in the sum of Rs.1,300/- for being an indoor patient. However, all such receipts are of the month of June 1994 and no other proof of previous treatment expenditure is available on record; nor there is any other proof in relation to permanent disablement relatable to the incident in question. In the overall circumstances of the case, the award of compensation in the sum of Rs.1.50 lacs together with interest @ 12% per annum in this case does not appear to be too low so as to warrant interference in appeal. It is noticed from the record that under the award in question ultimately she had been paid an amount of Rs.2,52,225/- on 19.05.1995. The amount received by the claimant cannot be said to be falling short of just compensation admissible in this case.

So far the case of claimant Sumer Chand is concerned, he has been awarded lump sum compensation at Rs.50,000/-. The said claimant suffered fracture of left femur bone and remained admitted in Mahatma Gandhi Hospital, Jodhpur from 26.05.1988 to 20.06.1988. However, except his discharge ticket Ex. 14 there is no other material on record to consider his further alleged treatment at Madras or of his having spent the amount as alleged or his carrying any disablement so as to result in loss of earning capacity as a Chartered Accountant. The amount of compensation in his case too appears to be not lesser than that of just compensation and calls for no

modification.

In the case of Baby Bharati, it appears that she had suffered fracture on upper 1/3rd of right femur bone and comminuted compound fracture of mid shaft of left femur bone at her age of 9 years. Discharge ticket Ex.19 shows her having remained admitted in Mahatma Gandhi Hospital, Jodhpur from 26.05.1988 to 22.06.1988 and having been operated on 26.05.1988. Her case was referred to Orthopaedician at Madras as she was resident of Madras and wanted further treatment thereat only. Even while certifying her to be fit to travel by air, the Professor and Head of Department of Orthopedics of Mahatma Gandhi Hospital, Jodhpur has pointed out about her condition thus: "Bilateral fracture femur with fracture leg bones – patient is plastered from nipple to both side toes - can lie down".

In relation to the claimant Baby Bharti, the learned Judge of the Tribunal has purportedly reproduced some portions from the document Ex. 21, the discharge summary of Vijay Hospital, Madras but unfortunately has missed the fact that she was operated at the said hospital on 06.07.1988, 09.07.1988, and 15.07.1988. The details of operation notes are type-written on the paper that carries different printed heads on the left side column like Name, Age, Address, Dates of Admission, Operation & Discharge, Diagnosis, Treatment Given, Operation Notes, and Discharged with Advice. The note dated 09.07.1988

relating to operation of left femur bone has been read by the learned Judge as "Discharge with advise" because of the printed words on the left side column. If the contents were looked at, it would have been clear that it is not a discharge advice but there are two operation notes, dated 06.07.1988 and 09.07.1988, running in continuity. In fact, the discharge advice has been stated on the reverse of the said paper.

The significant fact is that on the said document (Ex. 21), the noting of 18.08.1988 shows that the patient was taken up for further treatment as the fracture did not unite. It appears that the said girl child in about 9-10 years of age continued to suffer with the injuries and their after-effects for long; and looking to the nature of injuries suffered and looking to her being required to be taken up for further treatment in the month of August 1988, the statement that an entire year of her studies was lost does not appear incorrect or exaggerated. Although in her relation too, other evidence of her being continuously under treatment after the year 1988 is not available on record; and the other documentary evidence relates to the her right femur plate removal in the month of May 1994; but in the overall facts and circumstances of the case, the amount of Rs.45,000/- awarded by the Tribunal in her case appears to be on the lower side and deserves suitable enhancement. This Court is of opinion that interest of justice shall be served if she is awarded total

compensation in the sum of Rs.75,000/- while allowing another sum of Rs.30,000/- with reference to the pains and suffering, treatment expenditure, and so also looking to her loss of one year of studies.

Though the Tribunal has allowed interest on the award amount at the rate of 12% per annum, but having regard to the circumstances of the case, the period of incident, the time spent in litigation, and the enhancement being allowed herein, it appears appropriate to allow interest @ 7.5% per annum on the enhanced amount from the date of filing of claim application.

In these claim cases, the material produced on record by the claimants is obviously incomplete and more of obscurity; and the claimants have not produced the relevant documentary evidence particularly the MLC Reports that ought to have been prepared immediately after the incident, and the bills/vouchers of the treatment and other related expenditure proximate to the date of incident. Even other relevant evidence like that of tax returns in relation to the claimant Sumer Chand and disablement certificates, if any, in relation to the claimants have not been filed. The Tribunal has also proceeded to make award in lump sum in each case obviously because sufficient material is not available to quantify compensation on the relevant heads. Given the state of record, this court is of opinion that only in the case of the claimant Baby Bharati enhancement as aforesaid

deserves to be made looking to the facts available on record; and the other two appeals deserve to be dismissed.

Thus, in the result:

- (a) The appeals filed by the claimants Smt. Kamla Bai [Civil Misc. Appeal No.93/1995] and Sumer Chand [Civil Misc. Appeal No.100/1995] are dismissed;
- (b) The appeal filed by the claimant Baby Bharati [Civil Misc. Appeal No.92/1995: Claim Case No. 265/1992] succeeds and is partly allowed; the impugned award made by the Tribunal is modified and in place of the amount of Rs.45,000/-, the claimant-appellant is awarded compensation in the sum of Rs.75,000/-. The claimant shall, therefore, be entitled for a further amount of Rs.30,000/- over and above the amount awarded by the Tribunal and shall be entitled for interest @ 7.5% per annum on this enhanced amount from the date of filing of claim application. The respondent-insurer shall deposit the remaining amount payable under the modified award within 30 days with the Tribunal. Upon deposit, the Tribunal shall issue necessary and appropriate orders for disbursement.
- (c) The parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

Mohan/