

SRI B.T. KRISHNAPPA

A

v.

THE DIVISIONAL MANAGER, UNITED INSURANCE
COMPANY LTD. AND ANOTHER
(Civil Appeal No. 4027 of 2010)

APRIL 30, 2010

B

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

Motor Vehicles Act, 1988: s.166 – Compensation – Future loss of earning – Claimant aged 50 years working as mason – In motor accident, suffered multiple fractures resulting in shortening of right leg by 3.5 cms – Tribunal assessed disability at 20% and awarded compensation of Rs.1.55 lacs – High Court enhanced compensation by Rs.34000 – On appeal, held: Appellant had suffered an irreversible damage to his right leg posing difficulties for him in carrying out his avocation as a mason – High Court while making observation that the Tribunal's compensation under the heads "loss of amenities and enjoyment of life and loss of earnings during laid up period" was on the lower side, did not make its own assessment under these heads – These areas needed proper introspection and a more sensitive approach as the appellant represented weaker section of the community – Matter remitted to High Court for consideration afresh.

C

D

E

F

The appellant aged 50 years was working as a mason. On the fateful day, while he was crossing the road, a motorcycle hit him resulting in bone fractures, head and other injuries all over the body. He was hospitalized for about 2 weeks and was under medical treatment for about 6 months after discharge from hospital. MACT awarded him a compensation of Rs.1.55 lacs. Dissatisfied with the quantum of compensation, appellant filed appeal before High Court. High Court

G

- A enhanced the compensation only by Rs.34,000/- Hence the appeal.

Allowing the appeal and remitting the matter to High Court, the Court

- B HELD: 1.1. The High Court did no consider the appellant's case properly. It accepted the Tribunal's assessment of the body disability at 20% and observed that the Tribunal has paid compensation under the heads "loss of amenities and enjoyment of life and loss of C earnings during laid up period" on the lower side. However, it awarded an additional compensation only for future medical expenditures and did not deal with the aspect of future loss of earnings at all, which was not a correct approach. The incapacity or disability to earn D livelihood should be viewed not only in *praesenti* but in *futuro* on reasonable expectancies and taking into account deprival of earnings of a conceivable period. [Paras 9, 10] [662-C-F]

Ramesh Chandra v. Randhir Singh and others (1990) 3 E SCC 723, relied on.

- 1.2. As per the evidence of PW-2, the doctor who supervised the appellant's injuries and administered treatment in the Hospital, it was proved that the appellant F sustained compound fractures in the tibia and fibula bone of the right leg. He also suffered bruises and cuts on his face and some parts of the body. He was operated. Even after his discharge, he was advised follow up treatments and physiotherapy and also exercise for better movement G of his leg. In his affidavit before the Tribunal, PW2 stated that the appellant's right leg was shortened as a result of which he had to walk with a limp. The appellant was advised to use footwear with a raised sole and to continue with the exercises. The Tribunal noted that the H shortening of the leg was by 3.5 cms. The Tribunal however, in accepting the disability of the appellant at

48%, refused to accept the assessment of the doctor that the future loss of earning would also be at 48%. It opined that construction work involves many people and the doctor was not right in concluding that due to the disability on the right leg, the appellant would not be able to do construction work. The future loss of earning was assessed at a much lesser 20%. Since there was no specific evidence regarding his income, the multiplier method was used for assessing the compensation. [Paras 11-14] [662-F-H; 663-A-C; 663-E-G]

1.3. Although the Tribunal concluded by holding that the assessment of future loss of earnings should be made only at 20%, the High Court, while making the observation that the Tribunal's compensation under the heads "loss of amenities and enjoyment of life and loss of earnings during laid up period" was on the lower side, should have given reasons and made its own assessment under these heads, since High Court, as the first appellate authority, is an authority both on facts and law. The High Court's orders starkly lacked in any details on assessment of compensation under these heads. These areas needed proper introspection and a more sensitive approach as the appellant being a mason and a workman represented the weaker section of the community. The appellant had suffered an irreversible damage to his right leg which would pose difficulties for him in carrying out his avocation as a mason. [Para 15] [663-G-H; 664-A-C]

M/s. Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi & others (1979) 4 SCC 365; Divisional Controller, KSRTC v. Mahadeva Shetty & another (2003) 7 SCC 197, relied on.

2. Long expectation of life is connected with earning capacity. If earning capacity is reduced, that impacts life expectancy as well. No amount of compensation can

- A restore the physical frame of the appellant. Whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury so far as money can compensate because it is not possible to equate the
- B money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame. In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some
- C guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. [Paras 17-19] [664-H; 665-B-C; 665-D-E]

Case Law Reference:

- D (1990) 3 SCC 723 relied on Para 10
- (1979) 4 SCC 365 relied on Para 15
- (2003) 7 SCC 197 relied on Para 16
- E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4027 of 2010.

From the Judgment & Order dated 20.7.2009 of the High Court of Karnataka at Bangalore in MFA No. 259 of 2008.

- F V.N. Raghupathy for the Appellant.
- A.K. De, Rajesh Kumar, Udit Kumar, Debasis Misra for the Respondents.

- G The Judgment of the Court was delivered by
GANGULY, J. 1. Leave granted
- 2. This Appeal impugns the order of the High Court of Karnataka in Miscellaneous First Appeal No. 259 of 2008 dated 20.07.2009, whereby the High Court enhanced the
- H compensation granted by the tribunal to the appellant only to

SRI B.T. KRISHNAPPA v. D.M., UNITED INSURANCE 661
CO. LTD. [ASOK KUMAR GANGULY, J.]

the extent of Rs.34,000/- without disclosing adequate reasons. A

3. This Court finds that the High Court did not properly consider the case for enhancement. Thus after condonation of delay, this Court passed an order dated 05.02.2010 as follows:

“....Heard learned counsel for the petitioner and perusea B
the records.

We are prima facie of the view that the impugned judgment C
of the High Court deserves to be set aside and the matter remitted to it for fresh disposal of the Miscellaneous First Appeal filed by the petitioner because the High Court has failed to consider the issues relevant for deciding the cases involving claim for compensation.

Issue Notice to the Respondents.....”

4. Pursuant thereto show cause notices were issued to the D
respondents on 17.2.2010 and service was complete.

5. The material facts are that appellant was working as a E
mason and was aged 50 years at the time of accident. On the F
fateful day of 08.01.2006, at about 4.30 pm, the appellant was crossing the road near Deepa Nursing Home, K.R. Puram, when a motorcycle, with the registered number plate KA-05- EW-1108 hit him. The motorcycle was being driven by the second respondent (to be known as 'R2' hereinafter) at the time of the accident. As a result of the accident, the appellant sustained bone fractures as well as head and other injuries all over the body. He was taken to the Deepa Nursing Home, Bangalore where he received first aid. He was then shifted to Bowring and Lady Curzon Hospital, Bangalore (to be known as 'Hospital' hereinafter) the same day where he was admitted and received treatment as an inpatient till 21.01.2006. He continued with the follow up treatments for about six months after his discharge. G

6. The first Respondent Insurance Company, (to be known H
as 'R1' hereinafter) was also impleaded as a party as the

A motorcycle was insured with it.

7. By the award of the Motor Accident Claims Tribunal (to be known as 'Tribunal' hereinafter), the appellant was awarded a compensation of Rs.1,55,000/- with interest @ 7.5%. R1 was made liable to pay the compensation to the appellant.

B 8. On appeal, the High Court however enhanced the compensation by only Rs.34,000/- awarding a total of Rs.1,89,000/- with interest @ 6% per annum.

C 9. On a reading of the High Court order, it is clear that High Court did not consider the appellant's case properly. It accepted the Tribunal's assessment of the body disability at 20% and observed that the Tribunal has paid compensation under the heads "loss of amenities and enjoyment of life and loss of earnings during laid up period" on the lower side. However, it awarded an additional compensation only for future medical expenditures and did not deal with the aspect of future loss of earnings at all, which we feel was not a correct approach.

E 10. This Court finds that "incapacity or disability to earn livelihood would have to be viewed not only *in praesenti* but *in futuro* on reasonable expectancies and taking into account deprival of earnings of a conceivable period." This was laid down by this Court in *Ramesh Chandra vs. Randhir Singh and others*, (1990) 3 SCC 723. In page 726, para 7, those above quoted observations were made.

F 11. The Tribunal examined the doctor who supervised the appellant's injuries and administered treatment in the Hospital, Dr. S. Rajanna, as PW2.

G 12. As per the evidence of PW2, it was proved that the appellant sustained compound fractures in the tibia and fibula bone of the right leg. He also suffered bruises and cuts on his face and some parts of the body. He had to be operated upon and the operation was done on 09.01.2006. Even after his discharge, he was advised follow up treatments and

H

SRI B.T. KRISHNAPPA v. D.M., UNITED INSURANCE 663
CO. LTD. [ASOK KUMAR GANGULY, J.]

physiotherapy and also exercise for better movement of his leg. A

13. In his affidavit dated 23.05.2007 before the Tribunal, the PW2 states that he examined the appellant for assessment of the percentage of disability on 17.04.2007. He recorded that the appellant's right leg was shortened as a result of which he had to walk with a limp. Thus the appellant was advised to use footwear with a raised sole and continue with the exercises. The Tribunal later noted that the shortening of the leg was by 3.5 cms. The High Court should have considered that appellant, being a mason, these injuries would cause considerable problem in moving his knee and ankle. PW2, in the disability certificate clearly stated:

"Due to the above mentioned disabilities, he cannot walk like a normal person, cannot sit crossed leg, cannot squat, cannot lift any weight, cannot climb the stairs without support. D

...I am of the opinion that the...disability is 48% of the (right) lower limb and 48% disability to the whole body. In view of this disability, the petitioner cannot do mason work and cannot do any other manual work also" E

14. The Tribunal however, in accepting the disability of the appellant at 48%, refused to accept the assessment of the doctor that the future loss of earning will also be at 48%. It opined that construction work involves many people and the doctor is not right in concluding that due to the disability on the right leg, the appellant would not be able to do construction work. Therefore, the future loss of earning was assessed at a much lesser 20%. Since there was no specific evidence regarding his income, the multiplier method was used for assessing the compensation. G

15. Although the Tribunal concluded by holding that the assessment of future loss of earnings should be made only at 20%, we feel that the High Court, while making the observation that the Tribunal's compensation under the heads "loss of H

- A amenities and enjoyment of life and loss of earnings during laid up period" was on the lower side, should have given reasons and made its own assessment under these heads, since High Court, as the first appellate authority, is an authority both on facts and law. The High Court's orders starkly lack in any details on
- B assessment of compensation under these heads. These areas need proper introspection and a more sensitive approach as the appellant being a mason and a workman represents the weaker section of the community. The appellant had suffered an irreversible damage to his right leg which will pose
- C difficulties for him in carrying out his avocation as a mason. This Court in *M/s. Concord of India Insurance Co. Ltd. vs. Smt. Nirmala Devi & others*, (1979) 4 SCC 365, has observed that:

- D "...The jurisprudence of compensation for motor accidents must develop in the direction of no-fault liability and the determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales..." [at page 366, para 2]

- E 16. In the case of *Divisional Controller, KSRTC vs. Mahadeva Shetty & another*, (2003) 7 SCC 197, where the claimant was also a mason, this Court held that:

- F ".....It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired...." [at page 204, Para 15.]
- G

- H 17. Long expectation of life is connected with earning capacity. If earning capacity is reduced, which is the case in

SRI B.T. KRISHNAPPA v. D.M., UNITED INSURANCE 665
CO. LTD. [ASOK KUMAR GANGULY, J.]

the present situation, that impacts life expectancy as well. A

18. Therefore, while fixing compensation in cases of injury affecting earning capacity the Court must remember:

“....No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury “so far as money can compensate” because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.” [See *R.D. Hattangadi vs. Pest Control (India) (P) Ltd. & others*, (1995) 1 SCC 551, at page 556, para 10]

19. Further, the Court in the same case also held that: D

“In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards. [at page 557, para 12]

20. Thus, we feel that the appeal needs to be remanded to the High Court so that it can consider the matter afresh. The High Court, we expect, will consider the case of enhancement of compensation to the appellant in its proper perspective and keeping in mind the factual aspects of the case and in the light of the views expressed by this Court in several judgments, discussed above. G

21. The High Court is requested to deal with the matter with utmost expedition since it concerns compensating an injured workman. The appeal is allowed. No costs.

D.G. Appeal allowed. H