ARVIND KUMAR MISHRA

v.

NEW INDIA ASSURANCE CO. LTD. AND ANR.

(Civil Appeal No. 5510 of 2005)

SEPTEMBER 29, 2010

[AFTAB ALAM AND R.M. LODHA, JJ.]

Motor Vehicles Act, 1988 – s. 166 – Compensation – Claim for – Motor accident of final year engineering student, aged 25 years – 70% permanent disability – Compensation of Rs. 2,50,000 with interest @ 9 % p.a. by tribunal – Enhanced to Rs. 3,50,000/- by High Court – On appeal held: Tribunal as well as High Court erred in not taking appropriate multiplier of an appropriate multplicand while assessing compensation – In view of the facts, taking multiplicand as Rs. 42,000/- p.a. and operative multiplier as 18, compensation is enhanced to Rs. 9,06,000/- with simple interest @ 9% p.a. – Claimant also entitled to cost of Rs. 15,000/-.

The appellant, final year engineering student aged about 25 years, met with the serious accident due to rash and negligent driving by the driver of the truck. It was certified that the appellant suffered 70% permanent disablement. The appellant filed an application under Section 166 of the Motor Vehicles Act, 1988. The tribunal awarded compensation of Rs. 2,50,000/- with interest @ 9% per annum, holding the owner of the vehicle and the insurer liable to pay compensation to the appellant. The High Court enhanced the compensation to Rs. 3,50,000/ -. Aggrieved, by the compensation awarded by the High Court, the appellant filed the instant appeal.

Partly allowing the appeal, the Court

HELD: 1.1 The conventional basis of assessing

A compensation in personal injury cases - and that is now a recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand. In the instant case, the tribunal as well as the High Court seriously erred in not assessing
B the compensation for personal injury to the appellant in accord with the recognized mode - by taking an appropriate multiplier of an appropriate multiplicand. [Paras 7 and 9] [864-C-D; 865-E]

C *General Manager Kerala State Road Transport Corporation, Trivandrum v.. Susamma Thomas (Mrs.) and Ors* (1994) 2 SCC 176 – affirmed.

1.2 The appellant at the time of accident was a final year engineering (Mechanical) student in a reputed
D college. He was a remarkably brilliant student having passed all his semester examinations in distinction. Due to the accident he suffered grievous injuries and remained in coma for about two months. His studies got interrupted as he was moved to different hospitals for
E surgeries and other treatments. For many months his condition remained serious and his right hand was amputated and vision seriously affected. These multiple injuries ultimately led to 70% permanent disablement. He was rendered incapacitated and a career ahead of him in
F his chosen line of mechanical engineering got dashed for ever. He is now in a physical condition in which he would require domestic help throughout his life. He has been deprived of pecuniary benefits which he could have reasonably acquired had he not suffered permanent
G disablement to the extent of 70% in the accident. [Para 10] [865-F-H; 866-A]

1.3 On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like B.I.T., it can be reasonably assumed that he would have got a good
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job. The appellant stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of Rs. 3,50,000/- per annum. Even if that is not accepted for want of any evidence, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs. 60,000/- per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. It is fair and reasonable to assess his future earnings at Rs. 60,000/- per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the basis. Since he suffered 70% permanent disability, the future earnings may be discounted by 30% and, it is estimated upon the facts that the multiplicand should be Rs.42,000/- per annum. The appellant at the time of accident was about 25 years. As per the decision of this Court in *Sarla Verma's case the operative multiplier would be 18. The loss of future earnings by multiplying the multiplicand of Rs. 42,000/- by a multiplier of 18 comes to Rs. 7,56,000/-. The damages to compensate the appellant towards loss of future earnings must be Rs. 7,56,000/-. The tribunal awarded him Rs. 1,50,000/- towards treatment including the medical expenses. The same is maintained as it is and, the total amount of compensation to which the appellant is entitled is Rs. 9,06,000/- . [Para 11] [866-B-H; 867-A]

*Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr. (2009) 6 SCC 121 – relied on.

1.4 The submission that the appellant is entitled to compensation in accordance with the multiplier specified

A **in the Second Schedule appended to the 1988 Act only, overlooks the fact that the appellant made his claim under Section 166 of the 1988 Act and not under Section 163A. The Second Schedule has no application to the claim petition made under Section 166 of the 1988 Act. [Para**
B **12] [867-B-D]**

Reshma Kumari and Ors. v. Madan Mohan and Anr. **(2009) 13 SCC 422 – referred to.**

1.5 The compensation awarded by the High Court in
C **the sum of Rs. 3,50,000/- is enhanced to Rs. 9,06,000/-. The appellant would be entitled to 9% simple interest per annum on the enhanced amount from August 7, 2002 until the date of actual payment. The appellant would also be entitled to the costs of the appeal which is quantified at**
D **Rs. 15,000/-. [Para 13] [867-E-F]**

Case Law Reference:

(1994) 2 SCC 176	**Referred to.**	**Para 8**
(2009) 6 SCC 121	**Referred to.**	**Para 12**
(2009) 13 SCC 422	**Referred to.**	**Para 12**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5510 of 2005.

F From the Judgment & Order dated 12.01.2004 of the High Court of Jharkhand at Ranchi in M.A. No. 71 of 2003.

Shree Prakash Sinha, Vijay Kumar, Shekhar Kumar, S. Chandra Shekhar for the Appellant.

G A.K. Raina, Anil Kumar Jha for the Respondents.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. The present appeal, by special leave,

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raises the issue, indeed the only issue, of assessment of loss of earnings in respect of the victim of a motor accident who was certified 70% permanent disablement.

2. Arvind Kumar Mishra – appellant – a student of engineering final year at Birla Institute of Technology, Mesra (B.I.T.) at the time of accident was seriously injured as a result of a truck bearing registration No. DEG 3291 being negligently driven on June 23, 1993. The truck coming from the opposite direction hit the motorcycle and the appellant riding the motorcycle was thrown on the road. He sustained multiple injuries; diffused multifocal damage of brain with interventricular hemorrhage; optic atrophy in right eye and 3+ relative afferent papillary in left eye; amputation of right hand distal to carpometacarpal joint level; compound fracture of shaft of tibia (left); total bronchial plexus palsy; blocking of anterior wall of the trachea at the level of the 3rd and 4th cartilaginous rings and disfiguration. He was treated by several doctors at various hospitals namely, R.M.C.H, Ranchi, C.C.L .Hospital, Gandhinagar, Christian Medical College and Hospital, Vellore and Shankar Netralaya, Madras. He had to undergo few surgical operations. After a little recovery, he made an application under Section 166 of the Motor Vehicles Act, 1988 ('the 1988 Act') claiming total compensation in the sum of Rs. 22 lakhs which included the expenditure already incurred by him up to that time to the extent of Rs. 1,50,000/- for his treatment.

3. The offending vehicle was insured with the New India Assurance Company Ltd. ('the insurer'). The owner as well as insurer contested the claim petition. The appellant passed out Bachelor of Engineering during the pendency of the claim petition. He examined himself and tendered some of the doctors who treated him in evidence. The vouchers of the expenditure incurred by him on his treatment at various hospitals were also produced.

4. The Motor Vehicle Accident Claims Tribunal, Ranchi (for

A short 'the Tribunal') in its award dated December 19, 2002 held that the accident occurred due to rash and negligent driving of the truck bearing registration No. DEG 3291. It also held that the owner of the vehicle and the insurer were liable to pay the compensation to the appellant. As regards quantum of
B compensation, the Tribunal allowed the total compensation of Rs. 2,50,000/- along with the interest @ 9% per annum from August 7, 2002 by considering the matter as follows:

> ".....under the head of pecuniary damages the amount which has been amended (sic) by the claimant in his
C treatment including medical expenditure other material loss, a total lump sum compensation amount of Rs. 1,50,000/- (Rupees one lac and fifty thousand only) is being granted to the claimant. So far as non-pecuniary damages are concerned from the evidence itself it is very
D much clear that injured was a brilliant student of engineering Final year at B.I.T. Mesra, and due to said accident he has lost his future career. He has also suffered from mental and physical shock and has to be suffered in future. There is also damages and the loss of expectation
E of life on account of the injuries sustained by him. He has to face inconvenience, hardship, discomfort disappointment and mental stress till his life, therefore, a lump sum compensation amount of Rs. 1,00,000/- (Rupees one lac only) is being granted to the claimant. The total
F compensation came to Rs. 2,50,000/- (Rupees two lac and fifty thousand only) which the claimant is entitled with interest @ 9% per annum."

5. The claimant, dissatisfied with the assessment of
G compensation by the Tribunal, approached the High Court of Jharkhand, Ranchi. The High Court increased the amount of compensation from Rs. 2,50,000/- to Rs. 3,50,000/- having considered the matter thus:

> "On an application under Section 166 of the Motor Vehicles

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Act, 1988 vide Compensation Case No. 183 of 1993 the Motor Vehicles Accident Claims Tribunal, Ranchi, assessed a sum of Rs. 1,50,000/- to be paid to him under the head pecuniary damages i.e. the amount which was expended by him towards his treatment including the medical expenses and a sum of Rs. 1,00,000/- was granted towards non pecuniary damages. i.e. for his permanent disablement to the extent of 70% for the loss of right wrist and paralysis of right upper limb as also for loss of vision in his right eye.

Keeping into consideration the nature of disability the appellant had to sustain and loss of his future expectancy in life, we are of the view that he was entitled to a sum of Rs. 2,00,000/- on account of non pecuniary loss. Accordingly, we modify the impugned judgment and award to the extent that instead of total amount of Rs.2,50,000, the claimant is entitled to get Rs. 3,50,000/-. It is stated that the award amount with interest granted by the tribunal had already been paid. Hence, we make it clear that there will be no interest payable on the compensation amount if the said amount is deposited before the tribunal within six weeks, failing which the interest @9% per annum as granted by the tribunal shall be payable on the enhanced amount also from 07/08/2002."

6. It is not necessary to discuss the liability of the respondents. That was disputed, but the matter has been considered, and the Tribunal found that due to rash and negligent driving by the driver of the truck (DEG 3291), the accident took place in which the appellant sustained serious multiple injuries and, therefore, owner and insurer were liable to him for the damage. There was no appeal with regard to that matter before the High Court.

7. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages

A for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take B care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in C the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases – and that is now recognized mode as to the proper measure of compensation – is taking an appropriate D multiplier of an appropriate multiplicand.

8. In *General Manager Kerala State Road Transport Corporation, Trivandrum v.. Susamma Thomas (Mrs.) and Ors*[1]., this Court laid down the following principles:

E "13. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that F of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the G capital sum should also be consumed-up over the period for which the dependency is expected to last."

17. The multiplier represents the number of years' purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs H 10,000. If a sum of Rs 1,00,000 is invested at 10% annual

interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs 10,000 would be 20. Then the multiplier, i.e., the number of years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependants, whichever is higher) goes up."

9. The principles laid down in *Susamma Thomas*[1] still hold the field; the only variation has been in respect of maximum multiplier. In the present case the Tribunal as well as the High Court seriously erred in not assessing the compensation for personal injury to the appellant in accord with the recognized mode i.e., by taking an appropriate multiplier of an appropriate multiplicand.

10. The appellant at the time of accident was a final year engineering (Mechanical) student in a reputed college. He was a remarkably brilliant student having passed all his semester examinations in distinction. Due to the said accident he suffered grievous injuries and remained in coma for about two months. His studies got interrupted as he was moved to different hospitals for surgeries and other treatments. For many months his condition remained serious; his right hand was amputated and vision seriously affected. These multiple injuries ultimately led to 70% permanent disablement. He has been rendered incapacitated and a career ahead of him in his chosen line of mechanical engineering got dashed for ever. He is now in a

physical condition that he requires domestic help throughout his life. He has been deprived of pecuniary benefits which he could have reasonably acquired had he not suffered permanent disablement to the extent of 70% in the accident.

11. On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like B.I.T., it can be reasonably assumed that he would have got a good job. The appellant has stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of Rs. 3,50,000/- per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs. 60,000/- per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. In our opinion, it is fair and reasonable to assess his future earnings at Rs. 60,000/- per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the basis. Since he suffered 70% permanent disability, the future earnings may be discounted by 30% and, accordingly, we estimate upon the facts that the multiplicand should be Rs.42,000/- per annum. The appellant at the time of accident was about 25 years. As per the decision of this Court in *Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr*[2]. the operative multiplier would be 18. The loss of future earnings by multiplying the multiplicand of Rs. 42,000/- by a multiplier of 18 comes to Rs. 7,56,000/-. The damages to compensate the appellant towards loss of future earnings, in our considered judgment, must be Rs. 7,56,000/-. The Tribunal awarded him Rs. 1,50,000/- towards treatment including the medical expenses. The same is maintained as it is and, accordingly, the total

amount of compensation to which the appellant is entitled is Rs. 9,06,000/- .

12. Before we close, we must notice in all fairness to the learned counsel for the insurer his submission that the appellant is entitled to compensation in accordance with the Second Schedule appended to the 1988 Act only. This submission overlooks the fact that the appellant made his claim under Section 166 of the 1988 Act and not under Section 163A. It is true that in *Reshma Kumari & Ors. v. Madan Mohan & Anr.,*[3] a two-Judge Bench of this Court has referred the question whether multiplier specified in the Second Schedule should be taken to be a guide for calculation of the amount of compensation payable in a case falling under Section 166 to the larger bench and the said question is not yet authoritatively decided. However, in a case such as the present case, we find no justification to await decision of the larger bench on the aforenoticed question as there are already few decisions of this Court taking a view that the Second Schedule has no application to the claim petition made under Section 166 of the 1988 Act.

13. In the result, the appeal is allowed in part and the compensation awarded by the High Court in the sum of Rs. 3,50,000/- is enhanced to Rs. 9,06,000/-. The appellant shall be entitled to 9% simple interest per annum on the enhanced amount from August 7, 2002 until the date of actual payment. The appellant shall also be entitled to the costs of this appeal which we quantify at Rs. 15,000/-.

N.J Appeal partly allowed.

A

STATE OF ANDHRA PRADESH

v.

VISWANADULA CHETTI BABU ETC.

(Criminal Appeal No. 131 of 2004 etc.)

B SEPTEMBER 30,2010

[HARJIT SINGH BEDI AND CHANDRAMAULI KR. PRASAD, JJ.]

C *SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) RULES, 1995:*

r.7 – Investigating Officer –Held: In view of the clear mandate of the Rules, it was only a specified Deputy Superintendent of Police who could investigate an offence D *under the Act – Any officer below that rank and not specified as per Rule 7, would not be entitled to investigate any such offence – In the instant case, the investigation has been made by an officer of the rank of an Assistant Sub-Inspector of Police – This was not permissible – The judgment of the* E *High Court in this respect, upheld –Investigation.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 131 of 2004.

F From the Judgment & Order dated 24.7.2002 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Appeal No. 1016 of 1996.

I. Venkata Narayana, D. Mahesh Babu and D. Bharati Reddy for the Appellant.

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Leela Sarveswar and V.N. Raghupathy for the Respondent.

The following Order of the Court was delivered

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ORDER

We have heard learned counsel for the parties.

Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, framed under the Andhra Pradesh Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 reads as under:

> "7. Investigating Officer (1) An offence committed under the Act shall be investigated by a police officer not below the rank of Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account past experience, sense of ability and justice to perceive the implications of the case and investigate it alongwith right lines within the shortest possible time.
>
> (2) The investigating officer so appointed under sub-rule(1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.
>
> (3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer-in-charge of Prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer."

A bare perusal of the Rule would reveal that the State Government/the Director General of Police/ Superintendent of Police after taking into account the experience etc. of a Deputy Superintendent of Police shall appoint him as the Investigating Officer in cases under the above Act. Sub-rule (3) further provides that the Home Secretary and the Social Welfare

A Secretary to the Government and other officers in charge shall review the working of the Deputy Superintendent of Police and the investigations done by him at the end of every quarter. It is therefore apparent that authority to investigate has to be conferred on a specified officer not below the rank of Deputy
B Superintendent of Police.

We are, therefore, of the opinion that in view of the clear mandate of the Rules, it was only a specified Deputy Superintendent of Police who could investigate an offence under the Act. An investigation done by any officer below that
C rank and not specified as per Rule 7 would not be entitled to investigate any such offence. In the present matter the investigation has been made by an officer of the rank of an Assistant Sub-Inspector of Police. This was not permissible. We endorse the judgment of the High Court in this respect.
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The appeals stand dismissed.

R.P. Appeals dismissed.