

PETITIONER:
MUTHAIAH SEKHAR

Vs.

RESPONDENT:
NESAMONY TPT. CORPORATION LTD. & ANR.

DATE OF JUDGMENT: 01/09/1998

BENCH:
K. VENKATASWAMI, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:
[WITH CIVIL APPEAL NO. 13385 OF 1996]
J U D G M E N T

K. Venkataswami, J.
Civil Appeal No. 13391/86:

Aggrieved by the dismissal of his appeal at the admission stage, the appellant, who sustained serious injuries in a motor accident that took place on 10.8.84, has preferred this appeal.

The appellant along with his mother, brother and sister-in-law were travelling in a taxi from Nagarcoil to Trivandrum on 10.8.84. A bus, belonging to the respondent-Corporation coming from the opposite direction, dashed against the taxi while trying to overtake a bullock cart, resulting in the death of the Driver and the appellant's mother. The other occupants including the appellant sustained injuries. The appellant moved the Motor Accident Claims Tribunal, Trivandrum, Claiming a sum of Rs.5,06,091/- as compensation. At the time of accident, he was aged about 25 years and after practising as a Lawyer for some time, applied for and secured a seat in the Madras University for pursuing his M.L. course. He sustained in all seven injuries including dislocation of right hip, head injury and injury to the left eye and ear. Initially, he was admitted to the Medical college Hospital, Trivandrum, for treatment and after discharged therefrom, he was admitted again to the Madras General Hospital for further treatment. It was the claim of the appellant that he was to be treated for the left carotid cavernous fistula; a condition which required the treatment of balloon embolisation. According to the appellant, the said treatment was not available in India and his brother, who was a practising Doctor at New York, United States, asked the appellant to go over there for treatment. Accordingly, he went to the United States and had his treatment there. The Head of the Neurosurgery Department of Trivandrum Medical College Hospital gave a Disability Certificate assessing loss of 60% vision in the left eye and 50% hearing in the left ear. He also opined that dislocation of the right hip was permanent. Bringing all these factors in his claim petition, he made a claim of Rs.5,06,091/-.

The Tribunal was of the view that the claim towards the

travelling expenses to New York and Medical expenses in the Hospital at New York and medical expenses in the Hospital at New York and Medical expenses in the Hospital at New York, cannot be allowed as there was no record to show that the facilities were not available in India for such treatment. The Tribunal after referring to the Disability Certificate given by the Head of the Neurosurgery Department and other factors, awarded the compensation in a sum of Rs.1,76,000/-.

Aggrieved by the meager amount of compensation awarded by the Tribunal, the appellant preferred an appeal to the Kerala High Court in M.F.A. No. 712/90. Unfortunately, the appellant's appeal came up for admission along with the appeals filed by the other injured occupants of the taxi and the legal representatives of the deceased person. A Division Bench of the Kerala High Court summarily dismissed all the appeals at the admission stage. Hence, this appeal by special leave.

Learned senior counsel appearing for the appellant, placing reliance on the disability Certificate issued by the Head of the Neurosurgery Department and the letter written by a Doctor in New York to the U.S. Consulate at Madras to enable the appellant to get necessary visa for his treatment at United States and the oral evidence given by the Doctor, who gave the Disability Certificate, submitted that the findings of the Division Bench cannot be supported. According to the learned senior counsel, the appellant has discharged the burden to prove his case that the treatment he had in New York was not available in India at that time and there is no iota of evidence on the side of the respondents to demolish the claim of the appellant in this regard. In any event, according to the learned senior counsel, it was not for the respondent to suggest what type of treatment the injured has to undergo. It was further contended that neither the Tribunal nor the High Court had any material to disbelieve the evidence produced by the appellant. In the absence of any positive evidence from the side of the respondent-Corporation, it was the contention of the learned senior counsel for the appellant that the High Court should have allowed the compensation as claimed by the appellant.

Contending contrary, learned counsel for the respondent-corporation submitted that the High Court has correctly appreciated the evidence and the High Court has factually found that the Award of Rs. 1,76,000/- was on the higher side. He also invited our attention to the oral evidence of the Doctor, who gave the Disability Certificate.

After going through the Award of the Tribunal and the judgment of the High Court, we are of the view that the appellant was not given the just compensation on the facts of the case, to which he was entitled to. The Disability Certificate was not totally accepted by the High Court only on the ground that the Doctor, who gave the Certificate, has no authority to give such a Disability Certificate in respect of vision in the left eye and loss of hearing in the left ear. We have perused the evidence of the Doctor, who gave the Disability Certificate, and he has asserted in the evidence as follows:-

" Before I issued this certificate Ext. A22 I saw the report of neurologist of the M.C.H. The respective departments will send their reports. I referred the patient to ophthalmic hospital and ENT specialist, M.C.H., Trivandrum. ENT must have seen it. Audiometry was done to him. I did not examine

his vision. Ophthalmologist examined his vision. He had lot of problem. Mainly Deplopia. Regarding the nature of deploea only the Ophthalmic surgeon can explain Audiometry was done and a report was given by ENT department. when I treat a patient, I alone will issue a disability certificate. Other departments will issue reports about the treatment made by them. I have not seen any disability certificate issued by the other departments. As head to he treating unit the Neurologist can issue disability certificate. There is in 60% loss of hearing in one ear. With respect to vision also I have seen the report. You are not competent to issue a disability certificate regarding eye and ear (Q) Not correct (ANS.) Orthopaedic surgeons are competent to issue disability certificate in respect of every system of the body on the basis of the MC brid scale. His left hip is affected. He had a damage to optical nerve of the left side. I mean the 2nd cranial nerve. That was not mentioned in the loss certificate. when there is a total loss, each of the reasons need not be mentioned. I say you have not mentioned the reasons for assessing 50% disability (Q). I have stated in the certificate the reasons. I say without getting reports from the other departments you have issued the certificate (Q) No (Anser).

On a fair reading of the evidence, we are of the view that the High Court was not justified in doubting the correctness of the Disability Certificate. Further, it is on record that the treatment by balloon embolisation of the fistula was not available in India.

The Assistant Professor Clinical Neurosurgery, New York University School of Medicine, in his letter addressed to the U.S. Consulate, Madras, has stated thus:-

" Mr. Muthaiah Sekhar is a 27-year-old Asian Indian male who was involved in a major automobile accident in India in August, 1984. His mother was killed in this accident and Mr. Muthaiah Sekhar himself sustained multiple injuries. He presented to the Government General Hospital in Madras with head injury, decreased vision and bulging of left eye, Examination revealed markedly decreased visual acuity, pulsating proptosis and a bruit in the left eye. A cerebral angiogram clearly showed the presence of a carotico-cavernous fistula.

The modern treatment for this condition is intra-arterial balloon embolization of the fistula, sparing the carotid artery. This procedure is not available in India. The only procedure they could offer him in Madras was a carotid ligation, which apart from not being curative, is dangerous and can cause disastrous complications such as stroke.

I have reviewed all his medical records and angiograms from Madras and strongly feel that he should come to the United States to have the balloon embolization. I can make all the arrangements for this procedure to be done at New York University Medical Center. The patient's brother, Dr. Muthaiah Sukumaran, is a practicing physician in New York and is willing to bear all expenses.

I would like to request that a visa be issued to him as soon as possible before the patient develops an irreversible complication such as blindness, stroke, cerebral hemorrhage or even death."

This was not given the due importance both by the Tribunal and by the High Court in rejecting the claim of the appellant for travelling to New York and expenses incurred for his treatment at New York. As rightly pointed out by the learned senior counsel for the appellant, no attempt was made by the Respondent-Corporation to produce evidence oral or documentary to the effect that the facility was available in India. Even otherwise, the view taken by the High Court that the appellant never informed the respondent about his going to New York for treatment and he cannot burden the Corporation with the expenses for treatment in foreign country, is not correct. Nothing prevented the injured person from taking the best available medical facilities to recover from the disabilities caused by the tortfeasor. We have already noticed that the appellant was 25 years old and was a student of M.L. Course at the time of the accident and he could not complete the M.L. Course because of the accident and permanent disability he has sustained in the accident. The Tribunal has found that he would have earned at least Rs. 1,000/- a month as a practitioner in law at the beginning stage.

We can usefully refer at this stage to a recent judgment of this Court in *Shashendra Lahri Vs. UNICEF & Ors.* [(197) 11 SCC 446]. In that case, a 17 year old boy and a student of B. Com., suffered multiple injuries in a motor accident which occurred on 6.1.77. He suffered permanent disability of shortening his right leg by three inches. It was also noticed that the injured thereafter continued his education and has a good academic career. The Tribunal in that case awarded a sum of Rs. 33,000/- only as against the claim of Rs. 6, 00,000/-. On appeal, the High Court enhanced the amount to Rs. 58, 000/-. This Court, on further appeal, was of the view that having regard to the age of the appellant at the time of accident and the prospects in view of his good academic career, the adverse effect of his

permanent disability as a result of the motor accident on his future prospects, is much more than that assessed by the High Court. On that basis, this court awarded further sum of Rs. 4 lakhs in addition to that awarded by the High Court.

[Emphasis supplied]

Applying the above principle to the facts of this case, we find no difficulty in awarding a sum of Rs. 3 lakhs in addition to that awarded by the Tribunal confirmed by the High Court. This enhanced amount of compensation will bear interest at the rate of 12% p.a. from the date of the claim petition till the date of payment.

The appeal is accordingly allowed. No costs.

Civil Appeal No. 13385/96:

This appeal is preferred against the order in Review Petition in M.F.A. No. 712/90. In view of the disposal of the appeal against the M.F.A. No. 712/90, this appeal will also stand disposed of accordingly with no order as to costs.