

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2695 OF 2011

(Arising out of Special Leave Petition (C) No.33820/2010)

Rudra

...Appellant(s)

- Versus -

Divisional Manager,
National Insurance Co. Ltd. & Anr.

...Respondent(s)

J U D G M E N T

GANGULY, J.

1. Application for deletion of respondent No.2
from the array of parties is allowed.

2. Leave granted

3. On 15.12.2002, at about 1.30 pm, the appellant
was walking on the road when a BMTC bus (bearing

No. KA-01-A-3638) came in high speed and dashed against the appellant, as a result of which the appellant sustained multiple injuries and was admitted in hospital for operation and treatment.

4. The appellant was aged 25 years and was working as a coolie. He filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming Rs.4 lacs as compensation with interest @ 18%. He also claimed that he was earning a monthly income of Rs.4000/- p.m.

5. Apparently, when the appellant was admitted to hospital immediately after the accident, he was conscious and well oriented and his breath smelled of alcohol. Hence, the respondent contended that the accident occurred solely due to the negligence of the appellant.

6. However, the Tribunal did not accept this argument of the respondent. It held that merely

because the appellant had consumed alcohol did not mean that the driver of the vehicle did not need to drive the vehicle cautiously. Thus, the Tribunal concluded that the accident occurred due to the rash and negligent driving of the offending vehicle as a result of which the appellant sustained injuries.

7. The Tribunal concluded that as the appellant was a coolie, his daily earnings would be Rs.100/- per day, as the appellant's claim that he was earning Rs.4000/- p.m. was unsupported by documentary evidence. The Tribunal considered the fact that the appellant had been in hospital for at least a month and, therefore, it awarded an amount of Rs.3000/- towards loss of income during treatment period. The doctor had assessed disability of the appellant's left lower limb at 58% and that of the whole body at 29%. Considering the nature of the injuries (fracture of the ankle and foot), it awarded Rs.15,000/- towards pain and

suffering, Rs.2000/- towards medical expenses, and Rs.3000/- towards nourishment. The Tribunal also awarded global compensation of Rs.15,000/- towards loss of amenities as the appellant could not normally carry out his occupation with the weight of the body on it. Thus, total compensation amounted to Rs.40,000/-, payable at 8% p.a. rate of interest.

8. On appeal before the High Court of Karnataka, the Court took the view that assessment of disability by the doctor of the left lower limb at 58% and the whole body at 29% appeared to be a bit of an exaggeration. Thus, it reassessed the whole body disability at 15% for calculating compensation payable towards loss of future income. Accordingly, adopting a multiplier of 18 since the appellant was aged 25 years, it computed loss of future income (which had not been awarded by the Tribunal at all) at Rs.97,200/- ($\text{Rs.3000} \times 12 \times 18 \times 15/100$). However, it enhanced compensation for pain and

suffering to Rs.20,000/-, Rs.5000/- for conveyance, nourishing food and attendant charges, Rs.9000/- towards loss of income during period of treatment (taking income of appellant at Rs.3000/- p.m. for 3 months). Accordingly, the award of the Tribunal was modified and compensation was enhanced to Rs.1,48,200/-, with interest at 6% p.a.

9. Still dissatisfied with the compensation amount awarded, the appellant filed the present appeal before this Court. Having gone through the records and after hearing the parties, we are of the view that the appeal deserves to be allowed.

10. When the doctor had assessed whole body disability at 29%, and the same was accepted by the Tribunal, the High Court erred in rejecting the same and instead of presuming disability of 15% of the whole body. Hence, we re-compute loss of future income by considering disability at 29%, which

amounts to Rs.1,87,920/- (Rs.3000 X 12 X 18 X 29/100).

11. The doctor, in his evidence, has also stated that the nature of disability is such that the appellant cannot work as a coolie or do any other manual work. Hence, we award compensation for loss of amenities to Rs.40,000/-, for pain and suffering to Rs.30,000/-, for medical expenses to Rs.10,000/- and for conveyance, nourishment and attendant charges to Rs.20,000/-.

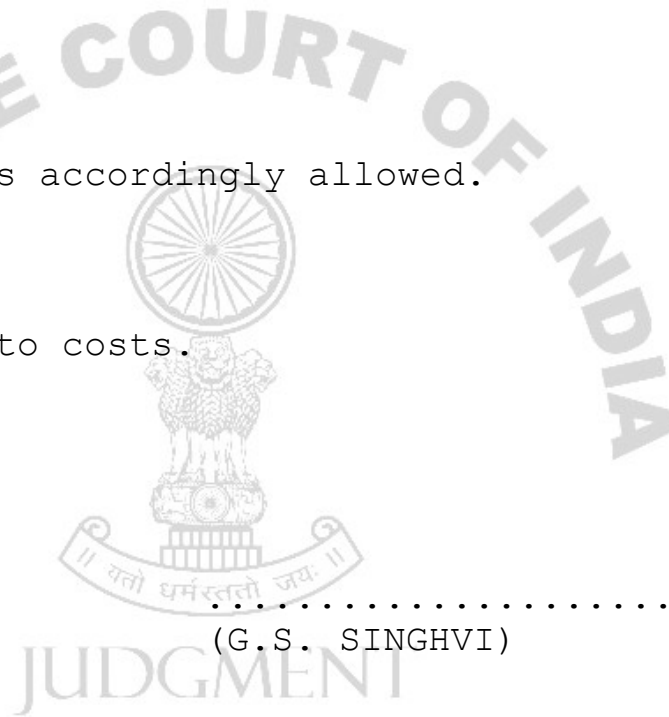
12. The break-up of compensation is as follows:

Pain and suffering	- Rs.30,000/-
Loss of amenities	- Rs.40,000/-
Medical expenses	- Rs.10,000/-
Conveyance, nourishment and attendant charges	- Rs.20,000/-
Loss of future income	- Rs.1,87,920/-
Loss of income during treatment	- Rs.9,000/-
TOTAL	- Rs.2,96,920/-

13. Thus, total compensation amounts to Rs.2,96,920/-, which is rounded off to Rs.3,00,000/-. The impugned judgment of the High Court is hereby modified, awarding Rs.3,00,000/- with interest of 6% p.a. on the enhanced sum, payable from the date of the claim petition till realization.

14. The appeal is accordingly allowed.

15. No order as to costs.



.....J.
(G.S. SINGHVI)

New Delhi
March 18, 2011

.....J.
(ASOK KUMAR GANGULY)