

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3575 OF 2008
(Arising out of SLP (C) No.21080 of 2006)

Sapna

... Appellant

Versus

United India Insurance Co. Ltd. & Anr.

... Respondents

JUDGMENT

S.B. Sinha, J.

1. Leave granted.
2. What should be the fair and adequate compensation for permanent disability suffered by a 12 years' girl in an accident involving a motor vehicle is the question involved herein. On 3.9.1999, at about 10.00 am, Sapna, while going to a temple, was hit by a 'jeep', used as a taxi. She

was dragged along with the jeep to a distance of about 15-20 feet. She suffered compound fracture of left knee and dislocation of Patellae/bone of left knee and skin and muscles above and below came out and veins got cut and knee got completely damaged and bones of left leg became bare due to tearing of skin and flesh and left leg bent at 90 degree at knee as a result whereof she has become crippled and completely disabled to walk. The skin of right leg from thigh to ankle was also peeled off resulting in serious wounds.

3. She was taken to a hospital and admitted as an inpatient therein for about 25 days. A sum of Rs.45,000/- were expended for her treatment till that day. It is stated that she is still required to undergo treatment from the aforementioned hospital.

4. A claim petition was filed praying for grant of compensation for a sum of Rs.6,45,000/. The learned Tribunal passed an award of Rs.82,569/- together with 8% simple interest thereupon.

5. Aggrieved thereby, the appellant preferred an appeal. By reason of the impugned judgment, the High Court has enhanced the amount of compensation to Rs.2,00,000/- but reduced the rate of interest to 6% from 8% p.a.

6. Mr. Garg, learned counsel appearing on behalf of the appellant, submits that the Tribunal as also the High Court committed a serious error in passing the impugned awards insofar as they failed to take into consideration that having regard to the nature of injuries suffered by the appellant in the said accident, not only her education has come to an end but also her future matrimonial prospect are also adversely affected and, thus, she was entitled to a higher amount of compensation. She being completely dependent upon her parents, the Tribunal as also the High Court should have, while determining the amount of compensation, considered that even for the purpose of future treatment, a sum of Rs.1,50,000/- would be required. It was urged that considering the provisions contained in the Second Schedule to the Motor Vehicles Act and furthermore having regard to the mental agony suffered by the appellant, this Court should enhance the amount of compensation.

7. Mr. Nanda, learned counsel appearing on behalf of the respondent, on the other hand, would submit that the loss has to be determined as on the date of the accident; even the amount of future treatment should be determined as on the date of the award. Appellant, admittedly, did not have any income and in that view of the matter the award of the Tribunal and the High Court should not be interfered with.

8. The principles governing a claim petition for assessing the damages in case of bodily injury suffered is that while awarding the compensation, the Tribunal should consider all relevant factors so as to enable the insured to be put in the same position as if he had not sustained any injury. The principle of Restitutio-in-integrum may be applied in a case of nature. Pecuniary loss and non-pecuniary loss are required to be pressed under certain heads. So far as the pecuniary loss is concerned, the same can be ascertained. What is required to be done is a balancing act by awarding such sum which, on the one hand, shall take care of the loss suffered by the claimant for the present time and future pecuniary benefits and, on the other, pecuniary advantages which from whatever source comes to them by reason of such injuries. So far as non-pecuniary loss is concerned, the same has to be assessed broadly under certain heads, namely, damages for physical pain, mental suffering etc. besides the amount spent on medical treatment, if any.

9. Expenditure for medical treatment has been granted. The High Court, in its judgment, noticed that although the Tribunal had referred to the likely effect on the matrimonial prospects of the appellant on account of permanent disability, due regard in that behalf had not been given.

The High Court opined :

"Considering the age of the claimant Km. Sapna at the time of the accident; the nature of the injuries and the fractures suffered by her in the accident; the extent of permanent disability suffered by her in left leg on account of the injuries sustained in the accident; the amount of physical pain and mental suffering she must have suffered during the period she remained hospitalised and her left leg was under plaster; the fact that the permanent disability to the extent of 90% in her left leg is bound to affect adversely her matrimonial prospects and that for rest of her life she would remain crippled and in view of the guidelines laid down by the Apex Court in the above quoted dicta, we are of the opinion that a lump sum of Rs.2,00,000/- (Rupees Two Lakhs only) would be just and proper compensation to the claimant for the injuries suffered by her in the accident, the amount spent on treatment, physical pain and mental suffering, loss of future earning capacity and other permissible heads."

10. No reason has been assigned in support thereof. In arriving at the said figure, only loss of matrimonial prospect has been taken into consideration. The fact that she would remain crippled throughout her life was also noticed but it does not appear that any serious consideration was bestowed thereupon.

11. The principle that is to be applied in a case of this nature that the amount of compensation should be just and fair is not in dispute. What would, however, be just and fair amount of compensation is required to

be determined having regard to the facts and circumstances of the case involved. In given cases, the courts may deviate from the structured formula. In terms of the Second Schedule, where the deceased or injured were not having any income, the statute presumes an income of or about 15,000/- per month. If having regard to the age of the appellant, the multiplier of 15 is applied, a sum of Rs.2,25,000/- would be payable. Besides the said sum, not only some amount of compensation should be awarded under the heading of mental agony but also some provision should be made for future treatment.

12. In *Abati Bezbaruah v. Dy. Director General, Geological Survey of India & Anr.* [(2003) 3 SCC 148], it was held :

"11. It is now a well-settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of Section 166 thereof. Deviation from the structured formula, however, as has been held by this Court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case."

We may also notice a decision in Nagappa v. Gurudayal Singh & Ors. [(2003) 2 SCC 274] wherein a Three Judge Bench of this Court opined that the law does not permit passing of any further award after the final award was passed, stating :

"Therefore, in a case where injury to a victim requires periodical medical expenses, fresh award cannot be passed or previous award cannot be reviewed when the medical expenses are incurred after finalization of the compensation proceedings. Hence, the only alternative is that at the time of passing of final award, the Tribunal/court should consider such eventuality and fix compensation accordingly. No one can suggest that it is improper to take into account expenditure genuinely and reasonably required to be incurred for future medical expenses. Future medical expenses required to be incurred can be determined only on the basis of fair guesswork after taking into account increase in the cost of medical treatment."

13. What would be the genuine and reasonable expenditure likely to be incurred by the appellant towards her future treatment is not borne out from the records. It would require serious consideration for the purpose of award of damages. When a person becomes completely incapable to do any work and virtually has no enjoyment for life, the same form

relevant factors and, thus, requires consideration for the purpose of determining a fair and reasonable amount of compensation.

14. It has not been disputed that future treatment for the appellant would be necessary. If future treatment is necessary, some provision should be made therefor. In absence of any clear cut estimate, we are inclined to award a further sum of Rs.75,000/- under the said head. She may require another operation. She may require to be provided with an artificial limb. We, direct accordingly.

15. Similar question came up for consideration in Madhya Pradesh State Road Transport Corporation Bairagarh, Bhopal v. Sudhakar & Ors. [AIR 1977 SC 1189] wherein this Court held :

"The other appeal (C.A. No.2255 of 1968) relates to the injury sustained by a boy aged about four years. He suffered compound fracture of his right tibia and fibula lower third near the ankle joint with infection of the wound, skin-grafting had to be done and the boy had to remain in hospital from June 25 to August 4, 1961. According to the doctor who examined him, the child was likely to develop a permanent limp which might require another operation at the age of 16 years or so. In any case, in the opinion of the doctor the deformity was certain to persist till the boy was 16 years when another operation might remove it. The tribunal awarded Rs.10,000/- as general damages and Rs.890/- as special damages. The

High Court increased the general damages to Rs.20,000/-. It appears from the evidence that the boy comes from a well-to-do family. Though the possibility was there of the deformity being removed by surgical operation when he grew up to be 16 years, the other possibility cannot be altogether ruled out. That being the position, we are not inclined to interfere with the sum awarded by the High Court."

16. Out of the aforementioned amount, if not already distributed, the Tribunal shall invest a sum of Rs.2,00,000/- in a fixed deposit till she attains majority. As and when any amount is required for her treatment or for other expenditure, the sum may be released. The learned Tribunal, however, shall be at liberty to pass such other order or orders if and when found necessary therefor.

17. The appeal is allowed to the aforementioned extent with no order as to costs.

.....J.
[S.B. Sinha]

.....J.
[Lokeshwar Singh Panta]

New Delhi
May 14, 2008.