



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 11TH DAY OF JANUARY 2022

PRESENT

THE HON'BLE MR. JUSTICE S.G. PANDIT

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

M.F.A. No.103473/2017 (MV)

BETWEEN:

SRI.BASAVARAJ
.....

...APPELLANT

(BY SRI. HANUMANTHAREDDY SAHUKAR, ADVOCATE)

AND

1. SRI.UMESH

2. SHRI RAM GENERAL
INSURANCE CO.LTD
5-3, 5TH FLOOR, BICO INDUSTRIAL AREA

...RESPONDENTS

(BY SRI. SURESH S GUNDI, ADVOCATE FOR R2,
NOTICE TO R1 IS DISPENSED WITH)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, 1988 AGAINST THE JUDGMENT AND AWARD DATED 04.08.2016 PASSED IN MVC NO.49/2012 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND MEMBER, ADDITIONAL MACT, RANEBENNUR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR *ADMISSION*, THIS DAY, **ANANT RAMANATH HEGDE J.**, DELIVERED THE FOLLOWING:

JUDGEMENT

The task of adjudicating quantum of compensation payable under the non-pecuniary heads like pain and suffering, loss of amenities in life and loss of expectation of life, is not easy though appears to be easy. The task gets a bit more difficult if the claimant suffers a permanent disability at a young age. While quantifying the compensation under the non-pecuniary heads, the courts need to pause and ponder, particularly in a situation when the claimant suffers permanent disability.

2. Faced with a situation, where the claimant who suffered 40% permanent disability around his pelvic region, (on account of injuries which are referred later) claimed compensation of Rs.11,75,000=00, the Tribunal

awarded a compensation of Rs.3,73,988=00. The doctor who treated the claimant assessed permanent disability at 40%. The doctor has opined that the claimant is unable to achieve a penile erection and nocturnal penile tumescence and thereby unable to copulate. According to the doctor, the condition is irreversible. Thus, the claimant who was aged 14 at the time of the accident, is in appeal. The insurer having admitted the liability has not questioned the award. However, is opposing the appeal for enhancement with all vehemence. Though, this appeal is listed for admission, with the consent of learned counsel for both the parties, the same is taken up for final disposal. The owner has not contested the claim petition and this appeal.

3. The very object of awarding compensation under non-pecuniary heads in a case relating to death or permanent disability is to restore, as far as possible, the position of the victim, to the situation that existed before the accident. In case of death or case of permanent disability, though the attempt is to restore the position of

the claimant before the accident, no amount of compensation would restore the things as they stood before the accident. Tribunals and Courts are entrusted with the task of awarding compensation to mitigate the suffering to the best possible extent. However, the object of awarding compensation is not to confer a windfall on the claimant. The court/tribunal has to balance the conflicting claim of the victim and the tortfeasor. Bearing these principles in mind, this Court heard the submissions made by the learned counsel for contesting parties.

4. Relevant facts necessary for adjudication of this appeal.

5. The petitioner who was walking on the road along with his father, is the victim of the unfortunate accident which occurred on 18.09.2011. The lorry bearing Reg. No.MH-12/QA-9760 came from behind and dashed against the petitioner. The petitioner sustained grievous injuries and initially was shifted to OM Hospital, Ranebennur then to S.S. Hospital, Davanagere and later to

Kasturba Hospital, Manipal. The petitioner underwent two surgeries and was inpatient for 13 days.

6. According to the petitioner, he was a student and was also working as a supplier in a hotel. It is the case of the claimant that he has suffered a fracture of pubic rami, ruptured urethra, pelvic fracture and fracture of inferior ramus of the right hip bone resulting in permanent disability. The compensation awarded by the Tribunal is as under:

Sl.No	Heads	Amount(in Rs)
1	Pain and Suffering	50,000.00
2	Medical expenses	1,04,988.00
3	Towards diet, food and nourishment charges, attendant charges and conveyance	50,000.00
4	Loss of income during the laid up period	Nil
5	Towards loss of future prospects	54,000.00
6	Loss of amenities and enjoyment of life	50,000.00
7	Towards loss of education	35,000.00
8	Towards future medical expenses	30,000.00
	Total	3,73,988.00

7. Learned counsel for the claimant inviting the attention of the Court to Ex.P.13-disability certificate

issued by the doctor, would urge that given the fact that the claimant has suffered permanent disability, the compensation awarded by the Tribunal is on the lower side.

8. Placing reliance on the above-said certificate and the evidence of three doctors, the learned counsel for the claimant would submit that, the marriage prospect of the petitioner is severely jeopardized and he cannot marry and have a family. According to the learned counsel, the disability sustained by the petitioner, being a permanent disability, award of compensation of Rs.50,000/- for loss of amenities is extremely conservative and the compensation requires to be enhanced substantially on the head of loss of amenities and enjoyment of life. It is further urged that given the nature of injuries sustained by the claimant and the kind of trauma undergone by the claimant, compensation of Rs.50,000/ awarded under the head of pain and suffering is also grossly inadequate.

9. The learned counsel for the respondent-insurer defending the impugned judgment and award would contend that the compensation awarded by the Tribunal is just and fair. It is further contended that the claimant was not a student as claimed and it is urged that award of Rs.35,000/- towards loss of education is unjustified.

10. This Court has perused the certificate dated 02.09.2013, marked as Ex.P13, issued by the Head of Department of Urology, Kasturba Hospital, Manipal and also his testimony before the Tribunal. The certificate reveals that the petitioner has suffered a pelvic fracture, urethral fracture and has undergone urethroplasty on 24.11.2011 and re-do urethroplasty on 18.06.2013. The certificate further reveals that the claimant is unable to achieve a penile erection and nocturnal penile tumescence. The certificate further reveals that the petitioner is unable to copulate in future. The doctor who issued the certificate is examined as PW.4.

11. From the evidence placed before the Tribunal, it can be safely concluded that the petitioner has suffered permanent disability in respect of his sexual organ, as well as around hip. The doctor has opined that the situation is irreversible. There is no marriage prospect for the petitioner. The loss of the petitioner, who is deprived of marriage prospects and pleasure of marital life and having children, cannot be adequately compensated in terms of money. Nevertheless, to mitigate the pain and agony, monetary compensation is to be awarded. The quantum of compensation to be awarded by the Tribunal depends upon the gravity of the injury, the pain and agony suffered by the claimant. There should be some logical and rational nexus between the compensation awarded and the pain suffered by the claimant. The compensation should offer solace to the victim of the accident. As observed above, the petitioner who is aged 14 years has suffered an injury to his sexual organ causing permanent disability. Ex.P14 is the disability certificate issued by the doctor and said certificate reveals the petitioner has suffered 40%

permanent physical disability and loss of physical function concerning the pelvic region. Under the circumstance, the award of Rs.50,000/- on the head of loss of amenities and enjoyment of life is extremely conservative, to say the least. Award of Rs.54,000=00 under the head loss of future earning capacity and award of Rs.50,000=00 under the head loss of amenities and enjoyment of life are not in sync with the settled principles governing compensation. In fact, the award under these two heads cannot be termed as compensation at all.

12. Before deciding on the quantum of compensation payable under the non-pecuniary heads, it is useful to refer to the decision of the Hon'ble Apex Court in the matter of ***Rekha Jain Vs National Insurance Company (2013) 8 SCC 389***. The Hon'ble Apex Court while dealing with the compensation payable to a victim of a motor vehicle accident under the pecuniary and non-pecuniary heads has referred to various judgments rendered by the Apex Court, High Court as well as English

Courts. The Hon'ble Apex Court has held that, while awarding compensation in case of personal injuries, the court has to take into account the human rights angle. The Apex court has said, possession of one's own body is the first and most valuable of all human rights and bodily injury should be equated with deprivation of basic human rights which entitles compensation depending upon the gravity of the injury. It is also useful to quote some of the paragraphs of the above-said judgment, wherein the Hon'ble Apex Court has referred to various authoritative decisions and the texts.

"32. Further, Lord Blackburn in *Livingstone v. Rawyards Coal Co.* [(1880) 5 App Cas 25 (HL)] has held as under (AC p. 39)"... where any injury is to be compensated by damages, in settling the sum of money to be given ... you should as nearly as possible get at that sum of money which will put the party who has been injured ... in the same position as he *would have been in if he had not sustained the wrong...*"

"24. *In deciding on the quantum of damages to be paid to a person for the personal injury suffered by him, the court is bound to ascertain all considerations which will make good to the sufferer of the injuries, as far as money can do, the loss which he has suffered as a natural consequence of the wrong done to him.*" (K. Narasimha Murthy case [K. Narasimha

Murthy v. Oriental Insurance Co. Ltd., ILR 2004 KAR 2471], ILR pp. 2483-84, para 24)

35. *Further, a Division Bench of the Karnataka High Court in Basavaraj v. Shekar [ILR 1987 KAR 1399] has held as under: (ILR pp. 1403-404, para 8)*

"8. ... If the original position cannot be restored—as indeed in personal injury or fatal accident cases it cannot obviously be—the law must endeavour to give a fair equivalent in money, so far as money can be an equivalent and so 'make good' the damage."

"26. Therefore, the general principle which should govern the assessment of damages in personal injury cases is that the court should award to injured person such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries. But, it is manifest that no award of money can possibly compensate an injured man and renew a shattered human frame." (K. Narasimha Murthy case [K. Narasimha Murthy v. Oriental Insurance Co. Ltd., ILR 2004 KAR 2471] , ILR p. 2484, para 26)

(emphasis supplied)

36. *Lord Morris of Borth-y-Gest in Parry v. Cleaver [1970 AC 1 : (1969) 2 WLR 821 : (1969) 1 All ER 555 (HL)] has said: (AC p. 22A)*

"... To compensate in money for pain and for physical consequences is invariably difficult but ... no other process can be devised than that of making a monetary assessment."

(emphasis supplied)

37. *The necessity that the damages should be full and adequate was stressed by the Court of Queen's Bench in Fair v. London and North Western Railway Co. [Fair v. London and North Western Railway Co., (1869) 21 LT (NS) 326 (QB)] In Rushton v. National Coal Board [(1953) 1 QB 495 : (1953) 1 WLR 292 : (1953) 1 All ER 314 (CA)] Singleton, L.J. has said that: (Rushton case [(1953) 1 QB 495 : (1953) 1 WLR 292 : (1953) 1 All ER 314 (CA)] , QB pp. 498-99)*

"When damages have to be assessed in a case of this kind there are many elements for consideration: the pain and suffering undergone and that which may occur in the future; the loss of some of the amenities of life; the fact that a man with an injury of this kind will always require some measure of help, even though he may be able to earn considerable money. These are some of the matters which have to be taken into consideration, and another is the fact that his earnings will probably be less than they were before."

(emphasis supplied)

38. *In Fowler v. Grace [(1970) 114 Sol Jo 193 (CA)] Edmund Davies, L.J. has said that:*

"It is the manifest duty of the Tribunal to give as perfect a sum as was within its power'. There are many losses which cannot easily be expressed in terms of money. If a person, in an accident, loses his sight, hearing or smelling faculty or a limb, value of such deprivation cannot be assessed in terms of market value because there is no market value for the personal asset which has been lost in the accident, and there is no easy way of expressing its equivalent in terms of money. Nevertheless a valuation in terms of money must be made, because, otherwise, the law would be sterile and not able to give any remedy at all. Although accuracy and certainty were frequently unobtainable, a fair assessment must be made. Although undoubtedly there are difficulties and uncertainties in assessing damages in personal injury cases, that fact should not preclude an assessment as best as can, in the circumstances be made."

(emphasis supplied)

40. *It is well-settled principle that in granting compensation for personal injury, the injured has to be compensated (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special damages. In personal injury cases the two main elements are the personal loss and pecuniary loss. Cockburn, C.J. in Fair case [Fair v. London and North*

Western Railway Co., (1869) 21 LT (NS) 326 (QB)] , distinguished the above two aspects thus:

"In assessing the compensation the jury should take into account two things, first, the pecuniary loss the plaintiff sustains by the accident; secondly, the injury he sustains in his person, or his physical capacity of enjoying life. When they come to the consideration of the pecuniary loss they have to take into account not only his present loss, but his incapacity to earn a future improved income."

42. *In R. Venkatesh v. P. Saravanan [(2001) 1 Kant LJ 411] the High Court of Karnataka while dealing with a personal injury case wherein the claimant sustained certain crushing injuries due to which his left lower limb was amputated, held that in terms of functional disability, the disability sustained by the claimant is total and 100% though only the claimant's left lower limb was amputated. In para 9 of the judgment, the Court held as under: (Kant LJ p. 415)*

"9. As a result of the amputation, the claimant had been rendered a cripple. He requires the help of crutches even for walking. He has become unfit for any kind of manual work. As he was earlier a loader doing manual work, the amputation of his left leg below the knee, has rendered him unfit for any kind of manual work. He has no education. In such cases, it is well settled that the economic and functional disability will have to be treated as total, even though the physical disability is not 100%."

13. Keeping in mind the above-said principles governing the award of compensation on non-pecuniary heads this court has to guestimate the compensation payable to the claimant. As already noted above the disability suffered by the claimant is irreversible which

destroyed his marriage prospect. Even if married, the claimant is not in a position to perform certain conjugal obligations. The claimant is deprived of conjugal bliss. The claimant cannot have children of his own.

14. The concept of the institution of marriage is one of the noblest concepts evolved by society. Marriage, in addition to providing support, happiness, companion and progeny will also confer purpose and meaning to life. Married life opens up one of the most important facets of life. After marriage, the married couple lives for one another sharing the responsibility, pleasure and sorrow of life. Children bring a source of joy and hope. Since the marriage prospect of the claimant is wiped out, the claimant is deprived of all the pleasure and benefits of married life. The loss is so huge and is incapable of evaluation in terms of money.

15. Given the kind of disability suffered by the claimant, the mental trauma which the claimant has to

undergo for the rest of his life, is much more painful than the physical pain that he has suffered immediately after the accident. The mental trauma of having to remain single, and answering the curious questions posed by the people around throughout life, for not getting married, are some of the things not easy to cope with. The trauma is going to be perennial and unabated. Such being the position, the duty is cast upon the Tribunals and Courts to award just compensation to ensure that the unbearable mental trauma is mitigated to the extent possible and the claimant can live with some dignity and find some solace in the monetary compensation awarded.

16. It is also important to note that the compensation payable under the non-pecuniary heads is not dependent on the social status, educational qualification or income of the claimant. It affects the poor and the rich alike. The rich may have some means of their own to mitigate the pain. Unfortunately for the poor, they need to depend on the compensation to be awarded to

trace the silver line around the dark cloud cast by the permanent disability. The claimant, in this case, hails from an impoverished background. Since the award is going to be passed in respect of loss of amenities and enjoyment in life, by taking into consideration the inflation and constantly depreciating purchasing power of the rupee, this court deems it appropriate and award Rs.10,00,000=00 on this head.

17. It is also forthcoming from the evidence on record, that the claimant has undergone two surgeries and was inpatient in the hospital for 13 days from 23.11.2011 to 29.11.2011, 29.8.2012 to 30.8.2012 and 11.5.2013 to 14.5.2013. The petitioner has undergone repeated minor surgical procedures. The petitioner has suffered a fracture of pubic rami, ruptured urethra, pelvic fracture and fracture of inferior ramus of the right hip bone.

18. In the backdrop of the above said fact situation and keeping in mind the object of an award of

compensation under the non-pecuniary heads, award of Rs.50,000/- on the head of pain and suffering is on the lower side. The doctor has opined that the claimant will have pain while passing urine. Thus the compensation requires to be enhanced to Rs.1,00,000=00. The Tribunal has awarded Rs.30,000/ towards future medical expenses. The doctor has opined that future treatment is also required for the petitioner. Given the nature of injuries suffered and permanent disability incurred by the petitioner, we deem it appropriate to award Rs.50,000/- towards future medical expenses as against award of Rs.30,000/- by the Tribunal.

19. It is also noticed that the Tribunal has awarded only Rs.54,000/- towards loss of future earnings. The claimant was aged 14 at the time of the accident. There is no material to assess the income. In the absence of such material, this Court while deciding the cases in Lok-Adalat based on the chart prepared by the Karnataka Legal Services Authority, is accepting Rs.6,000/- per month as a

notional income in respect of accidents for the year 2011. And to this income, 40% is to be added towards future prospects. Thus, Rs.8,400/- would be the notional income per month to calculate compensation under the head of loss of prospects. The Tribunal has taken Rs.30,000/- as his income per annum and has not awarded anything towards the prospect. Thus, the claimant is entitled to income on the head of loss of future prospects as he has suffered a permanent partial disability. The disability is assessed by the doctor at 40%. Normally Court would consider 1/3rd of the disability while calculating loss of future earnings. However, the Tribunal has taken 10% disability to calculate the loss of future earnings. The fact of the matter is claimant has suffered a 40% disability in his pelvic region. The doctor opined that the claimant is not in a position to lift the weight and is having difficulty in working. He has stiffness in hip joints and is having difficulty passing urine. Thus, this Court can hold that same would severely affect his ability to work in future. This Court deems it appropriate to take 20% disability to

assess compensation. The compensation under the above head would be Rs.8,400 X 12 (months)x18 (multiplier)x 20% (disability)=Rs.3,62,880=00.

20. This court has also noticed that no compensation is awarded for the loss of expectancy of life. Rs.50,000=00 is awarded on this head.

21. As far as the award of compensation in respect of other heads awarded by the Tribunal is concerned, this Court is not inclined to take a different view except in respect award of Rs.35,000=00 which is awarded under the head loss of education. Since no material is placed to show that the claimant was attending college or in the absence of proof of loss of the academic year, the award of Rs.35,000=00 under head loss of education is not justified. And accordingly, the award under the said head is set aside. Accordingly, the appeal is allowed in part awarding the modified compensation as under:

SI.No	Heads	Amount(in Rs)
1	Pain and Suffering	1,50,000.00
2	Medical expenses	1,04,988.00
3	Towards diet, food and nourishment charges, attendant charges and conveyance	50,000.00
4	Loss of income during the laid up period	Nil
5	Towards loss of future prospects	3,62,880.00
6	Loss of amenities and enjoyment of life	10,00,000.00
7	Towards loss of expectation of life	50,000.00
8	Towards future medical expenses	50,000.00
	Total	17,67,868.00
	Rounded Off	17,68,000.00

22. As the compensation awarded by this court is higher than what is claimed, the question naturally arises whether this court is justified in doing so? The Motor Vehicles Act, 1988, is benevolent legislation. The duty is cast upon the Tribunal to award just and fair compensation

to the victim of a Motor Vehicle Accident. Though the claim made in the petition is less than what the Tribunal or Court finds as just and fair compensation, the power of the Tribunal or the Court to award just and fair compensation to the victim is not taken away because of prayer for a lesser amount. This court is conscious of the fact that it is difficult to assess the compensation under the non-pecuniary heads as the compensation under the heads of pain and suffering, loss of amenities in life and loss of expectation of life would not come with a price label. It has to be adjudicated in each case taking into consideration several factors. Defective or inadequate prayer won't be a hurdle to the Tribunal and Courts to assess and award just compensation. The compensation to be awarded by the Tribunal is not bogged down by the figure mentioned in the prayer column of the claim petition. On the other hand, Tribunals and courts are guided by the principles of law and sense of justice while adjudicating the compensation under the provisions of the Motor Vehicles Act. If relief is

not moulded by awarding higher compensation, we will be failing in our duty.

23. Accordingly, the appeal succeeds and the claimant is entitled to total compensation of Rs.17,68,000=00.

24. Interest at the rate of 6% p.a. is payable on the compensation awarded from the date of the petition till the date of actual payment awarded except for the compensation under the head of loss of future prospects and loss of amenities in life.

25. The award under the head loss of prospects and loss of amenities of life shall carry interest @6% p.a from the date of the award till actual payment.

26. Consequently, the judgment and award dated 04.08.2016 passed in MVC No.49/2012 on the file of the

Principal Senior Civil Judge and AMACT, Ranebennur is modified and compensation of Rs.17,68,000.00 is awarded along with interest at the rate of 6% as observed in paragraphs No.24 and 25 supra.

27. No order as to cost.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Sh.