

A.P.S.R.T.C. REP. BY ITS CHIEF LAW OFFICER

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v.

M. PENTAI AH CHARY

AUGUST 30, 2007

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

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Motor Vehicles Act:

ss.163A and 166; Second Schedule—Motor accident—Permanent disability—Assessment of compensation—Person aged 38 years met with accident—Became permanently disabled and lost earning capacity—Compensation awarded by High Court—Plea for interference by Supreme Court—Held: Minimum compensation payable in a case of this nature should be considered from sufferings of disability undergone by the victim—Case not fit and proper for Supreme Court to exercise discretionary jurisdiction under Art. 136 of the Constitution—Workmen Compensation Act, 1923—s.2(1)—Constitution of India, 1950—Art. 136.

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s.166—Compensation—Determining factors—Laid down.

Respondent, aged 38 years, working as carpenter in a company on a monthly salary of Rs.4,500/-, met with an accident with the bus belonging to appellant-Corporation while he was riding on a two-wheeler. He suffered serious multiple injuries on various parts of his body and consequently became permanently disabled and lost his earning capacity. Respondent had six dependants viz. his parents, wife and three children. He filed application under s.166 of the Motor Vehicles Act claiming damages. Tribunal awarded a sum of Rs.85000/- with interest at the rate of 12% p.a.. On appeal, High Court enhanced the compensation by Rs.1,62,800/- after applying a multiplier of 15.

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In appeal to this Court, it was contended by the appellant-corporation that the correct multiplier applicable in this case is 12 and not 15 as applied by the High Court.

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Dismissing the appeal, the Court

A HELD: 1.1. The accident took place on 26.01.1995. A few months prior thereto, the Parliament inserted Section 163-A of the Motor Vehicles Act by Act 54 of 1994 with effect from 14.11.1994. The said provision contains a non-obstante clause in terms whereof *inter alia* the owner of the motor vehicle is made liable to pay, in the case of death or permanent disablement, compensation, as indicated in the Second Schedule appended to the Act.

B [Para 9] [612-D, E]

C 1.2. "Total Disablement" has been defined in Section 2(l) of the Workmen's Compensation Act, 1923 to mean "such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement". [Para 10] [612-E, F]

D 1.3. Section 166 of the Motor Vehicles Act evidently stands on a different footing. The extent of compensation payable thereunder may vary from case to case. Various other factors including contributory negligence, earning capacity, extent of negligence on the part of one vehicle or the other, are relevant factors for computation of damages. Loss of property can also be subject matter of the claim petition. [Para 11] [612-F, G]

E *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs) and Ors.*, [1994] 2 SCC 176; *Dr. K.G. Poovaiah v. General Manager/ Managing Director Karnataka State Road Transport Corporation*, [2001] 9 SCC 167 and *U.P. State Road Transport Corpn. v. Krishna Bala and Ors.*, [2006] 6 SCC 249, referred to.

F 2.1. One fails to visualise that in a case of this nature a claimant can be deprived of a reasonable amount of compensation despite the fact that he has permanently lost his capacity to earn and remains dependant on others besides physical sufferance of such magnitude. [Para 13] [613-E]

G 2.2. This Court does not, however, intend to lay down a general law. The minimum compensation payable in a case of this nature should be considered from the sufferings of disability undergone by the victim. This Court is not suggesting that in certain situations, the multiplier specified in the Second Schedule to the Act cannot and should not be altered but therefor there must exist strong circumstances. [Para 14] [613-F]

H *Deepal Girishbhai Soni and Ors. v. United India Insurance Co. Ltd., Baroda*, [2004] 5 SCC 385, relied on.

3. The present case is not a fit and proper case where discretionary jurisdiction under Article 136 of the Constitution should be exercised.

[Para 16] [614-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3988 of 2007.

From the final Judgment and Order dated 29.08.2006 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Appeal Against Order No. 528 of 2000 and C.M.A. No. 3350 of 1999.

A. Vinayagam and S.Udaya Kumar Sagar for the Appellant.

Naveen R. Nath for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Whether in the facts and circumstances of this case multiplier of '15' ought to have been applied by the High Court in its impugned judgment falls for consideration in this appeal which arises out of a common judgment and order dated 29.08.2006 passed by the High Court of Judicature of Andhra Pradesh in Appeal against Order No. 528 of 2000 and C.M.A. No. 3350 of 1999.

3. Before embarking upon the said question, we may notice the basic fact of the matter which is not in dispute. Claimant was aged about 38 years on the date of accident which took place on 26.01.1995. He was a carpenter working in a company. His monthly salary was said to be Rs. 4500/-. He had 15 years of experience in woodcrafts. His parents, wife, two daughters and one son were dependant on him. On the night of 25.01.1995, he was coming back to his house. When he was riding on a two-wheeler, he met with the accident having been hit by a bus belonging to the appellant -corporation. He was thrown on the road and dragged to a distance of 10 to 15 yards. He suffered serious multiple injuries, viz., fracture of left hand (humour); fracture of left eight ribs; rupture of spleen; loss of skin and rupture of left hand; injury to haemolhorex; injury to spinal cord, injury to nerve of contracting to spleen; blunt injury to left forehead; injury to thoracic lumber; blunt injury to thigh; rupture of left calf muscle, bruises all over the body; closed brain injury with blackouts. He underwent an operation. A steel rod was inserted in his fractured hand. He became permanently disabled and lost his earning capacity.

A He filed an application under Section 166 of the Motor Vehicles Act (for short "the Act") claiming a sum of Rs. 4,00,000/- as damages. The Tribunal awarded a sum of Rs. 85,000/- with interest at 12% p.a.

B 4. Respondent preferred an appeal thereagainst. The High Court by reason of the impugned judgment granted further compensation to him for a sum of Rs. 1,62,800/- in addition to the awarded compensation of Rs. 85,000/-.

C 5. Application of the multiplier in a structural form was provided in the Second Schedule appended to the Motor Vehicles Act. Benefit of applying such structural formula was considered by this Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs) and Ors.*, [1994] 2 SCC 176] wherein this Court opined:

D "14. The considerations generally relevant in the selection of multiplicand and multiplier were adverted to by Lord Diplock in his speech in Mallett's case where the deceased was aged 25 and left behind his widow of about the same age and three minor children. On the question of selection of multiplicand Lord Diplock observed:

E "The starting point in any estimate of the amount of the "dependency" is the annual value of the material benefits provided for the dependants out of the earnings of the deceased at the date of his death. But...there are many factors which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for his dependants. They might have diminished with a recession in trade or he might have had spells of unemployment. As his children grew up and became independent the proportion of his earnings spent on his dependants would have been likely to fall. But in considering the effect to be given in the award of damages to possible variations in the dependency there are two factors to be borne in mind. The first is that the more remote in the future is the anticipated change the less confidence there can be in the chance of its occurring and the smaller the allowance to be made for it in the assessment. The second is that as a matter of the arithmetic of the calculation of present value, the later the change takes place the less will be its effect upon the total award of damages. Thus at interest rates of 4 1/2 per cent the present value of an annuity for 20 years of which the first ten years are at Pounds 100 per annum and the second ten years at Pounds 200 per annum, is about 12 years'

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purchase of the arithmetical average annuity of Pounds 150 per annum, whereas if the first ten years are at Pounds 200 per annum and the second ten years at Pounds 100 per annum the present issue is about 14 years' purchase of the arithmetical mean of Pounds 150 per annum. If therefore the chances of variations in the "dependency" are to be reflected in the multiplicand of which the years' purchase is the multiplier, variations in the dependency which are not expected to take place until after ten years should have only a relatively small effect in increasing or diminishing the "dependency" used for the purpose of assessing the damages." A B

6. Placing strong reliance upon the observations made therein, the learned counsel appearing on behalf of the appellant - corporation would submit that the correct multiplier which should have been applied in this case was '12'. C

Reliance was also placed on *Dr. K.G. Poovaiah v. General Manager/ Managing Director Karnataka State Road Transport Corporation*, [2001] 9 SCC 167 wherein this Court opined: D

"5... However, the assessment of compensation under the head of loss of earning capacity is very much on the lower side. The injury to the right hand, which has left a permanent disability and which has affected the functioning of the limb and in particular the fingers, is a serious handicap to a medical practitioner. Patients would be reluctant to go to him for treatment and, therefore, the loss of earning capacity would be substantial. Even if we were to assume that it would reduce his earning capacity by 50% and even if we go by his earnings at the date of the accident, the monthly loss would come to Rs. 1500 i.e. Rs. 18,000 per annum. If this monthly loss of earning is multiplied by 10 years purchase factor the compensation would work out to Rs. 1,80,000. To that must be added the compensation allowed under certain other heads, namely, pain and suffering, loss of amenities, medical expenses, etc. The total amount comes to Rs. 2,38,000." E F

7. Reliance has also been placed on *U.P. State Road Transport Corpn. v. Krishna Bala and Ors.*, [2006] 6 SCC 249 wherein it was held: G

"13. In *Susamma Thomas* case it was noted that the normal rate of interest was about 10% and accordingly the multiplier was worked out. As the interest rate is on the decline, the multiplier has to H

A consequentially be raised. Therefore, instead of 16 the multiplier of 18
as was adopted in Trilok Chandra appears to be appropriate. In fact
in Trilok Chandra case, after reference to Second Schedule to the Act,
it was noticed that the same suffers from many defects. It was pointed
out that the same is to serve as a guide, but cannot be said to be
B invariable ready reckoner. However, the appropriate highest multiplier
was held to be 18. The highest multiplier has to be for the age group
of 21 years to 25 years when an ordinary Indian citizen starts
independently earning and the lowest would be in respect of a person
in the age group of 60 to 70, which is the normal retirement age. (See:
C *New India Assurance Co. Ltd. v. Charlie*)”

8. As against this, the learned counsel appearing on behalf of the
respondent would submit that this is not a fit case where this Court should
exercise its discretionary jurisdiction and in particular having regard to a
recent decision of this Court in *Deepal Girishbhai Soni and Ors. v. United
D India Insurance Co. Ltd., Baroda*, [2004] 5 SCC 385 : AIR (2004) SC 2107.

9. We have noticed hereinbefore that the accident took place on
26.01.1995. A few months prior thereto, the Parliament inserted Section
163-A of the Act by Act 54 of 1994 with effect from 14.11.1994. The said
provision contains a non-obstante clause in terms whereof *inter alia* the
owner of the motor vehicle is made liable to pay, in the case of death or
E permanent disablement, compensation, as indicated in the Second Schedule
appended to the Act.

10. “Total Disablement” has been defined in Section 2(i) of the
Workmen's Compensation Act, 1923 to mean “such disablement,” whether of
F a temporary or permanent nature, as incapacitates a workman for all work
which he was capable of performing at the time of the accident resulting in
such disablement”.

11. Section 166 of the Act evidently stands on a different footing. The
extent of compensation payable thereunder may vary from case to case.
G Various other factors including contributory negligence, earning capacity,
extent of negligence on the part of one vehicle or the other, are relevant
factors for computation of damages. Loss of property can also be subject
matter of the claim petition.

12. In *Deepal Girishbhai Soni* (supra), this Court observed:

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“Section 163A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs. 40,000/- having regard to the fact that in terms of Section 163A of the Act read with the Second Schedule appended thereto; compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in columns 2 to 6 thereof leaves no manner of doubt that the Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.”

13. We, therefore, fail to visualise that in a case of this nature a claimant can be deprived of a reasonable amount of compensation despite the fact that he has permanently lost his capacity to earn and remain dependant on other besides physical sufferance of such magnitude as to why the multiplier suggested by the Parliament should not be accepted.

14. We do not, however, intend to lay down a general law. We wish to point out that minimum compensation payable in a case of this nature should be considered from the sufferings of disability undergone by the victim. We are not suggesting that in certain situations, the multiplier specified in the Second Schedule cannot and should not be altered but therefor there must exist strong circumstances. In the year 1995, the rate of interest was lower than the rate of interest taken into consideration in *Susamma Thomas* (supra). Application of multiplicative factor should also be considered from that angle.

Susamma Thomas (supra) or the other decisions relied upon by the learned counsel, do not lay down any law in absolute terms.

A 15. In *Krishna Bala* (supra), the Division Bench considered that the amount of compensation will have to be determined having regard to the fact 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. Rate of interest, therefore, was a relevant factor.

B 16. Furthermore, in a case of this nature, we are of the opinion that it is not a fit and proper case where we should exercise our discretionary jurisdiction under Article 136 of the Constitution of India.

C 17. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly. Appellant shall bear the costs of the respondents. Counsel's fee assessed at Rs. 25,000/-.

B.B.B.

Appeal dismissed.