

SAPNA

v.

UNITED INDIA INSURANCE CO. LTD. & ANR.  
(Civil Appeal No.3575 Of 2008)

MAY 14, 2008

[S.B. SINHA AND LOKESHWAR SINGH PANTA, JJ.]

*Motor Vehicles Act, 1988:*

*Motor vehicle accident – Permanent disability – A minor girl suffering from – Just & fair compensation – Held: Principle of Restitutio-in-integrum applies in a case of this nature – While awarding compensation in case of bodily injury to insured, tribunal should consider all relevant factors so as to put insured in the position as if he had not sustained any injury – Though the High Court had referred to the likely effect of the disability suffered by the injured on her matrimonial prospects but due regard in that regard had not been given – In order to determine the just & fair amount of compensation due regard should be given to the facts & circumstances of the case – The courts may deviate from the structural formula in terms of Schedule II of the Act, while determining compensation – In absence of any clear cut estimate of necessary future treatment, Supreme Court is inclined to award a sum of Rs.75,000/- for further treatment of the victim in addition to the sum awarded by the tribunal as compensation and enhanced by the High Court – Tribunal is directed to invest the sum so awarded in a fixed deposit till the victim attains majority and to release the amount as & when required – Directions issued.*

*Doctrines/Principles:*

*Principle of Restitutio-in-integrum – Applicability of.*

**Appellant, a 12 years old girl suffered a permanent disability in motor vehicle accident. She was taken to a hospital, a sum of Rs.45,000/- spent for her treatment and**

- A she was required to undergo further treatment. She filed a claim petition, the Tribunal awarded a sum of Rs.82,569/- as compensation with 8% simple interest thereupon. In appeal, the High Court enhanced the compensation to Rs.2,00,000/- reducing the rate of interest to 6%. Hence,  
B the present appeal.

- Counsel on behalf of the appellant contended 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 accident, not only her education has come to an end but also her future matrimonial prospects are also adversely affected and, thus, she was entitled to a higher amount of compensation; and that even for the purpose of future treatment, a sum of Rs.1,50,000/- would be required; and considering the provisions contained in the Schedule II to the Motor Vehicles Act and furthermore having regard to the mental agony suffered by the appellant, the amount of compensation should be enhanced.

- E Respondent submitted 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; and that the appellant, admittedly, did not have any income and in that view of the matter the award of the  
F Tribunal and the High Court should not be interfered with.

Partly allowing the appeal, the Court

- HELD: 1.1 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 this 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. [Para 8] [796F,G,H, 797-A,B]

1.2 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. No reason has been assigned in support of arriving at the said figure of the compensation. 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. [Para 9 & 10] [797-B,C,G,H]

1.3 The principle that is to be applied in a case of this nature that the amount of compensation should be just and fair. 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 of the Motor Vehicles Act, 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

A awarded under the heading of mental agony but also some provision should be made for future treatment. [Para 11] [798-A,B,C]

B 1.4 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. [Para 13] [799-B,C,D]

D *Abati Bezbaruah v. Dy. Director General, Geological Survey of India & Anr. (2003) 3 SCC 148 and Nagappa v. Gurudayal Singh & Ors. (2003) 2 SCC 274 – relied on.*

E 1.5 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, this court is 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. [Para 14] [799-D,E]

F 2. The Tribunal shall invest a sum of Rs.2,00,000/- out of the amount of compensation, if not already distributed, in a fixed deposit till the victim attains the age of majority. As and when any amount is required for her treatment or for other expenditure, the sum may be released. The Tribunal, however, shall be at liberty to pass such other order or orders if and when found necessary therefor. [Para 16] [800-C,D]

G *Madhya Pradesh State Road Transport Corporation Bairagarh, Bhopal v. Sudhakar & Ors. AIR 1977 SC 1189 – relied on.*

H CIVILAPPELLATE JURISDICTION : Civil Appeal No. 3575 of 2008

SAPNA v. UNITED INDIA INSURANCE CO. LTD. 795  
& ANR. [S.B. SINHA, J.]

From the final Judgment and Order dated 1.3.2006 of the High Court of Uttranchal at Nainital in Appeal from Order No. 487 of 2003

Ashwani Garg, Vijay Kumar, Sangeeta Kumar, Mendi Imam & Tarrez Khan for the Appellant.

Atul Nanda, Rameeza Hakeem, Rajesh Kumar and Sandeep Bajaj (for M/s Law Associates & Co.) for the Respondents.

The Judgment of the Court was delivered by

**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 re-

A. duced the rate of interest to 6% from 8% p.a.

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D 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.

E 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.

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H 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 Res-titutio-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.

A 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,  
B 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  
C payable. Besides the said sum, not only some amount of com-  
pensation 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 :

D "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  
E 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  
F 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  
G further award after the final award was passed, stating :

H "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/ A  
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 B  
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 expendi- C  
ture likely to be incurred by the appellant towards her future treat-  
ment 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 vir-  
tually has no enjoyment for life, the same form relevant factors  
and, thus, requires consideration for the purpose of determin- D  
ing 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 E  
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* F  
*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 G  
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 H

A 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  
B 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  
C 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 dis-  
tributed, the Tribunal shall invest a sum of Rs.2,00,000/- in a  
fixed deposit till she attains majority. As and when any amount  
D 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.

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

S.K.S.

Appeal Partly allowed