

Ankur Kapoor Thr. Gpa vs Oriental Insurance Company Ltd on 6 November, 2017

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. __17998____ OF 2017

(Arising from SLP (C) No.4841/2016)

Ankur Kapoor ..Appellant

Versus

Oriental Insurance Co. Ltd. ..Respondent

JUDGMENT

MOHAN M. SHANTANAGOUDAR, J.

Leave granted.

2. The appellant has sought enhancement of compensation by filing this appeal, questioning the judgment dated 31.10.2015 passed by the High Court of Punjab and Haryana at Chandigarh in FAO No. 3218 of 2003 (O&M).

3. Facts leading to this appeal are as under:

In the accident that occurred at about 10.30 p.m. on 21.3.2000 at Jamnagar, the appellant sustained grievous injury to his right arm which resulted in permanent disability to the extent of 50% to his right

arm. Since the appellant was immediately admitted to the hospital at Jamnagar his life was saved; the appellant remained as in-patient in the hospital from 21.03.2000 to 31.05.2000 and had undergone several surgeries. It is the case of the appellant that even after discharge from the hospital at Jamnagar, he was taking treatment at Karnal as out-patient. At the time of accident, the appellant was “Dec Cadet trainee” of Merchant Navy in the Binnys Management Company Ltd. and as a trainee, he was getting fifty US dollars per month as salary, apart from free boarding and lodging. It was the claim of the appellant that he would have become “third Officer” after 18 months and the said post was attached with the salary of 1500 US dollars per month. According to the appellant, he would have then become “Chief Officer” within three years and then “Captain” of the ship after about eight years of the service, but as a result of accident and as a result of permanent disability to the right arm of the appellant, he has not only lost his job in Binnys Management Company Ltd. but he has become unfit for the Merchant Navy. He alleges that his future career is ruined, apart from sustaining heavy financial loss.

4. The Motor Accident Claims Tribunal, Karnal awarded compensation of Rs.6,60,000/- (Rupees Six Lacs Sixty Thousand only) along with 9% interest per annum from the date of filing the claim petition to the appellant.

5. Dissatisfied with the quantum of compensation, the appellant approached the High Court of Punjab and Haryana at Chandigarh seeking enhancement of compensation. The High Court has enhanced the compensation by Rs.2,20,000/- (Rupees Two Lacs Twenty Thousand only) along with interest @ 6% per annum, which means the appellant has been awarded a total compensation of Rs.8,80,000/- along with interest. As mentioned supra, this appeal is filed praying for further enhancement of compensation.

6. The Tribunal as well as the High Court have not quantified the compensation under separate heads, which in our considered opinion has resulted in grant of lesser compensation.

7. It is by now well settled by this Court in a catena of decisions including the case of Raj Kumar vs. Ajay Kumar reported in (2011) 1 SCC 343, in the case of permanent disability, the compensation is usually awarded under the following heads:

A. Pecuniary damages (Special Damages):

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure;

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

B. Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries;

(v) Loss of amenities (and/or loss of prospects of marriage);

(vi) Loss of expectation of life (shortening of normal longevity)

8. The record reveals that the Tribunal has made a note while recording the deposition of the claimant about the seriousness of the injuries sustained by the claimant. The observation of the Tribunal reads thus:

“At this stage I have seen the right arm i.e. right upper limb which is almost completely in a damaged condition and skin is not visible properly from elbow onward till shoulder and there seems to be some muscle loss.” The record also reveals that the claimant was unconscious for a couple of days in the hospital and he was operated by the doctor at Jamnagar hospital. According to the appellant, he has spent an amount of Rs.3,00,000/- (Rupees Three Lacs only) at Jamnagar hospital. Thereafter, he has taken the assistance of Dr. O.P.Miglani at Karnal for getting the dressing done every day. The disability certificate is Ex. P1 and the treatment certificate issued by the hospital is Ex. P9.

Due to the injuries sustained, the appellant has lost strength and flexibility in his right arm and he cannot lift the weight. The appellant cannot raise the arm beyond the level of 90 degree and he cannot drive the vehicle as his arm is not as strong as it was before the accident. The appellant had completed six and half months training prior to the incident. When the ship had halted at Jamnagar for ten days, he took casual leave for seven days to go to Karnal for applying fresh passport, during which time the accident occurred. After completion of his 10+2, the appellant had passed Diploma in Applied Research International, New Delhi which is a condition precedent for joining Merchant Navy. The appellant had also passed Diploma in Personal Safety and Social Responsibilities, Oil Tanker Familiarization, Elementary First Aid, Personal Survival Techniques, Fire Prevention and Fire Fighting(all are related to sea courses) for Dec Cadet and thereafter he joined Binniship Management Company as Dec Cadet. The record further reveals that the appellant has to undergo one more surgery i.e. plastic surgery at Mumbai inasmuch as such facility is not available in his native place at Karnal. According to the appellant, the said surgery may cost him rupees three to four lacs.

9. Having regard to the afore-mentioned material on record and keeping in mind that the future of the appellant has become bleak, so also his marriage prospects are reduced to greater extent, in our considered opinion, the compensation awarded to the appellant needs to be enhanced to certain extent.

The appellant, as mentioned supra, has spent about rupees three lacs for treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure during the course of treatment. He lost his earnings during the course of treatment, i.e., at least for a period of four months. He has also lost his future earnings since he may not be able to do the job as before and he cannot join Merchant Navy. Even, it would be very difficult for him to get an alternate job easily, particularly in view of 50% permanent disability to his right arm. Thus, the appellant is awarded Rs.10,00,000/- (Rupees Ten Lacs only) on account of the expenses relating to treatment, hospitalization, medicines etc, loss of earnings during the course of treatment and loss of future earnings on account of permanent disability. The appellant is awarded Rs.3,00,000/- (Rupees Three Lacs only) for future medical expenses. The appellant must have suffered pain, agony and trauma as a consequence of injuries. The Court can take judicial notice of the fact that he may not have bright future as before. He was just 22 years of age at the time of accident and was unmarried. It is unfortunate that he had to suffer at this young age when he was thinking of his bright future life. Having regard to the material on record, we award Rs.3,00,000/-(Rupees Three Lacs only) towards pain, agony and trauma as a consequence of injuries, and Rs.3,00,000/-(Rupees Three Lacs only) towards loss of amenities(including loss of prospects of marriage) and Rs.3,00,000/-(Rupees Three Lacs only) towards loss of expectation of life.

10. Thus, on all counts, the appellant is awarded, in total, a compensation of Rs.22,00,000/-(Rupees Twenty Two Lacs only), instead of Rs.8,80,000/-(Rupees Eight Lacs Eighty Thousand only) awarded by the High Court, along with uniform rate of interest @ 8% per annum from the date of filing of the claim petition before the Motor Accident Claims Tribunal till its realization. It is also directed that the payment of compensation with interest shall be made to the appellant within three months from today. Needless to mention that any amount, if already paid, shall be adjusted. The findings of the Motor Accident Claims Tribunal and the High Court regarding composite negligence and liability to pay will remain undisturbed.

11. The instant appeal is accordingly allowed to the aforesaid extent. There shall be no order as to costs.

.....J.

[S.A. BOBDE]J.

[MOHAN M. SHANTANAGOUDAR] NEW DELHI;

NOVEMBER 06, 2017.