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JAGDISH

v.

MOHAN & ORS.

(Civil Appeal No. 2217 of 2018)

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MARCH 06, 2018

**[DIPAK MISRA, CJI, A.M. KHANWILKAR AND
DR. D.Y. CHANDRACHUD, JJ.]**

C *Motor accident: Compensation – Enhancement – Self employed, skilled carpenter met with motor accident – Income taken as 4050/- and disability assessed at 90% - Award of Rs.12,81,228/- as compensation by the tribunal, however the High Court awarded an additional amount of Rs.2,19,000/- – On appeal held: Claim of the victim that his earnings were Rs. 6,000/- pm cannot be regarded as being unreasonable or contrary to a realistic assessment of the situation on the date of the accident – As regards, the benefit of future prospects, being self-employed person, addition of 40 per cent of the established income should be made where the age of the victim at the time of the accident was below 40 years, thus, the victim entitled to an enhancement of Rs. 2400/- towards loss of future prospects – Victim has suffered a serious disability in which he has suffered a loss of the use of both his hands – He is unable to even eat or to attend to a visit to the toilet without the assistance of an attendant – Disability is indeed total – Thus, the victim awarded a total sum of Rs. 25,38,308/- by way of compensation, payable on account of the loss of income, including future prospects, pain, suffering and loss of amenities, medical expenses, with interest at the rate of 9 per cent per annum on the compensation from the date of the filing of the claim petition.*

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G **Appellant-self employed skilled carpenter met with a motor accident. Tribunal took the monthly income of the appellant as Rs.4,050/- and assessed the disability at 90%. The compensation of Rs.12,81228/- was awarded for the injuries suffered by the victim. However the High Court awarded an additional amount of Rs.2,19,000/- with interest of 7.5 per cent per annum from the date of filing of the claim. Hence, the instant appeal seeking enhancement of compensation.**

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Allowing the appeal, the Court

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HELD : 1.1 The claim of the appellant that his earnings were Rs. 6,000/- per month cannot be discarded. This claim cannot be regarded as being unreasonable or contrary to a realistic assessment of the situation on the date of the accident. As held in in Pranay Sethi case that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals. In the case of a self-employed person, an addition of 40 per cent of the established income should be made where the age of the victim at the time of the accident was below 40 years. Hence, in the instant case, the appellant would be entitled to an enhancement of Rs. 2400/- towards loss of future prospects. [Paras 9, 10] [27-B-C, D-E]

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1.2 In making the computation, the court must be mindful of the fact that the appellant suffered a serious disability in which he has suffered a loss of the use of both his hands. For a person engaged in manual activities, it requires no stretch of imagination to understand that a loss of hands is a complete deprivation of the ability to earn. Nothing at least in the facts of the case—can restore lost hands. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. The yardsticks of compensation should not be so abysmal as to lead one to question whether the law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. The conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity. [Para 11] [27-E-G]

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1.2 The tribunal noted that the appellant was unable to even eat or to attend to a visit to the toilet without the assistance of an attendant. In this background, it would be a denial of justice to compute the disability at 90 per cent. The disability is indeed total. Having regard to the age of the appellant, the tribunal applied a multiplier of 18. In the circumstances, the compensation payable to the appellant on account of the loss of income, including future prospects, would be Rs. 18,14,400/-. In addition to this amount,

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A the appellant should be granted an amount of Rs. 2 lakhs on account of pain, suffering and loss of amenities and Rs. 3 lakhs towards future medical expenses. The amount awarded by the tribunal towards medical expenses (Rs. 98,908/-); for extra nourishment (Rs. 25,000/-) and for attendant's expenses (Rs. 1 lakh) is maintained. The appellant is thus awarded a total sum of

B Rs. 25,38,308/- by way of compensation, with interest at the rate of 9 % p.a. on the compensation from the date of the filing of the claim petition. The liability to pay compensation has been fastened by the tribunal and by the High Court on the insurer, owner and driver jointly and severally which is affirmed. [Para 11] [28-A-D]

C *National Insurance Company Limited v Pranay Sethi* (2017) 13 SCALE 12 ; *Sri Laxman @ Laxman Mourya v Divisional Manager, Oriental Insurance Co. Ltd.* (2011) 12 SCALE 658 ; *K Suresh v New India Assurance Company Ltd.* [2012] 11 SCR 414 :

D (2012) 12 SCC 274 ; *Ramesh Chandra v Randhir Singh* [1990] 3 SCR 1 : (1990) 3 SCC 723 ; *B Kothandapani v Tamil Nadu State Transport Corporation Limited* [2011] 6 SCR 791 : (2011) 6 SCC 420 ; *Govind Yadav v New India Insurance Company Limited* (2011) 10 SCC 683 ; *R D Hattangadi v Pest Control (India) (Pvt) Ltd.* [1995] 1 SCR 75 : (1995) 1 SCC 551 ; *Nizam's Institute of Medical Sciences v Prasanth S Dhananka* [2009] 9 SCR 313 : (2009) 6 SCC 1 ; *Reshma Kumari v Madam Mohan* [2009] 11 SCR 305 : (2009) 13 SCC 422 ; *Arvind Kumar Mishra v New India Assurance Company Limited* [2010] 11 SCR 857 : (2010) 10 SCC 254 ; *Raj Kumar v Ajay Kumar* [2010] 13 SCR 179 : (2011) 1 SCC 343 ; *Subulaxmi v MD Tamil Nadu State Transport Corporation* [2012] 9 SCR 962 – referred to.

G Case Law Reference

(2017) 13 SCALE 12	referred to	Para 7
(2011) 12 SCALE 658	referred to	Para 8
[2012] 11 SCR 414	referred to	Para 8

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[1990] 3 SCR 1	referred to	Para 8	A
[2011] 6 SCR 791	referred to	Para 8	
(2011) 10 SCC 683	referred to	Para 8	
[1995] 1 SCR 75	referred to	Para 8	
[2009] 9 SCR 313	referred to	Para 8	B
[2009] 11 SCR 305	referred to	Para 8	
[2010] 11 SCR 857	referred to	Para 8	
[2010] 13 SCR 179	referred to	Para 8	
[2012] 9 SCR 962	referred to	Para 8	C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2217 of 2018.

From the Judgment and Order dated 05.12.2016 of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in S.B. Civil Miscellaneous Appeal No.3050 of 2015. D

Anuj Bhandari, Yashodhar Pandey, Advs for the Appellant.

Satyajeet Kumar, Adv for the Respondent. E

The Judgment of the Court was delivered by

DR. D.Y. CHANDRACHUD, J. 1. The appellant was injured in a motor accident. The Tribunal awarded compensation of Rs. 12,81,228/- for the injuries suffered by him. The High Court enhanced the award of compensation by an amount of Rs.2,19,000/-. Interest of 7.5 per cent per annum has been awarded from the date of the filing of the claim. The appellant seeks an enhancement of compensation. F

2. The appellant was 24 years of age when the accident took place on 24 November 2011. The accident occurred at 4pm when the appellant and another person were riding on a motor cycle. The appellant who was riding the motor cycle at a moderate speed indicated to a dumper which was ahead of him to allow him to pass. When the appellant was passing the vehicle, it swerved on the driver's side and hit the motor cycle of the appellant. The appellant was injured in the course of the accident. G

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- A 3. The nature of the injuries is evident from the following extract from the judgment of the Motor Accidents Claims Tribunal No. 2, Kota.
“As for the claimant due to the injuries received by the claimant he has suffered 90% permanent disability...
The claimant came to give evidence in the matter...
- B looking at both the hands of the claimant it was noted that...
the hands are not able to perform any function. It has also been submitted on behalf of the claimant that the claimant himself is unable to eat food or go to toilet for which he requires the assistance of someone else as both his hands are unable to perform any function as it has been stated in Exhibit 168. In such situation if a
- C person of labour class suffers from an injury due to which 90% of both his hands are unable to perform any function then in such situation the claimant would have same difficulty which would be the permanent disability of his body. Therefore relying on Exhibit 168 I hold that there has been loss of 90% of earning ability of the
- D claimant”.

4. The Tribunal found that there was negligence on the part of the driver of the dumper and that the appellant was liable to be compensated for the injuries sustained by him.

- E 5. In computing the amount of compensation, the Tribunal noted that the appellant was a carpenter and had claimed that he was in receipt of an income of Rs. 6,000/- per month. In the absence of documentary evidence, the Tribunal took the monthly income of the appellant at Rs. 4,050/-. The appellant having been found to suffer from 90 per cent disability, the loss of the future monthly income was computed at
- F Rs. 3645/-. The Tribunal applied a multiplier of 18 and held that the appellant was entitled to compensation for loss of future income of Rs. 7,87,320/- (Rs. 3645 X 12 X 18). The Tribunal awarded an amount of Rs. 1.80 lakhs on account of mental and physical hardship and agony, Rs. 90,000/- for loss of comfort, Rs. 25,000/- for expenses and
- G Rs. 95,908/- on account of medical expenses. An amount of Rs. 1 lakh was awarded for attendant charges. The Tribunal awarded a total amount of Rs. 12,81,228/- as compensation on which interest was allowed at the rate of 7.5 per cent per annum from the date of the filing of the claim petition. No amount was awarded towards expenses for future treatment.

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6. In appeal, the High Court awarded an additional amount of Rs. 2,19,000/-. The High Court directed that if the enhanced amount is not deposited within 8 weeks, it would carry interest at 9 per cent per annum. A

7. The appellant has sought an enhancement of compensation under the following heads: B

(i) The Tribunal ought to have, but did not award any amount towards loss of future prospects. The appellant submits that in view of the recent judgment of the Constitution Bench in **National Insurance Company Limited v Pranay Sethi**¹, he would be entitled to be compensated for loss of future prospects even though he is self-employed; C

(ii) According to the appellant, the nature of the injuries suffered, resulting in a total loss of the functionality of both the hands would require compensation to be computed on the basis of a disability of 100 per cent and not 90 per cent; and D

(iii) The income as claimed of Rs. 6,000/- per month should be the basis of computation and not Rs. 4,050/- as allowed by the Tribunal and confirmed by the High Court.

8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects: E

(i) Pain, suffering and trauma resulting from the accident; F

(ii) Loss of income including future income;

(iii) The inability of the victim to lead a normal life together with its amenities;

(iv) Medical expenses including those that the victim may be required to undertake in future; and G

(v) Loss of expectation of life.

In **Sri Laxman @ Laxman Mourya v Divisional Manager, Oriental Insurance Co. Ltd**², this Court held:

¹(2017) 13 SCALE 12

²2011 (12) SCALE 658

A “The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim’s inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.”

B In **K Suresh v New India Assurance Company Ltd**³, this Court adverted to the earlier judgments in **Ramesh Chandra v Randhir Singh**⁴ and **B Kothandapani v Tamil Nadu State Transport Corporation Limited**⁵. The Court held that compensation can be granted for disability as well as for loss of future earnings for the first head relates to the impairment of a person’s capacity while the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself.

C In **Govind Yadav v New India Insurance Company Limited**⁶, this Court adverted to the earlier decisions in **R D Hattangadi v Pest Control (India) (Pvt) Ltd.**⁷, **Nizam’s Institute of Medical Sciences v Prasanth S Dhananka**⁸, **Reshma Kumari v Madam Mohan**⁹, **Arvind Kumar Mishra v New India Assurance Company Limited**¹⁰, and **Raj Kumar v Ajay Kumar**¹¹ and held thus:

D “18. In our view, the principles laid down in Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Raj Kumar v. Ajay Kumar must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities,

³(2012) 12 SCC 274

G ⁴(1990) 3 SCC 723

⁵(2011) 6 SCC 420

⁶(2011) 10 SCC 683

⁷(1995) 1 SCC 551

⁸(2009) 6 SCC 1

⁹(2009) 13 SCC 422

¹⁰(2010) 10 SCC 254

H ¹¹(2011) 1 SCC 343

which he would have enjoyed but for the disability caused due to the accident.” (Id at page 693) A

These principles were reiterated in a judgment of this Court in **Subulaxmi v MD Tamil Nadu State Transport Corporation**¹² delivered by one of us, Justice Dipak Misra (as the learned Chief Justice then was). B

9. Having regard to these principles, it would be now appropriate to assess the case of the appellant for enhancement of compensation. The accident took place on 24 November 2011. The appellant was a skilled carpenter and self-employed. The claim of the appellant that his earnings were Rs. 6,000/- per month cannot be discarded. This claim cannot be regarded as being unreasonable or contrary to a realistic assessment of the situation on the date of the accident. C

10. In the judgment of the Constitution Bench in **Pranay Sethi** (supra), this Court has held that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals. In the case of a self-employed person, an addition of 40 per cent of the established income should be made where the age of the victim at the time of the accident was below 40 years. Hence, in the present case, the appellant would be entitled to an enhancement of Rs. 2400/- towards loss of future prospects. D

11. In making the computation in the present case, the court must be mindful of the fact that the appellant has suffered a serious disability in which he has suffered a loss of the use of both his hands. For a person engaged in manual activities, it requires no stretch of imagination to understand that a loss of hands is a complete deprivation of the ability to earn. Nothing – at least in the facts of this case – can restore lost hands. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law’s doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity. E
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¹²Civil Appeal No. 7750 of 2012, decided on 1 November 2012

- A The Tribunal has noted that the appellant is unable to even eat or to attend to a visit to the toilet without the assistance of an attendant. In this background, it would be a denial of justice to compute the disability at 90 per cent. The disability is indeed total. Having regard to the age of the appellant, the Tribunal applied a multiplier of 18. In the circumstances, the compensation payable to the appellant on account of the loss of income, including future prospects, would be Rs. 18,14,400/-. In addition to this amount, the appellant should be granted an amount of Rs. 2 lakhs on account of pain, suffering and loss of amenities. The amount awarded by the Tribunal towards medical expenses (Rs. 98,908/-); for extra nourishment (Rs. 25,000/-) and for attendant's expenses (Rs. 1 lakh) is maintained. The Tribunal has declined to award any amount towards future treatment. The appellant should be allowed an amount of Rs. 3 lakhs towards future medical expenses. The appellant is thus awarded a total sum of Rs. 25,38,308/- by way of compensation. The appellant would be entitled to interest at the rate of 9 per cent per annum on the compensation from the date of the filing of the claim petition. The liability to pay compensation has been fastened by the Tribunal and by the High Court on the insurer, owner and driver jointly and severally which is affirmed. The amount shall be deposited before the Tribunal within a period of 6 weeks from today and shall be paid over to the appellant upon proper identification.
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- E 12. The appeal is accordingly allowed. There shall be no order as to costs.