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Chandrashekhar Madhusudan Vs. Suhas Shankar Shirke

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Court : Gujarat

Decided On : Jun-25-1982

Reported in : 1982ACJ491; AIR1982Guj332; (1982)2GLR379

Judge : P.D. Desai and; R.J. Shah, JJ.

Acts : Motor Vehicles Act, 1939 - Sections 110-A

Appeal No. : First Appeal No. 195 of 1980

Appellant : Chandrashekhar Madhusudan

Respondent : Suhas Shankar Shirke

Advocate for Def. : S.B. Vakil, Adv.

Advocate for Pet/Ap. : Rajni H. Mehta, Adv.

Judgement :

P.D. Desai, J.

1. The appellant, an unmarried youth aged about 20, met with art accident on May 26, 1978 at about 7.30 A. M. on a public road near Vakal Seva Kendra in the city of Baroda. At the material time, the appellant was driving a scooter and he was knocked down by a motor tanker which came from behind and collided with the scooter. The motor tanker was owned by the first respondent and at the material time it was driven by the second respondent. The third respondent is the insurer of the vehicle. As a result of the accident, the appellant sustained minor external injuries on the right eye, nose and lower lip. The internal injuries, which were major, consisted of the fracture of the pubic bone and rupture of urethra. The appellant was taken to the S. S. G. Hospital, Baroda at about 8.15 A. M. and he was admitted as an indoor patient. An operation was performed at about 5.30 P. M. on the same day for repairing the rupture of urethra. The appellant was discharged from the hospital on July 6, 1978 after a period of about six weeks as an indoor patient, The discharge from the hospital, however, did not terminate the petitioner's pain and suffering nor did it relieve him of the need of medical treatment. We shall elaborate upon the post hospitalization physical condition of the appellant and the persistent after-effects of the accident injury, a little later. Suffice it to say, for the present, that the evidence establishes that one of the excretory functions of the appellant has been seriously impaired as a result of the accident and that he will have to learn to live with the impairment for the rest of his life.

2. The appellant instituted the claim petition out of which this appeal arises for

compensation in the global amount of Rs. 50,000/-. The Tribunal awarded compensation in the sum of Ra. 16,300/- under the following heads:-

Rs. 3,300/- for actual economic loss. Rs. 1,000/- for the cost of medical treatment.Rs. 2,000/- for the cost of future medical treatment.Rs. 10,000/- for pain, shock and suffering and loss of amenities of life.----------Rs. 16,300/----------

3. The appellant, feeling aggrieved by the award, has instituted this appeal claiming additional compensation in the sum of Rs. 33,700/-. No cross-appeal or cross objections have been filed. The sole question, therefore, which requires consideration is whether the appellant has been awarded just compensation.

4. At the time of the accident, the appellant was employed as a helper at the Chhani Sub-station of the Gujarat Electricity Board. His total salary at the material time was Rs. 396/- (Rs. 245/- basic salary + Rs. 118/dearness allowance + Rs. 25/- H. R. A. + Rs. 8/- washing allowance). In addition, the appellant was entitled to bonus at the rate of 81% of the basic salary and dearness allowance payable to him per annum. The appellant accordingly was being paid bonus at the rate of Rs. 3651- approximately per annum, that is, approximately Rs. 301- per, month. The monthly emoluments of the appellant, at the time of the accident, therefore, were Rs. 426t-, that is, Rs. 430/- per. month. The appellant was on leave from May 26, 1978 to Jan. 15, 1979. On and with effect from Jan. 16, 1979 the appellant resumed duty and at the date of the trial, he was back in the saddle drawing the pre-accident wages.

5. The evidence with regard to the injuries sustained by the appellant and their after-effects is to be found in the deposition of Dr. Ashok M. Thakkar (Ext. 28) and that of the appellant (Ext. 46). Dr. Thakkar, who is F. R. C. S., was at the material time the professor of Surgery in the Medical College attached to the S. S. G. Hospital, Baroda. He was also rendering services as a Surgeon in the said hospital. He has deposed that he had examined the appellant at the time of his admission in the hospital and that he had found the following injuries on the person of the appellant :-

(1) Abrasion contusion below the right eye.

(2) Clotted blood in the nose.

(3) Abrasion on the lower lip.

(4) Fracture of the pubic bone, which was later confirmed by the radiological examination.

(5) Rupture of urethra.

He operated upon the appellant on the same day and the rupture of urethra was repaired. At the time of his discharge from the hospital, the appellant was advised to attend the out-door department for dilatation at least once a month. According to the doctor, the appellant would be required to take dilatation under local an aesthesia for a very long time or perhaps for the whole of his life. The requirement of taking dilatation was on account of the stricture left at the site of the rupture. If dilatation was not taken when required, the appellant might have difficulty in passing urine and that might give rise to complications. The doctor deposed that the appellant had periodically reported for check-up and for taking dilatation since his discharge from

the hospital and that be had taken dilatation on six occasions since July, 1978.

6. The doctor was of the opinion that there was no possibility of impotency or inability to perform sexual act on the part of the appellant because of the rupture of urethra. However, the appellant had complained to him sometime in Aug,1978 that he was not able to achieve complete erection, His semen was examined on June 19, 1979 and it was found that the sperm-count was normal. According to the doctor, it could not be definitely said whether the appellant would be able to perform the sexual act satisfactorily. Loss of complete erection might result from the pelvic fracture and haemorrhage round about the prostate. In the case of the appellant, there was haemorrhage around the prostate.

7. The doctor also deposed that the appellant had once complained to him about dribbling of urine; the complaint was that whenever he had coughed or strained, there was some dribbling of urine. In the opinion of the doctor, the dribbling of urine might vanish with dilatation and it might have occasioned because of late dilatation. It was not as if the appellant had no control over, the urinary function.

8. The appellant, in the course of his deposition, stated that he was hospitalized for a period of about six weeks to two months for the treatment of the accident injuries. He underwent an operation. At the time of discharge, he was advised to report to the Hospital for check-up once every week and be had accordingly reported for check-up from time to time. According to the appellant, even at the date of the trial, he had not fully recovered. Sometimes he urinated involuntarily and on some occasions lie experienced burning sensation and pain on account of retention of urine lie was unable to have full discharge of semen which was retained within the penis. He had undertaken dilatation six to seven times since his discharge from the hospital.

9. The appellant stated that he was fed up with life because of the various complications resulting from the accident injury.

He was the object of ridicule by others on account of the involuntary passing of urine. Before the accident, five to six offers for marriage were received by him. He had rejected those offers. Even after the accident offers used to be received. However, when the facts relating to the accident and its persistent after-effects became known, the offers were withdrawn or not pressed. Ordinarily, the age of marriage in his caste was 21. At the date of the trial, he was aged about 22. Still, however, he was not betrothed or married.

10. The appellant deposed that he had spent about Rs. 3,500/- to Rs. 4,000/- on medical treatment, special diet and transportation charges while he was in the hospital. His sister-in-law (brother's wife) used to attend upon him. She used to bring tea and tiffin for him and look after him for the whole day.

11. Against the aforesaid background, we shall take up for consideration first the question with regard to the adequacy of compensation under the head of non-pecuniary loss. Two sub-head3 of non-pecuniary loss, viz., pain and suffering and loss of amenities and enjoyment of life often fall for consideration. Ordinarily, no clear distinction is made between the various components of these two sub-heads. Indeed, the phraseology has become a term of art in the forensic field by its compendious user. It cannot be overlooked, however, that each one of the components of the two sub-heads has its own meaning and content. 'Pain' is the immediately felt effect on

the nerves and brain on account of some lesion or injury to a part of the body giving rise to a feeling of distress or agony. It includes, for the purposes of quantification of damages, any pain caused by the medical treatment or surgical operation rendered necessary by the accident injury. 'Suffering' is the distress, which is not felt as being directly connected with any bodily condition. The term would seem to include fright at the time of the injury or fright reaction, fear of future incapacity, either as to health, sanity or the ability to make a living, and humiliation, sadness and embarrassment caused by disfigurement, if any. 'Loss of amenities and enjoyment of life' denotes inconvenience and curtailment of the enjoyment of life not on account of any positive unpleasantness born out of pain and suffering but, in a more negative way, because of the inability to pursue the ordinary activities of life. The loss under this sub-head is not confined merely to interference with leisure activities, that is to say, deprivation of the ability to indulge in enjoyable pursuits. It also takes in impairment in the discharge of the day-to-day functions of life arising out of injury to one or more of the limbs, internal organs, senses or faculties. In making a global assessment of damages under this composite head, care must be taken to compensate the victim for the varied non-pecuniary losses and burdens, past, present and future, arising out of the accident injury.

12. Before turning to the question of assessment of damages, it is essential to resolve the controversy on a crucial question. A serious and sustained attempt appears to have been made on behalf of the appellant before the Tribunal and the exercise was repeated before us to establish that the accident injury and the surgical treatment consequent his sexual evidence, was pressed into service to establish that as a result of the accident injury there was loss of ability to perform sexual act satisfactorily and that there was also a clear possibility of total impotency. We are not satisfied, however, that the evidence establishes any existing or possible sexual malfunctioning or disability of the appellant. In the first place, Dr. Thakkar, in the course of his evidence, clearly ruled out the possibility of impotency or inability to perform sexual act on account of the rupture of urethra. No attempt was made to elicit from him whether the urethral stricture at the site of the rupture was likely to impair sexual functions. Under, the circumstances, the injury to urethra or the urethral stricture is not shown to have any likelihood of adverse effect on the sexual life of the appellant. In the next place, Dr. Thakkar speaks about a complaint made to him by the appellant sometime in Aug, 1978, i.e., within about three months of the date of the accident, about the erection of the penis being not complete. However, the appellant himself, in the course of his deposition, which was recorded in July 1979, does not voice any such complaint. It would not be unreasonable to assume, therefore, that the complaint no longer persisted when the appellant gave his evidence. Besides, very great caution is required to be exercised while taking into consideration what is said in medical reports or medical evidence as to what the patient had complained to the doctor about his physical condition. Unless the doctor is able to certify that on medical examination he had found the complaint to be well-founded or justified, it would not be ordinarily safe to act upon such evidence. There is no such evidence here. Under the circumstances, Dr. Thakkar's opinion that it could not be definitely said whether the appellant would be able to perform the sexual act satisfactorily and that the loss of complete erection might result from the pelvic fracture and haemorrhage around about the prostate - which phenomena were present in the instant case - leads us nowhere in the present case. It is true that the appellant has deposed that be could not have full discharge of semen which was retained in the penis. However, Dr. Thakkar has not been questioned on this aspect and it is not established that such a consequence was likely to ensue on account of the accident

injury. The Possibility cannot be ruled out that the feeling entertained by the appellant in this behalf may be more a subjective phenomenon than an objective symptom. Furthermore, the medical evidence establishes that in June 1979, semen examination was performed and the sperm-count was found to be normal. Even sterility, as distinguished from impotency, must, therefore, be ruled out. For the foregoing reasons, we are of the opinion that while assessing compensation under the head under consideration, we must proceed on the footing that there was not likely to be any impairment in the way of the appellant in leading a normal sexual life.

13. The evidence clearly establishes, however, that the serious internal injury sustained by the appellant has vitally affected the functioning of one of his excretory systems. The rupture of urethra, which required urgent surgical intervention and which has left a stricture at the point of rupture, has landed the appellant in a physical condition which will require periodical medical intervention to ensure proper functioning of the urinary system. The medical evidence establishes that the appellant will have to undergo dilatation at least once a month for a very long time or perhaps for the rest of his life and that the failure to take periodical dilatation might create difficulty in passing urine and give rise to complications including dribbling of urine. The evidence establishes that within a period of about one year between the date of his discharge from the hospital and the date of trial, the appellant had taken dilatation six times. Dilatation, as is well known, is a painful process. The medical evidence herein establishes that it is usually given under local anaesthesia. Besides, it oftentimes leads to infection of the genito-urinary track and to recurrent attacks of cystitis, etc. In some cases, such infection, if uncontrolled, may travel up to the kidney and, in turn, it may lead to the development of renal failure in course of time (see the Medical Assessment of Injuries for Legal Purposes by Arnold Mann, Third Edition, 1979, page 119). Though Dr. Thakkar has not deposed about these likely complications, the possibility of their occurrence cannot be ignored, having regard to the prognosis based on the day-to-day experience of life as reflected in the commentaries in the standard text-books. The post-accident physical condition of the appellant, therefore, is such that besides leading to frequent absences from work and abstinence from leisure activities, it is bound to generate in him a fear of future incapacity as to health or uncertainty of life and a feeling of despondency and remorse and embarrassment. The pain and suffering which the appellant must have felt on receiving the injury and in the course of the medical treatment including the surgical operation rendered necessary by the injury have also not ended. The appellant will be subjected to physical pain and discomfort and suffering from time to time for the rest of his life. It cannot be overlooked also that if for reasons beyond his control the appellant is unable to take timely dilatations the symptom of dribbling of urine would manifest itself. Indeed, the appellant has deposed that this trouble occasionally manifests itself and that causes him embarrassment on account of the ridicule to which he is subjected by the onlookers. The appellant has testified that the chances of marriage are also affected and that he is fed up with life on account of these and other troubles. In other words, he has lost the pleasure and zest of life.

14. In assessing damages under this head, this past and prospective pain and suffering and past and prospective loss of amenities and enjoyment will be required to be borne in mind. The appellant has to live with all these for nearly half a century and this again is a factor, which cannot be over-emphasized. Damages awarded under this head must, therefore, adequately compensate the appellant.

15. No decided case of an Indian Court has been cited before us to illustrate the

bracket of damages in which this case would fall. In Kemp & Kemp, The Quantum of Damages, Vol. 2, Part 7, Section D, the learned authors have digested cases in which compensation has been awarded for injury to excretory organs. Para 7-971- in the said section digests an English case (Giblin v. Sir. Robert McAlpine & Sons) decided on July 27, 1959 wherein a male aged 45 had sustained fracture of the pelvis and severance of urethra as a result of an accident. He was required to undergo long and painful treatment of about 11 weeks in the hospital and was unable to return to work for 13 months. Glyn-Jones, J. made an award in the sum of ;E3,000/-, which was higher than usual, because of the nature of injury and painful treatment. Way back in 1959, this was the award made by an English Court in a case comparable in all respects save and except the age of the claimant. No later English decision has been brought to our notice. However, having regard to the need of periodic reassessment of damages at certain key points, which principle has been accepted by the English Courts, the award for similar injury currently could well be expected to be in the neighborhood of ;E5,500. This assumption can be legitimately made having regard to the upward revision of damages in that country in respect of other injuries, such as, for example, loss of vision in one eye, in regard to which material is available (see Ahmedabad Municipal Corporation v. Niranjan Ambalal, 1981 ACJ 53 at p. 67). Conversion from one currency into another may not be strictly relevant in the context of the point under consideration, having regard to the varying conditions in the two countries. It might still be mentioned, however, that in terms of the rupee currency, an award in the sum of f 3,000 would mean Rs. 54,0001- and that in the sum of ;E 5,500 would mean Rs. 99,000/-, -taking the exchange ratio of f I = Rs. 181which is the amount around which the exchange rate usually fluctuates.

16. Bearing in mind all the relevant facts and circumstances of the present case which have been elucidated above and the age of the appellant, it appears to us that an award in the sum of Rs. 35,000/- under this head would be just, proper and adequate. This is the bracket of damages in which an in. jury of this nature would currently fall in a similar case and the Tribunals would be well advised to be guided by this award.

17. Next, we must consider compensation for the pecuniary loss. The award under this head is usually made under two distinct heads. Special damages are awarded for the actual pecuniary loss, that is to say, the exact amount of money which has been lost or spent as a consequence of the injury up to the date of the trial and general damages are awarded for the deprivation of earnings or other items which would have been received but for the accident and have now been taken away and for the new positive burden of expenses required to be incurred as a result of the accident. In the present case, so far as special damages are concerned, the Tribunal has awarded to the appellant Rs. 3,300/- to compensate him for the actual economic loss sustained by him by being away from the job and Rs. 1,000/- to reimburse him for the medical expenses. General damages in the sum of Rs. 2,000/- are awarded only on one count, namely, as recompense for the expenses likely to be incurred in future for dilatation. It appears to us that so far as medical expenses, both past and future, are concerned, the Tribunal's award is rather conservative. As regards the actual medical and correlated expenses incurred up to the date of the trial are concerned, the appellant's evidence is that he had incurred an expenditure of Rs. 3,500/- to Rs. 4,000/-. True it is that the appellant has been unable to give a detailed break-up of the expenditure or to produce precise evidence in - support of the claim. However, as has been often pointed out, accident is an event in real life and its impact is sudden and severe. A person who has met with such a serious accident would hardly be in a

frame of mind to maintain detailed accounts or to collect and preserve documentary evidence in respect of the expenditure incurred during the course of the prolonged medical treatment both as an indoor as well as an outdoor patient. From the nature of injury and the course and duration of the treatment, it would be legitimate to assume that the appellant must have incurred considerable expenditure. In such matters, it would be proper to make a reasonable estimate on probabilities and worldly experience. Under the circumstances, we propose to award to the appellant the sum of Rs. 3,600/-, which he claims to have expended on the medical treatment and transportation and incidental charges. For the future medical treatment consisting of dilatation for a period, covering over half a century and bearing in mind the possibility of the infection of the genito-urinary track and the likelihood of serious complications such as infection to the kidneys or renal failure, which might in all probability occur in course of time, an award in the sum of Rs. 8,000/- would appear to be justified even on a conservative basis. In all, therefore, the appellant would be entitled to an award in the sum of Rs. 11,500/- under the head of medical treatment, special diet and transportation and incidental charges, past, present and future.

18. The Tribunal has altogether ignored the aspect of loss of prospective earnings. True it is that at the date of the trial, the appellant was able to earn his pre-accident wages by going back to the pre-accident employment. This does not mean, however, that he has no claim for loss of future earnings. An injury of the kind sustained by the appellant with its tell-tale consequences and probable complications is almost certain to result in the reduction of earning capacity. Periodical dilatations by themselves would interrupt or affect the smooth course of the appellant's working life. If such dilatations result in the infection of the genito-urinary track, there might be frequent though short absences from work. If more serious complications such as infection of the kidney or renal failure occur, there might be prolonged absences from- work. Indeed, the Possibility that the appellant might not only stagnate but also run the risk of loss of employment at some point of time cannot be altogether ruled out. The appellant is certainly not a normal healthy human being. His prospects in the employment market cannot be compared with those of another person of his age who does not suffer from similar physical disabilities. All this is likely to prejudice the appellant's advancement in his present employment or his chance of getting another job in case he loses his present employment or securing better-paid form of employment. For such loss and for such partial destruction or diminution of his earning capacity, the appellant must be compensated on an estimate of the probable future earnings had there been no accident and the actual earning power left after the accident. The difference between the two must be treated to be the loss of earning capacity. On the evidence on the record of this case, the risk of financial damage likely to be incurred by the appellant on account of the accident injury must be regarded as substantial or real and not speculative or fanciful and damages must be awarded for the same, bearing in mind all sorts of variable factors such as his age, his skill, the nature and degree of his disability, etc.

19. As earlier pointed out, the appellant's total emoluments on the date of the accident were in the neighborhood of Rs. 430/- per month. It would not be unreasonable to assume, having regard to all the circumstances of the case, that in course of time he would have probably earned, had he not met with the accident, total emoluments in the sum of Rs. 750/-. This prospective rise in earnings would have been spread over long years. Besides, the probability that he might or might not have earned that amount in ordinary course for some other reason must also be taken into account. Taking a mean, therefore, the earning capacity of the appellant in

ordinary course must be estimated to be Rs. 600/- for the purposes of awarding compensation on an appropriate scale for the loss of earning capacity. Even if the loss of earning capacity is estimated at 15%, which appears to be the minimum, the loss in terms of 'money would work out to Rs. 90/- i.e. Rs. 1,080/- per annum. Applying the multiplicand of 18 on the facts and in the circumstances of the case, the compensation under the head under consideration would work out to Rs. 19,440/-. To round up, it would work out to Rs. 19,500/-.

20. As a result of the foregoing discussion, we find that the appellant is entitled to compensation in the following sums under different heads:

Rs. 35,0001- for pain and suffering and loss of amenities and enjoyment of life.Rs. 11,5001- for past and future medical treatment and incidental charges.Rs. 3,300/- for actual economic loss.Rs. 19,5001- for loss of earning capacity.----------Rs. 69,300/----------

The Tribunal has awarded total compensation in the sum of Rs. 16,300/-. The appellant is, therefore, entitled to additional compensation in the sum of Rs. 53,0001-. In view of the fact, however, that the claim in this appeal is restricted to Rs. 33,700/-, the actual additional award cannot exceed Rs. 33,700/-.

21. In the result, the appeal fully succeeds. The appellant is held entitled to an additional award in the sum of Rs. 33,700/with interest at the rate of 6% per annum from the date of the presentation of the claim petition till the deposit/payment and costs throughout. The third respondent will deposit the amount awarded hereunder in the Tribunal within a period of eight weeks from today. Upon such deposit being made, the appellant will be paid the amount of costs and interest awarded in his favour without the attachment of any condition. The principal amount of Rs. 33,700/- will, however, be paid to the appellant subject to the condition that he deposits the said amount in a fixed deposit with a nationalised bank for a period of ten years from the date of deposit and subject to the further condition that such fixed deposit shall not be encashed by him and no loan shall be raised by him against the said fixed deposit till its maturity, save and except with the permission of the Tribunal. Meanwhile, the appellant will be entitled only to the interest accruing due on such fixed deposit periodically. The Tribunal will ensure due fulfillment of these conditions by the appellant.

22. Appeal allowed.

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