



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.....OF 2024
(Arising out of SLP(C)No.18337/2021)

K.S. MURALIDHAR

... APPELLANT(S)

VERSUS

R. SUBBULAKSHMI & ANR.

... RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

Leave granted.

2. The concept of just compensation rests on the principle of *restitutio ad integrum* which means restoration to the original condition, as far as possible, taking the person to whom damages are awarded, to a position as if the incident or in this case, the accident, had never occurred. While this is a well-recognized and positive principle of law, we must also recognize its limitations. The award of compensation, however much it may be, does not give back to the person who affected their life but only alleviates the worry of being able to secure the required amenities.

3. In awarding non-pecuniary damages, this Court has often highlighted the difficulty in computation, for there is no manner in which such determination lends itself to formulaic ciphering. Every person in life has undertaken certain steps towards the realization of dreams, held goals and aspirations, and when they land up in such an unfortunate situation, where, for no fault of theirs, the trajectories of their lives are forever altered. Although, abstract in the written word, these factors form a large part of the '*pain and suffering*' one undergoes apart from the manifested disability, which may be visible to another person.

4. This appeal arises from the final judgment and order dated 12th November 2020 passed by the High Court of Karnataka at Bengaluru in M.F.A.No.2573 of 2016 (MV). This Miscellaneous First Appeal, in turn, was filed against the Award dated 17th April 2015 passed in M.V.C. No.3955 of 2009 by the Court of IX Additional Senior Civil Judge, Small Causes Court, at Bangalore.¹

5. Certain past events require recall for adjudication of the present dispute.

5.1 On 22nd August 2008, the appellant was travelling in his Company vehicle, bearing registration No. KA-02-D-9626, towards his place of employment, situated at Kasaba Industrial Area, Hoskote. On the way, the vehicle collided with a container lorry bearing registration No.TN-04-D-1047, which was allegedly being driven rashly and negligently.

¹ hereinafter referred to as 'Tribunal'

5.2 The injuries sustained were to the extent of 90% permanent disability (as per the case put forward by the claimant-appellant before the Tribunal), i.e.,

- “1. Fracture co-vertebra with anterior dislocation over C7
2. Cervical Spine revealed dislocation of C-6 over C-7.
C-7 Bilateral transverse process fracture and
3. C-6 fracture both laminae and body.”

5.3 The Hoskote Police have registered a case bearing Crime No.414 of 2008 for the offences punishable under Sections 279, 337 and 338 of the Indian Penal Code, 1860², against the driver of the lorry.

5.4 It was contended before the Tribunal that the claimant-appellant was employed as a workman in L.M. Glassfibre (India) Pvt. Ltd., Hoskote, earning a gross salary of Rs.28,221/- per month. Apart from being so employed, he was also an agent with the Life Insurance Corporation of India earning an annual commission between Rs.30,000/- to Rs.40,000/- per annum.

5.5 Having heard arguments, the Tribunal framed two issues, one relating to rash and negligent driving of the lorry and the second regarding the quantum of compensation and by whom it will be payable.

5.6 The Tribunal³ concluded that the lorry was indeed being driven rashly and negligently and *qua* compensation it was held that respondent

² IPC for short

³ It is to be noted that this determination of compensation was made after the High Court remitted the matter *vide* order dated 12th August 2014 for consideration afresh, on appeal from award dated 10th February 2011 passed by the IXth Additional Senior Civil Judge, member, MACT-7, Court of Small Causes, Bangalore

No.2 therein (New India Assurance Company Limited) would be liable to pay a sum of Rs.58,09,930/- with 6% interest per annum on the above said sum (excluding future medical expenses of Rs.1,00,000/-) from the date of Petition till payment.

6. Aggrieved by the order, both, the Insurance Company and the claimant-appellant, approached the High Court.

6.1 The Court held that the Tribunal had rightly taken functional disability to be 100% and was correct in not deducting compensation of Rs.6,61,371/- paid by his employer to the claimant-appellant.

6.2 On the aspect of loss of future income, it was held that the claimant-appellant, since he was below the age of 40, was entitled to 40% under this head. The amount was calculated to be Rs.70,22,520/-. In conclusion, considering other heads as well, the amount of compensation arrived at was a total of Rs.78,16,390/- as opposed to Rs.58,09,930/- awarded by the Tribunal.

6.3 The Insurance Company was directed to deposit the amount within four weeks, excluding interest, for the compensation awarded under the heading future medical expenses. The interest rate was maintained at 6%.

7. Further, aggrieved by the final judgment and order of the High Court, the claimant-appellant is before us.

8. During the course of arguments, it was submitted by the learned counsel for the claimant-appellant, that :-

(i) The High Court erred in taking future prospects at @ 40% instead of 50% in accordance with *National Insurance Co. Ltd. v. Pranay Sethi*⁴;

(ii) Under the head ‘*pain and suffering*’, the compensation awarded by the High Court is insufficient given the 100% functional disability. In arguing that the compensation should be increased to Rs.10,00,000/-, reliance is placed on a judgment of this Court in *Benson George v. Reliance General Insurance Co. Ltd. & Anr.*⁵, and, in particular, para 20 thereof, wherein it was held that in the attending facts and circumstances, considering the multiple brain injuries/injuries sustained by the claimant because of which he was comatose and bedridden, Rs.10,00,000/- was awarded as enhanced compensation, observing the same to be reasonable;

(iii) The Tribunal awarded Rs.1,00,000/- in terms of future medical expenses, which the High Court maintained without any discussion. Under this head too, it was submitted that the compensation should be enhanced to Rs.10,00,000/- in view of *Parminder Singh v. New*

⁴ (2017) 16 SCC 680

⁵ (2022) 13 SCC 142

*India Assurance Co. Ltd*⁶; and *Lalan D. v. Oriental Insurance Co. Ltd.*⁷.

9. The age of the claimant-appellant at the time of the accident was 37 years⁸. The computation of future prospects is to be done as per the law laid down by a Constitution Bench of this Court in *Pranay Sethi (supra)* para 59.3, which records the conclusion in this regard, reads as under :-

“59.3 While determining income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should read as actual salary less tax.”

10. It is submitted that the claimant-appellant's employment was permanent in nature, and as such, the loss of future income ought to be calculated, in terms of the above, at 50%. The High Court, in para 23 of the judgment, observes that the total income of the claimant-appellant was Rs.27,867/- per month. 50% thereof is Rs.13,933/-. His income, therefore, comes to Rs.41,800/- (27,867 + 13,933). Considering the above-computed income, the compensation under the head loss of future prospects would be Rs.41,800 x 12 x 15 x 100% = Rs.75,24,000/- as opposed to Rs.70,22,520/- as calculated by the High Court.

The total compensation as it stands at the moment would be Rs. 80,67,870/- + Rs.6,61,371/- = Rs.87,29,241/-.

⁶ (2019) 7 SCC 217

⁷ (2020) 9 SCC 805

⁸ Claim petition, Annexure A-3

11. Let us now consider the claimant-appellant's prayer for enhancement of compensation under the head 'pain and suffering'. It cannot be disputed that the injuries sustained by the claimant-appellant are serious, and their effects on his life are long-lasting; one may even say lifelong. The examination of the doctor, namely, Dr. N.C. Prakash, forming part of record as Annexure P-5, dated 6th October 2010 reads as under:

"5. I further state that recently I examined the patient on 30-9-2010 for assessment of disability. He complains of the following:

- a. No sensation to below the C-7 Dermatome.
- b. Lost sensation of bowel and urinary system.
- c. No control below the neck.
- d. Needs assistance for every activity.

6. On examination I found the following:

At present he is in wheel chair bound with no movements (Grade 0/5) in both lower limbs, minimal movements in bilateral upper limb proximally with wrist being very weak (1/5 power) and grip is not possible. He has no urinary control, has no sensation of bowels and is on urinary catheter. He needs help for all his day to day activities. He was an Assistant Team Leader in LM Glass Fibers India Pvt. Ltd. and now can't do any work. He has almost no chance of further improvement and impairment is likely to be permanent. All put together he has a disability of about 85% to the whole body."

12. It is to be noted that both the Tribunal and the High Court have taken the disability suffered by the claimant-appellant to be at 100%. We find no ground to take a different view.

13. While acknowledging that '*pain and suffering*', as a concept escapes definition, we may only refer to certain authorities, scholarly as also judicial wherein attempts have been made to set down the contours thereof.

13.1 The entry recording the term '*pain and suffering*' in P. Ramanatha Iyer's Advanced Law Lexicon⁹ reads as under:-

“Pain and suffering. The term ‘Pain and suffering’ mean physical discomfort and distress and include mental and emotional trauma for which damages can be recovered in an accident claim.

This expression has become almost a term of art, used without making fine distinction between pain and suffering. Pain and suffering which a person undergoes cannot be measured in terms of money by any mathematical calculation. Hence the Court awards a sum which is in the nature of a conventional award [Mediana, The (1900) AC 113, 116]"

13.2 Eric Cassell¹⁰, an American Physician and Bioethicist, defines '*pain*' not only as a sensation but also '*as experience embedded in beliefs about causes and diseases and their consequences*', and '*suffering*' as '*the state of severe distress associated with events that threaten the intactness of person*'.

13.3 In a recent article¹¹ published in the journal of the International Association for the Study of Pain, it has been recorded that there is no consensus on what exactly the concept of pain-related suffering includes, and it is often not precisely operationalised in empirical studies. The authors in their systematic review analysed 111 articles across a variety of disciplines such as bioethics, medical ethics, psycho-oncology, anaesthesiology, philosophy, sociology etc., we may refer to few of them:

⁹ 3rd Edition reprint 2009, Lexis Nexis, Butterworths Wadhwa, page 3441

¹⁰ <http://www.ericcassell.com/bio.html>

¹¹ Noe-Steinmüller et.al, (2024) “Defining suffering in pain: a systematic review on pain-related suffering using natural language processing.” 165 (7) : p1434-1449

13.3.1 Eugene V. Boisaubin¹², who is currently a Professor at the University of Texas, at Houston, in a 1989 article defined it as *“Suffering is experienced by individual and arises from threats to the integrity of the individual as a complex social and psychological entity.”*

13.3.2 Andrew Edgar, who is currently a Reader Emeritus in Philosophy at Cardiff University at UK has defined, in a 2007 article suffering as an *“experience of life never getting better, revealing in the sufferer only vulnerability, futility, and impotence.”*

13.3.3 Arthur W. Frank¹³, Professor Emeritus, Department of Sociology, University of Calgary in his well-known article *“Can We Research Suffering?”*, published in 2001, observed that *“at the core of suffering is the sense that something is irreparably wrong with our lives, and wrong is the negation of what could have been right. Suffering resists definition because it is the reality of what is not.”*

13.3.4 Daryl Pullman¹⁴ who currently serves as University research Professor, Bioethics at the Memorial University of Newfoundland, Canada in his 2002 article defined suffering as the *“product of*

¹² <https://med.uth.edu/oep/members-2/eugene-v-boisaubin-md/>

¹³ <https://sps.columbia.edu/faculty/arthur-w-frank-phd>

¹⁴ <https://www.mun.ca/medicine/faculty-and-staff-resources/faculty-a-z/pullman-daryl.php>

[physical], psychological, economic, or other factors that frustrate an individual in the pursuit of significant life projects.”

13.4 The Judicial Studies Board, now known as the Judicial College in the United Kingdom, produced guidelines in 1992 to produce greater consistency of awards and make the judicial scale of values more easily accessible. They have been deduced from a study of past cases, examining the range of awards therein. The latest edition of these guidelines was published in 2021¹⁵. They record the difficulty of computing ‘*pain and suffering*’ as under :-

"It is widely accepted that making of an award of general damages for pain and suffering is a somewhat artificial task. It involves the Judge seeking to convert the pain and suffering of a given claimant into a monetary award which he or she considers to be reasonable by way of compensation. That is a difficult task and one which has historically led to judges making widely varying awards of damages in respect of relatively comparable injuries a result which not only offends the principle of equality before law but results in unnecessary appeals and the incurring of additional cost, apart altogether from the burden that such appeals place on the Court's own scarce resources."

13.5 In determining non-pecuniary damages, the artificial nature of computing compensation has been highlighted in *Heil v. Rankin*¹⁶, as referred to in *Attorney General of St. Helena v. AB & Ors.*¹⁷ as under:-

¹⁵ See : Hassam and Anr. v. Rabot and Anr. (2024) UKSC 11

¹⁶ [2001] QB 272

¹⁷ Privy Council Appeal No. 0034 of 2018.

“23. This principle of ‘full compensation’ applies to pecuniary and non-pecuniary damage alike. But, as Dickson J indicated in the passage cited from his judgment in *Andrews v Grand & Toy Alberta Ltd*, 83 DLR (3d) 452, 475-476, this statement immediately raises a problem in a situation where what is in issue is what the appropriate level of ‘full compensation’ for non-pecuniary injury is when the compensation has to be expressed in pecuniary terms. There is no simple formula for converting the pain and suffering, the loss of function, the loss of amenity and disability which an injured person has sustained, into monetary terms. Any process of conversion must be essentially artificial. Lord Pearce expressed it well in *H West & Son Ltd v Shephard* [1964] AC 326, 364 when he said:

‘The court has to perform the difficult and artificial task of converting into monetary damages the physical injury and deprivation and pain and to give judgment for what it considers to be a reasonable sum. It does not look beyond the judgment to the spending of the damages.’

24. The last part of this statement is undoubtedly right. The injured person may not even be in a position to enjoy the damages he receives because of the injury which he has sustained. Lord Clyde recognised this in *Wells v Wells* [1999] 1 AC 345, 394H when he said: ‘One clear principle is that what the successful plaintiff will in the event actually do with the award is irrelevant.’

13.6 In the context of the United States, the most important piece of legal literature regarding ‘*pain and suffering*’ is an article titled ***Valuing Life and Limb in Tort: Scheduling Pain and Suffering***, published in the year 1989.

Relevant extracts thereof read as under :

"Pain and suffering and other intangible or non-economic losses are even more problematic. Physical pain and attendant suffering have for centuries being recognised as legitimate elements of damages, and "modern" tort law has seen a marked expansion of the rights to recover for forms of mental anguish. Some Courts have even permitted recovery for emotional trauma unaccompanied by physical injury, including derivative losses stemming from injuries to family members. The precise elements of compensable non-economic loss vary by jurisdiction. Pain and suffering may be used as a catch-all category for the jury's consideration of all non-pecuniary losses in a case of a non-fatal injury, subsuming other qualitative categories such as

mental anguish and humiliation. More commonly, though, other non-economic elements – such as “loss of enjoyment of life” are accorded independent standing ...”

Another important observation is that:

“Whatever the categories of non-economic damages allowed in a given jurisdiction, the law provides no objective benchmarks valuing them. As one commentator notes, “Courts have usually been content to say that pain and suffering damages should amount to ‘fair compensation’, or a ‘reasonable amount’, ‘without any definite guide’.”

13.7 Consideration of the above, underlines that while each discipline has its own conception of the meaning of pain/suffering, within its confines, the commonality that emerges is that a person's understanding of oneself is shaken or compromised at its very root at the hands of consistent suffering. In the present facts, it is unquestionable that the sense of something being irreparably wrong in life, as spoken by Frank (*supra*); vulnerability and futility, as spoken by Edgar, is present and such a feeling will be present for the remainder of his natural life.

14. In respect of ‘*pain and suffering*’ in cases where disability suffered is at 100%, we may notice a few decisions of this Court:-

14.1 In *R.D Hattangadi v. Pest Control (India) (P) Ltd.*¹⁸. It was observed :

“17. The claim under Sl. No. 16 for ‘pain and suffering’ and for loss of amenities of life under Sl. No. 17, are claims for non-pecuniary loss. The appellant has claimed lump sum amount of Rs.3,00,000 each under the two heads. The High Court has allowed Rs.1,00,000 against the claims of Rs.6,00,000. When compensation is to be awarded for ‘pain and suffering’ and loss of amenity of life, the special

¹⁸ (1995) 1 SCC 551

circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs.1,50,000 in respect of claim for ‘pain and suffering’ and Rs.1,50,000 in respect of loss of amenities of life. We direct payment of Rs.3,00,000 (Rupees three lakhs only) against the claim of Rs.6,00,000 under the heads “‘pain and suffering”” and “Loss of amenities of life”.

(Emphasis Supplied)

14.2 This Judgment was recently referred to by this Court in *Sidram v. United India Insurance Company Ltd.*¹⁹ reference was also made to *Karnataka SRTC v. Mahadeva Shetty*²⁰ (irrespective of the percentage of disability incurred, the observations are instructive), wherein it was observed :

“18. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident through out his life and a feeling is developed that his no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned.”

14.3 In *Kajal v. Jagdish Chand*²¹ considering the facts of the case, i.e., 100% disability, child being bedridden for life, her mental age being that of a nine-month-old for life - a vegetative existence, held that “even after taking

¹⁹ (2023) 3 SCC 439

²⁰ (2003) 7 SCC 197

²¹ (2020) 4 SCC 413

a conservative view of the matter an amount payable for the ‘pain and suffering’ of this child should be at least Rs.15,00,000/-.”

14.4 In *Ayush v. Reliance General Insurance*²² relying on *Kajal (supra)* the amount awarded in ‘pain and suffering’ was enhanced to Rs.10,00,000. The child who had suffered the accident was five years old and the Court noted in paragraph 2 that :

“As per the discharge certificate, the appellant is not able to move both his legs and had complete sensory loss in the legs, urinary incontinence, bowel constipation and bed sores. The appellant was aged about 5 years as on the date of the accident, hence has lost his childhood and is dependent on others for his routine work.”

14.5 In *Lalan* (supra) cited by the claimant-appellant, the Tribunal awarded Rs.30,000/- which was enhanced to Rs.40,000/- by the High Court. Considering the fact that the appellant therein has suffered extensive brain injury awarded compensation under ‘*pain and suffering*’ to the tune of Rs.3,00,000/-.

15. Keeping in view the above-referred judgments, the injuries suffered, the ‘*pain and suffering*’ caused, and the life-long nature of the disability afflicted upon the claimant-appellant, and the statement of the Doctor as reproduced above, we find the request of the claimant-appellant to be justified and as such, award Rs.15,00,000/- under the head ‘*pain and suffering*’, fully conscious of the fact that the prayer of the claimant–appellant for enhancement of compensation was

²² (2022) 7 SCC 738

by a sum of Rs. 10,00,000/-, we find the compensation to be just, fair and reasonable at the amount so awarded.

16. It stands clarified that we have modified the Award, as given by the High Court, only on two counts, i.e., future prospects and '*pain and suffering*'. The amount as enhanced, shall carry interest @ 6%, from the date of filing of the petition for special leave to appeal. According to paragraph 10, the compensation to be awarded stood at Rs.87,29,241/-. Consequent to the above discussion on '*pain and suffering*', the total amount now payable is Rs.1,02,29,241/-.

17. The appeal is allowed as aforesaid. Pending applications, if any, stand disposed of.

18. No costs.

.....J.
(C.T. RAVIKUMAR)

.....J.
(SANJAY KAROL)

New Delhi
November 22, 2024