

**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

DATED THIS THE 26TH DAY OF SEPTEMBER, 2019

PRESENT

THE HON'BLE MR.JUSTICE S.N. SATYANARAYANA

AND

THE HON'BLE MR.JUSTICE P.G.M. PATIL

M.F.A.NO.100662/2015 (MV)

SURESH NAIK

AND :

K.DINESH KUMAR

JUDGMENT

The claimant in MVC.No.1346/2011 on the file of M.A.C.T, Ballari has come up in this appeal seeking enhancement of compensation awarded for the injuries suffered in a road traffic accident dated 22.12.2010.

2. The records would disclose that on 22.12.2010 when the claimant was traveling on a Bicycle as a pillion, the said Bicycle was hit by APSRTC DGT goods vehicle bearing registration No.AAZ-5263.

3. The said accident is not in dispute, so also the injuries suffered by the claimant in the said accident. The records would indicate that the injuries suffered by the claimant is amputation of penis and scrotum, with fracture of right clavicle bone at its mid third and also fracture of inferior ramus of pubic bone of pelvis.

4. The claimant was initially treated at CHS Hospital, Rayadurga for the first time later

shifted VIMS Hospital, Bellary from 23.12.2010 to till 28.01.2011. It is seen that the injuries suffered by the claimant was treated surgically which has resulted in removal of penis to its roots and also both testicles. Thereafter the claimant who was minor aged about 17 years as on that day filed claim petition seeking compensation for the aforesaid injuries before the Court below.

5. In the said proceedings which was initiated by the father of claimant as his next friend, his father adduced evidence as PW.1 and he also secured the presence of Dr.Lakshmi Narayana who gave evidence as PW.2 in explaining the nature of injuries suffered by claimant and also the consequences of the said injuries on the future of the claimant. In all, eight documents were produced and marked in support of his claim. In the said proceedings, the claimant sought for compensation in a sum

of Rs.50,00,000/- on various grounds. However he was unable to substantiate the same before the Tribunal and as such, the Tribunal allowed the claim petition awarding compensation in a sum of Rs.2,70,000/- payable with interest at the rate of 8% per annum from the date of petition till the date of deposit of entire amount. While doing so, the compensation which was awarded was calculated as under;

- i) Rs.30,000/- towards pain and suffering.
- ii) Rs.30,000/- towards loss of amenities.
- iii) Rs.50,000/- towards loss of marital life.
- iv) Rs.15,000/- towards medical expenses.
- v) Rs.5,000/- towards attendant charges.

- vi) Rs.3,000/- towards extra nourishment and food.
- vii) Rs.3,000/- for conveyance.
Rs.1,29,600/- towards loss of future income due to disabilities.

6. The said judgment of the Tribunal is impugned by claimant in this appeal on the ground that the compensation awarded by the Tribunal is miserly in nature and it has not compensated him properly under any of the heads on which he was seeking compensation, as such, the same is required to be reconsidered and reassessed by this Court.

7. In this proceedings, though the appeal is filed by one Sri Amirkhan A.Pathan, the learned Counsel Sri Girish Bhat (Enrolment No.KAR 1404/2017) assisted this Court by looking into the case law, in which compensation to the victim under similar circumstances is considered, and also making in-depth study as to how these kind of injuries are

considered for granting compensation in other countries was brought to the notice of this Court by conducting extensive research into the matter.

8. This appeal was heard in the presence of Mr.Girish Bhat who was supplementing the argument of Sri Amirkhan A.Pathan learned counsel for the appellant, and learned counsel Smt.Aruna R.Deshpande for respondent No.2 – APSRTC.

9. Admittedly, the case on hand is peculiar in nature. The injured claimant was aged 17 years as on the date of accident. The records would indicate that he was hale, healthy and pursuing his education at the relevant point of time. On the ill-fated day, when he was traveling as a pillion on a bicycle he was hit by a APSRTC DGT goods vehicle resulting in the injuries as stated supra. The nature of the injuries is so severe that it has literally changed the life of the victim and put him in a most miserable situation where even before he could

attain his manhood he is being relocated from male gender to neutral gender. In the sense, the removal of testis and penis has irreversibly taken away his manhood; it is more than the physical injuries, the mental trauma that he has gone through from the date of accident till the claim petition filed by him before the trial court is not at all appreciated properly by the Tribunal. It has looked into the case of claimant as if another claim petition, where the injuries suffered would come in the way of his earning capacity and future life. While taking such a view, the seriousness of the aftermath of the accident is completely lost. Therefore, in the fact and circumstances, this Court is of the considered opinion that the entire judgment rendered by the Tribunal is required to be reconsidered in the light of pleadings and evidence available on record.

10. Learned Counsel Sri Girish Bhat would bring to the notice of this Court that the loss of reproductive organ and consequential effect of the same on the claimant is not

traceable to any of the provisions either under the Motor Vehicles Act or the Workmens' Compensation Act, where the injury to other limbs are considered in depth. He would try to take this Court through the Workers Compensation Act, 1951 of the Australian Capital Territory as guideline to consider the prayer of the claimant for the assessment of the injuries suffered by him vis-à-vis the compensation payable thereto. While doing so, he would also bring to the notice of this Court the report of the Medical Journal by George Krucik, MD, who has submitted a medical review in April, 2014 which is traceable to the website in <https://www.healthline.com/health/low-testosterone/effects-on-body#1>, a print out of which is taken from that is placed before the Court. By relying upon that, he would try to impress upon this Court that testis is the main organ in the body which produces testosterone which deals with the libido behavioral traits and also the control center of the body with

reference to production of hypothalamus. The report would indicate that the testosterone which is an important male hormone would affect everything in men from the reproductive system and sexuality to muscle mass and bone density and that it also plays a role in the behavior pattern, which according to the report would be at its peak in the late teens and starts descending up to the age of 30 years and would get stabilize instantly. The claimant herein has suffered the aforesaid accident resulting in removal of his testis at the height of his teens i.e., at the age of 17 years thereby indicating that removal of the same has taken away his manhood and he is reduced to the level of a person of neutral gender thereby indicating that he can never ever have any pleasures which a normal healthy man would experience in his life with reference to marital / sexual life and also the level of confidence which gets built around that. He would further argue that the loss of testis and penis would reduce him to the level of a eunuch causing a social stigma with which

he will have to live in the society and get himself identified in the circle of friends with whom he lived and was brought up. He would also state that in the social circle he would be treated as 'pariah' and the said social stigma is far more damaging, than the loss of earnings and all other mundane things which would come in the way of his normal life. Therefore, he would state that any amount of compensation that is awarded to him would not compensate for the loss that he has suffered in the said accident.

11. Though this court would accept the said arguments, it is seen that the same cannot be compensated in any other terms other than bringing it within the frame work of compensating the claimant financially. It is in this background, this Court would rely upon an unreported judgment of the Hon'ble Apex Court, dated 01.07.2013 rendered in the matter of G.Ravindranath @ R.Chowdary Vs. E.Srinivas & another in Civil Appeal No.5520 of 2013 (Arising out of SLP(C) No.14794 of 2012), where under similar circumstances, the Apex Court has considered awarding compensation to the claimant who was also of around similar age of 19

years, the compensation was considered to him in a sum of Rs.2,20,000/- towards expenses incurred for treatment since the said person had taken treatment in private hospital and a sum of Rs.6,00,000/- towards future medical expenses including hospitalization, medicine, attendant charges etc. For pain, suffering and trauma he was awarded Rs.3,00,000/-. For loss of amenities and prospects of marriage he was granted another sum of Rs.4,00,000/-. For loss of expectation of life, loss of future earnings he was granted another sum of Rs.5,00,000/-.

12. Sri Girish Bhat, learned counsel would state that this could be taken as the base for considering the compensation payable to the complainant in this proceedings. He would also state that while considering compensation to the claimant, the other aspects, which were not considered by the Apex Court as the said things were not urged before the Apex Court, should also be considered by this Court from the point of social stigma that the claimant has to live for rest of the life and also the unseen social ban which he has to face for the rest of his life.

13. It is in this background this court would reassess the compensation payable to the claimant in this matter independently taking the aforesaid judgment as the basis. While doing so, the salient features of the said case and also of this case are also required to be considered.

14. From reading of the judgment of Apex Court, it is seen that in the aforesaid case, the damage was only to the scrotum, but penis was not amputated; whereas in the instant case, the situation of the claimant is far more worse than that of the claimant in the said proceedings before the Apex Court. Further, there is nothing on record to demonstrate whether the potency of the penis could be brought to its normal condition. However, the Apex Court has considered grant of Rs.6,00,000/- towards future medical expenses in that behalf.

15. In the instant case, as it is seen from the record, the penis being completely removed up to its roots and testis being taken away,

whether same could be transplanted or the penis could be rebuilt is not demonstrated either by the claimant or by the doctor who has given evidence. Therefore, that also will have to be taken into consideration by this Court.

16. It is in this background, this court would venture into considering awarding of compensation to the claimant independently taking the aforesaid judgment of the Supreme Court only as base to ensure that just, proper and reasonable compensation is provided to the claimant herein. Therefore, in the instant case, this Court would retain the compensation of Rs.15,000/- awarded to claimant towards medical expenses as admittedly he was treated in a Government Medical Hospital for more than three months.

17. When it comes to the attendant charges, nutritious food and conveyance and all other things are concerned, the compensation awarded by the Tribunal at Rs.5,000/-, Rs.3,000 and Rs.3,000/- is abysmally low, and

the same is together considered at Rs.35,000/- in the instant case.

18. Now coming to the loss of pain, suffering and trauma during the period when he underwent treatment in the hospital for more than three months, the compensation awarded in a sum of Rs.15,000/- is enhanced to Rs.3,00,000/- as it was considered by the Apex Court in the aforesaid matter.

19. With reference to loss of amenities and prospects of marriage, this court would consider that in the light of the fact that penis being completely removed from the base and scrotum being removed, there is no chance of marriage or even sexual activities even otherwise. Therefore, he has completely lost the said pleasure for the rest of his life for which the compensation is considered in a sum of Rs.6,00,000/-.

20. The medical report, which is referred to supra, would indicate that the loss of production of testosterone at such young age

would have its effect on the overall behavior pattern, life expectancy and also the physical fitness of the man which should be considered as amenities for which no compensation is awarded. Therefore, another sum of Rs.5,00,000/- is awarded towards loss of amenities.

21. Now coming to the aspect of social stigma that claimant will have to face for the rest of his life. Admittedly, the unseen ban from the group of men in not accepting him in their company for his physical condition which has reduced him to the level of a person of neutral gender or eunuch cannot be denied. The social stigma will follow him for rest of his life. For that, he will have to be compensated. Accordingly, another sum of Rs.4,50,000/- is awarded towards that. While doing so, this court would also take into consideration the loss of earning capacity due to the aforesaid circumstance and also loss of future earning

capacity as it was considered by the Court below which is quantified at Rs.1,29,600/- is increased to Rs.5,00,000/- as it is considered by the Apex Court in the matter referred to supra.

22. With this, the claimant would be entitled to revised compensation in a sum of Rs.24,00,000/- as against Rs.2,70,000/- awarded by the Tribunal. The aforesaid revised compensation shall carry interest at the rate of 6% per annum from the date of petition till the date of deposit of the entire amount.

23. At this juncture, the learned counsel for the respondent-insurer would state that the original compensation which was awarded by the Tribunal in a sum of Rs.2,70,000/- with interest is already paid. Therefore, what is now required to be paid is Rs.21,30,000/- which is the enhanced compensation. The same shall be paid with interest within four weeks from this day by depositing the same before the MACT-II, Ballari.

24. Respondent No.2 is hereby directed to deposit the enhanced compensation of Rs.21,30,000/- with interest in disposed of MVC.No.1346/2011 on the file of M.A.C.T-II, Ballari, which shall be considered for releasing in favour of the claimant in the following manner.

25. From out of the total compensation to be deposited, a sum of Rs.24,00,000/- (which includes principal amount of Rs.21,30,000/- and a portion of the accumulated interest) shall be deposited in any nationalized Bank for a period of ten years with a right to receive interest periodically and the balance amount which is accumulated towards interest shall be released in his favour.

26. While awarding compensation to claimant, this court would also award an additional sum of Rs.25,000/- towards advocate's fee to Sri Girish Bhat who assisted this Court in conducting this matter.

27. However, with reference to the cost of Rs.25,000/- which is awarded towards advocate fee shall be released in favour of the learned Counsel Sri Girish Bhat (Enrolment No.KAR1404/2017) and the said amount shall be deposited in this appeal in the registry of this Court, which shall be released in his favour immediately thereafter on production of a voucher by him seeking release of the amount and the same need not be placed before this Court for further order for release of the same which shall be considered by the Registry as and when it is deposited.

Accordingly, the appeal is disposed of in the aforesaid terms.