

(2011) 09 BOM CK 0158
In the Bombay High Court
Case No : First Appeal No. 186 of 2002

Aneefa Alias Hanifa

APPELLANT

Vs

Govind Naik, Mohamad Ram Padasath Pandey and The New
India Assurance Company Ltd.

RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Citation : (2011) 09 BOM CK 0158

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : S.S. Kakodkar and P. Kakodkar, for the Appellant; E. Afonso, for the Respondent

Judgement

A.P. Lavande, J.—By this appeal, the Appellant-claimant challenges the judgment and Award dated 2nd April, 2002 passed by the Motor Accident Claims Tribunal, South Goa, Margao in Claim Petition No. 398/1995 filed by the Appellant-claimant.

2. The Appellant who was a pillion rider on the motorcycle bearing No. GA-02-C-3501 driven by one K.T. Mohammed, met with an accident on 26th May, 1995 at about 9.00 p.m. As they were proceeding from Vasco towards Zuarinagar, the motorcycle dashed against the truck bearing No. GDS-2581, coming from the opposite direction, driven by Respondent No. 1, owned by Respondent No. 2 and insured with Respondent No. 3. The claimant filed Claim Petition No. 398/1995, claiming compensation of Rs. 98,000 /-(Rupees ninety eight thousand only) which was contested by the Respondents.

3. The Tribunal framed the following issues:

1. Whether the claimant proves that the accident took place on account of rash and negligent driving of vehicle No. GDS-2581 ?

2. Whether the claimant proves that the claimant suffered permanent disability

on account of the said accident ?

3. Whether the claimant proves that the claimant is entitled for compensation of Rs. 98,000/- ?

4. What order ?

4. In the claim petition, the Appellant-claimant examined 5 witnesses, including himself as CW.1, CW.2 Kunjuman Nair, CW.3 Rajan Nair, CW.4 Babu Nazar and CW.5 Dr. Ponraj K. Sundaram. On the basis of the evidence brought on record, the Tribunal held that the accident took place on account of the rash and negligent driving of the truck No. GDS-2581 by Respondent No. 1 and also held that the claimant suffered permanent disability on account of the accident. The Tribunal assessed the compensation at Rs. 62,000/-with 9% interest thereon from the date of the petition, till payment. Aggrieved by the inadequacy of the compensation granted, the claimant-Appellant has filed the present appeal.

5. Mr. Kakodkar, learned Counsel for the Appellant-claimant submitted that the compensation granted is inadequate, more particularly under the head "permanent disability" inasmuch as the evidence of PW.5 Dr. Sundaram discloses that after the accident, the claimant was unconscious and the CT scan had shown contusions of the right frontal and parietal lobes of the brain and the claimant was treated conservatively. The evidence Dr. Sundaram discloses that the claimant had caused damage to the brain cells and there was no treatment to regain the lost cells. Mr. Kakodkar, therefore, submitted that the compensation granted under the head "permanent disability" deserves to be increased, having regard to the fact that the evidence led by the claimant who at the time of the accident was hardly 18 years, shows that his memory was affected. Learned Counsel placed reliance on the Judgments of the Apex Court in the case of Raj Kumar v. Ajay Kumar and Anr. 2011 (1) All MR 402; and in the case of R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. 1995 (1) T.A.C. 557 (SC).

6. Per contra, Mr. Afonso, appearing for Respondent No. 3 supported the impugned judgment and award and submitted that the compensation granted is adequate and, therefore, no interference is warranted with the impugned judgment and award.

7. I have carefully considered the rival submissions, perused the relevant record and the Judgments relied upon. In view of the submissions made, the following point arises for termination in this appeal:

Whether the compensation granted by the Motor Accident Claims Tribunal is inadequate ?

8. The Tribunal has arrived at a figure of Rs. 62,000/-, as compensation after awarding compensation under different heads, as below:

For medical treatment

... Rs. 2,250/-

For transportation

... Rs. 1,000/-

for loss of salary on the basis

of notional loss.

... Rs. 3,750/-

For pain and suffering

... Rs. 15,000/-

For permanent disability

... Rs. 40,000/-

Total

... Rs. 62,000/-

9. In so far as assessment of compensation under the first four heads is concerned, I do not find any infirmity in the award passed by the Tribunal and in my considered opinion, the Tribunal has correctly assessed the compensation under the said four heads. In so far as the compensation amount of Rs. 40,000/- in respect of the permanent disability is concerned, the evidence of the claimant and that of PW.5 Dr. Sundarm disclose that on account of the accident memory of the claimant has been affected. The evidence of Dr. Sundaram further discloses that he had examined the claimant on 16/3/1999 and although he had found that there was no neurological deficit, however, the claimant complained of giddiness, impaired memory, headache and the complaints were suggestive of post-concussion syndrome, which was not rateable as per the prevailing standards. His evidence further discloses that although the brain normally regenerates after the injury, in case of the claimant damage showed that the brain cells were lost and there was no treatment to regain the said lost cells. He opined that the claimant's memory would not come back to 100%. He further stated that the claimant had laceration on the forehead as his CT scan had shown multiple contusions of the brain. The above evidence clearly establishes that there is serious impairment of the memory of the claimant. In my considered opinion, it would be just and proper to award an additional compensation of Rs. 10,000/- under the head "permanent disability", having regard to the fact that the Appellant-claimant will not be able to regain his 100% memory during his lifetime and to that extent the impugned judgment and award stands modified. Rest of the award is maintained.

10. The appeal is partly allowed to the extent that the Appellant shall be entitled to an additional amount of Rs. 10,000/- under the head "permanent disability". Rest of the Award is maintained. Respondent No. 3 Insurance Company shall deposit an additional compensation of Rs. 10,000/- within a period of eight weeks, before the Tribunal. It is made clear that the said amount shall not carry

any interest, if the amount is deposited within eight weeks. If the amount is not deposited within eight weeks, Respondent No. 3 would be liable to pay interest at the rate of 9% p.a. after the period of eight weeks.

11. The appeal stands disposed of in the aforesaid terms.