(2012) 10 DEL CK 0075

In the Delhi High Court

Case No : Mac. App. 738 of 2011

Cholamandalam MS General Insurance Company Ltd. APPELLANT

Vs

Smt. Joginder Singh and Others RESPONDENT

Date of Decision : 15-10-2012

Acts Referred:

Citation : (2012) 10 DEL CK 0075

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant; Bhupesh Narula, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs. 10,20,200/- awarded in favour of the First Respondent for having suffered injuries in a motor vehicle accident which occurred on 19.02.2010. The finding on negligence is not challenged by the Appellant Insurance Company; thus, the same has attained finality.

2. The extent of the injuries is described on page 6 of the impugned judgment which is extracted hereunder:-

.....As per MLC petitioner had suffered injuries on the right leg (thigh), right hand and chin. Petitioner was admitted in Maharishi Balmiki Hospital on 20/02/10 discharged on 30/03/10 with fracture of neck of femur bone of the right leg. Petitioner was again admitted on 03/07/10 with report of failed fixation of femur bone (right). Implant was removed, bone graft was carried out on 14/07/10 and petitioner was discharged on 21/07/10. On 30/07/10 DHS removal and screw was carried out. On 28/08/10 it is reported that the implant was in proper condition but bone had not united. On 22/09/10 right leg was reoperated, implant removed and the fracture was reported to have been united. There is no further treatment record. As per disability certificate Ex. PW1/30 petitioner has suffered 50% permanent disability of the whole body due to malunion of neck of the femur, stiffness of hip and pain and shortening of right lower limb......

3. The Claims Tribunal awarded a compensation of Rs. 10,20,200/-, which is tabulated hereunder:-

4. The award towards medical expenses, special diet, conveyance and attendant charges is not disputed. The Appellant Insurance Company disputes Respondent No. 1''s income and the extent of disability. It is urged that the compensation awarded towards loss of income, loss of future income and the compensation awarded towards non-pecuniary damages is exorbitant and excessive.

5. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as a tractor driver at Hissar and was earning Rs. 8,000/- per month. The Claims Tribunal, in the absence of any cogent evidence with regard to deceased''s income took the Minimum Wages of an unskilled worker applicable in the State of Haryana to compute the loss of income and the loss of future earning capacity.

6. In his examination-in-chief, the First Respondent testified that he used to drive a tractor in the fields of various farmers and was earning Rs. 8,000/- per month from the said work at the time of the accident. In cross-examination, the witness deposed that he used to drive a tractor in the fields in village Sishana, Sonipat. Normally, he was working daily but he had no work on certain days. He stated that he was employed with Satbir Singh, who was owner of the tractor.

7. Admittedly, the First Respondent did not file any documentary evidence with regard to his income nor did he produce anybody from the fields or the owner of the fields where he was employed. But, at the same time, it was not disputed that the First Respondent was working as a tractor driver. The Minimum Wages of a skilled worker in the State of Haryana as per the Notification issued by the Haryana Govt. were Rs. 187/- per day. On 26 working days, the same would come to Rs. 4862/- per month.

8. Otherwise also, since it was not disputed that the First Respondent was working as a tractor driver, it would be reasonable to hold that the First Respondent would be earning at least Rs. 5,000/- per month from his profession as a tractor driver. Thus, the compensation of Rs. 35,214/- for loss of income for seven months cannot be faulted.

9. As far as loss of future income is concerned, the Claims Tribunal granted loss of earning capacity to the extent of 50% and also made an addition of 50% on account of inflation.

10. Learned counsel for the Respondent Claimant urges that the loss of earning capacity should have been taken as 75% as it was proved by the examination of PW-2 Dr. S.P. Sharma that the First Respondent would not be able to drive any vehicle in future due to disability. Reliance is placed on Raj Kumar Vs. Ajay Kumar and Another, where in the loss of earning capacity on account of amputation of the hand of a driver was taken as 75%.

11. While awarding loss of earning capacity, the Court has to see the possibility of alternative employment. In the instant case, the injured was working in the fields. He suffered permanent disability in respect of his right lower limb on account of malunion of shaft femur with stiffness of right hip and shortening of his right lower limb. In the circumstances, considering the chances of alternative employment and the age of the First Respondent the loss of future earning capacity was rightly taken as 50% by the Claims Tribunal.

12. Admittedly, there was no evidence with regard to the First Respondent''s future prospects. Thus, an addition of 50% in his (the First Respondent''s) income was not justified. In view of the judgment of Santosh Devi Vs. National Insurance Company Ltd. and Others, an increase of 30% could have been given on account of inflation.

13. The loss of future earning capacity thus comes to Rs. 6,24,000/- (5,000/- + 30% x 12 x 16 x 50%).

14. The Claims Tribunal awarded a compensation of Rs. 1,00,000/- towards pain and suffering and Rs. 50,000/- each towards loss of amenities, disfigurement and loss of expectations in life.

15. Keeping in view the long duration of treatment, successive surgeries underwent by the First Respondent and the period of recovery and the fact that there was malunion of fracture of shaft femur and the First Respondent suffered permanent stiffness in right hip and shortening of his right lower limb, the compensation of Rs. 1,00,000/- awarded towards pain and suffering and Rs. 1,00,000/- (Rs. 50,000/- each towards loss of amenities, disfigurement and loss of expectations in life) seems to be just and reasonable.

16. The compensation awarded is re-computed as under:-

17. The overall compensation is reduced from Rs. 10,20,200/- to Rs. 9,19,700/-.

18. The excess amount of Rs. 1,00,500/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

19. The statutory deposit of Rs. 25,000/- be refunded to the Appellant Insurance Company.

20. The compensation awarded shall be payable to the First Respondent in terms of the order passed by the Claims Tribunal.

21. The Appeal is allowed in above terms. Pending Applications also stand disposed of.