

(1989) 01 BOM CK 0030
In the Bombay High Court
Case No : F.A. No. 97 of 1987

Dilip Ranga Geunkar

APPELLANT

Vs

Narayan Camu Volip and Others

RESPONDENT

Date of Decision : 18-01-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1989) 1 ACC 541 : (1990) ACJ 854

Hon'ble Judges : G.F. Couto, J

Bench : Single Bench

Advocate : S.G. Dessai, for the Appellant; S.G. Naik, for the Respondent

Final Decision : Allowed

Judgement

G.F. Couto, J.—This appeal by the owner of the vehicle involved in the accident is directed against the judgment dated 31st July, 1987, whereby the learned Presiding Officer of the Motor Accidents Claims Tribunal, South Goa, allowed the application filed by the respondents herein and granted a compensation of Rs. 29,000/- to be paid exclusively by the appellant.

2. On 5th March, 1982, at 7.30 a.m., an accident took place near Sulkorna. One small boy by name Vishwas, son of the respondents, was proceeding at that time to school from his house situated at Sulkorna. He was walking on the left side of the tarred road when the appellant came from the opposite direction driving the scooter No. CDC 4143. He dashed against the said Vishwas and caused him several injuries, and in particular, fracture of his right leg. An application for compensation u/s 110-A of the Motor Vehicles Act was filed by the respondent Nos. 1 and 2 to get compensation for their son, as according to them, the accident took place as a result of rash and negligent driving of the vehicle by the appellant. They claimed a total compensation of Rs. 15,000/- only.

3. The appellant filed his written statement bringing a case that no accident took place involving his scooter. In fact, the injured Vishwas sustained the injuries

mentioned in the petition in an accident met with by the bus in which he was travelling. The said bus fell in a ditch and Vishwas was thrown out of the vehicle, in the process sustaining the fracture of his leg.

4. After evidence was recorded, the learned Presiding Officer of the Claims Tribunal recorded a finding that the accident was due to the exclusive fault of the appellant, who drove his scooter in a rash and negligent manner. Thereafter, addressing himself to the question of compensation to be allowed, the learned Judge held that the petitioner was entitled to a total compensation of Rs. 32,500/-, but considering that the said compensation was to be paid in a lump sum, reduced it to Rs. 29,000/- plus interest at the rate of 12 per cent per annum from the date of the claim till satisfaction. He also held that there was no liability of the insurance company, as it has been brought on record that the appellant was not holding a valid driving licence at the relevant time of the accident, although prior to it, he had been holding a learner's licence. He held that under the terms and conditions of the policy, there exists liability of the company only when a vehicle is driven by a person who holds a valid driving licence.

5. Mr. Dessai, the learned Counsel appearing for the appellant, in all fairness, does not challenge the findings of the Tribunal as regards the rash and negligent driving of the scooter by the appellant. However, he contends that the Tribunal was in error in two counts, namely, (1) in awarding a compensation higher than the one claimed by the petitioners, and (2) in holding that there was no liability of the insurance company. As regards the first aspect, the learned Counsel placing reliance on the decision of the Division Bench of this court in *Municipal Corporation of Greater Bombay and Another Vs. Kisan Gangaram Hire and Others*, , submitted that, although there is no bar for the Tribunal granting a compensation higher than the one claimed in the petition, nonetheless an amount higher than the one claimed can be granted only after giving a proper notice to the parties who would be liable to pay it and were entitled to contest the claim, even leading evidence therefore .. In the present case, no notice of whatsoever nature was given to the appellant and the insurance company, and the Tribunal on its own went on discussing the question of compensation under different heads and granted a compensation of Rs. 29,000/- which is highly in excess of the claim made by the petitioners. Insofar as the second point is concerned, the learned Counsel submitted that if once a person had held validly a driving licence, that circumstance will constitute a bar to the stand of an insurance company that there is no liability, because at the relevant time of the accident such person had ceased to hold a licence. In this connection Mr. Dessai relied upon the decision of the Division Bench of this court in *New India Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others*, . He urged that it is common ground that the appellant had been holding validly a learner's licence a little before the accident. Thus, the fact that the said learner's licence had not been renewed at the time of the accident is irrelevant and the insurance company cannot take shelter on the clause inserted in the policy that its liability

exists only when the vehicle is driven at the relevant time of the accident by a person who validly holds a licence.

6. Respondent Nos. 1 and 2 though duly served did not put up an appearance. The insurance company, however, is represented today by Mr. Naik, who fairly conceded that the grievances of Mr. Dessai have substance and, therefore, this appeal is to be allowed in the lines of the submissions made by Mr. Dessai.

7. It is seen that the petitioner/respondent Nos. 1 and 2 herein had sought a compensation of Rs. 15,000/- only, on account of the accident suffered by their son. In spite of this and the fact that the issue framed as regards the compensation was whether the amount of compensation claimed was due, reasonable and adequate, the learned Judge proceeded to discuss the matter on basis of that evidence and felt that on account of the general and special damages, the applicants' son Vishwas was entitled to a total compensation of Rs. 32,500/-. Then, bearing in mind that the said amount of compensation was to be paid in lump sum, he reduced it to Rs. 29,000/-. He observed that although the compensation claimed was only of Rs. 15,000/-, the fact remains that the Tribunal was not, strictly speaking, functioning as a court of law but as a court of equity, and therefore, he was granting the said compensation of Rs. 29,000/-, considering the ends of justice.

8. The question as to whether the Tribunal can grant a compensation in excess to the one claimed by a petitioner in his application u/s 110-A of the Act, fell for consideration before the Division Bench of this court in *Municipal Corporation of Greater Bombay and Another Vs. Kisan Gangaram Hire and Others*, . Dealing with it, the Division Bench observed that what the applicant is expected to do while filing such an application, is to mention an estimated amount and that amount does not, in any manner, restrict the powers of Tribunal to determine what is the just compensation. In fact, the amount of compensation claimed in the petition does not require the applicant to state the amount claimed under different sub-heads, as such amounts of compensation are nothing but the particulars of the claim made and cannot always be calculated precisely. The amount of compensation is a consequence of the accident which is the cause of action and that amount keeps varying and fluctuating even till the date of the decision of the application. Hence, enough leeway is necessary in matters of both claiming and granting compensation, and in all cases, the quantum is to be justified by the claimant by leading necessary evidence. The Division Bench further observed that it is neither fair nor realistic to insist that the claimant shall not claim more than what has been claimed by him at the initial stage or that in spite of the evidence on record, the Tribunal shall not grant more than what was claimed in the application. Then, in paragraph 11 of the judgment, the Division Bench laid down what is the procedure to be followed in such cases. It reads as under:

The only question that requires to be considered is of the procedure that should be followed by the Tribunal before awarding higher compensation. We are of the

view that in all such cases a proper notice or intimation should be given to the opposite party so that the opposite party has an opportunity to contest the claim even by leading evidence, if necessary. Ordinarily the Tribunal should take a written application from the claimant. This application need not necessarily be in the form of an amendment to the original application. Since as stated earlier the amount of compensation claimed or the specific heading under which it is claimed is no more than in the nature of the particulars of the claim, a variation in the same does not change the cause of action, which is the accident. It only furnishes additional material for assessing the claim. The additional claim should as far as possible be taken in writing which should also indicate the reasons why the additional claim is made. Where it is not possible to take the additional claim in writing, the reasons for the same should be recorded. A copy of such written application should be served on the opposite party to give it an adequate notice of the excess amount claimed and to contest it, if it so desires. Where the application is not taken in writing, the Tribunal should make a note of it in its diary and give notice of the claim similarly to the other side.

It may also happen in certain cases that on account of ignorance or otherwise, a party may not apply for higher compensation. If, however, the Tribunal feels at any stage that the party is entitled to higher compensation, the Tribunal should ask the claimant concerned to make an application for the same in writing and a copy of the application should be served on the opposite party to enable it to contest the claim for higher amount.

If these safeguards are followed, the powers conferred on the Tribunal for awarding compensation higher than that claimed in the original application would not be abused as is feared.

The procedure which we have laid down above would be applicable hereafter and the decisions of the Tribunal given earlier would not be rendered invalid only on account of the fact that the aforesaid procedure was not followed before awarding the compensation.

There is no dispute that the above procedure as laid down by the Division Bench was not followed by the Tribunal in the present case, and in particular, no notice was given to the respondents in the petition to put up their case, if any, and to lead evidence, if they so wished. This being so, it is manifest and clear that the Tribunal was not justified to enhance the compensation and grant Rs. 29,000/- instead of the claim of Rs. 15,000/- only by the petitioners.

9. As regards the second contention of Mr. Dessai, the question was laid to rest by the decision of the Division Bench of this court in *New India Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others*, . In that case, the question as to whether holder of a learner's licence can be considered as duly licensed fell for determination of the Division Bench. After addressing themselves to the relevant provisions of the law, the learned Judges constituting the Division Bench observed that they did not think that it would be appropriate to treat the holder

of a learner's licence as not licensed for the purposes of Sub-clause (ii) of Clause (b) of Sub-section (2) of Section 96 of the Act, as it will be in keeping with the purposes of that section to give the words "duly licensed" their ordinary and normal meaning, particularly when the law itself has not excluded the licence of a learner from the category of licences. Therefore, the Division Bench held that the term "duly licensed" would include the holder of a learner's licence, Then, the Division Bench observed that the proviso included in the insurance policies as to who would be the driver of the vehicle, noted that such provisos are to be read in the light and context of the provisions of Section 96 (2) (b) (ii) of the Act and, therefore, a person once duly licensed and not disqualified, cannot be excluded from being a driver of the vehicle. In the present case, it is not in dispute that the appellant had been holding a learner's licence and that the said learner's licence had expired at the relevant time of the accident. It is nobody's case that he has been disqualified. This being so and on the strength of the aforesaid ruling of the Division Bench which is binding on me, I hold that the insurance company was liable to pay the compensation to the limit established in the insurance policy.

10. The result, therefore, is that this appeal partly succeeds and consequently the compensation granted to Vishwas is reduced to Rs. 15,000/- only, to be paid jointly or severally by the petitioner and the third respondent herein, with interest at the rate of 12 per cent per annum from the date of the petition till the payment. There will be no order as to costs, in the circumstances of the case.

11. Mr. Naik prays that 30 days' time be granted to the third respondent to make the payment. The application is granted and the insurance company should deposit the amount of compensation awarded within 30 days in this court.