

(2023) 02 DEL CK 0129
In the Delhi High Court
Case No : MAC.APP. No. 452 Of 2013

Iffco Tokio General Insurance Company Ltd
Vs

APPELLANT

Satish Chander Madhok & Ors

RESPONDENT

Date of Decision : 17-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 21
Motor Vehicles Act, 1988 — Section 173

Citation : (2023) 02 DEL CK 0129

Hon'ble Judges : Gaurang Kanth, J

Bench : Single Bench

Advocate : Pankaj Gupta, Suman Bagga, Sanjeev Behl

Final Decision : Dismissed

Judgement

Gaurang Kanth, J

1. The present appeal has been preferred by the Appellant under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 12.02.2013 ("impugned award") passed by the Court of learned Presiding Officer, Motor Accident Claims Tribunal-II, Dwarka Courts, New Delhi.

2. Facts borne out of the records are that on 16.09.2010, the petitioner was coming to his house on foot and at about 07:50 p.m. when he was crossing the road while coming from Sector-4, PNB Apartments, Dwarka and walking towards Sector-3 Neat Matiala Bus Stand, Dwarka, Delhi. All of a sudden, the offending vehicle bearing no. KA-09EA-5202, motorcycle Bajaj pulsar, driven by the Respondent in rash and negligent manner came from Sector-3 Road and hit the petitioner with great force. As a result of the impact, the petitioner sustained grievous injuries all over his body and fell down on the road. Being physically, mentally and financially affected by the accident, the injured (now deceased) filed a claim petition before the learned Claims Tribunal seeking a compensation of Rs. 25 lacs.

3. By way of the impugned Award dated 12.02.2013, the learned Claims Tribunal awarded a compensation of Rs. 10,87,196/- with interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount and directed the Insurance Company to pay the entire awarded amount within a period of one month. The learned Claims Tribunal granted the compensation under the following heads:-

Head

Amount

Pain and Suffering

Rs. 75,000/-

Medical Bills

Rs. 3,00,833/-

Wheel Chair Charges

Rs. 4,440/-

Future Compensation Payment

Rs. 60,000/-

Physiotherapy charges

Rs. 2,05,800/-

Attendant Charges

Rs. 1,00,000/-

Conveyance charges

Rs. 20,000/-

Special Diet

Rs. 10,000/-

Loss of Salary of deceased daughter

Rs. 1,11,123/-

Loss of Wages of deceased

Rs. 2,00,000/-

Total

Rs.10,87,196/-

SUBMISSION OF THE APPELLANT

4. Mr. Pankaj Gupta, learned counsel for the Appellant/Insurance Company contended that the Impugned Award is perverse and has been passed without appreciating the principles of law, documents and the evidence on record. Learned counsel for the appellant further contended that the learned Tribunal erred in relying on the testimony of PW-5 and awarding a lumpsum compensation of Rs. 2,00,000/- towards the head 'Loss of Wages' as there was no documentary proof placed on record to show that the injured (now deceased) was in service of Rama Steel Tubes Ltd. after 2008. Learned counsel for the appellant further contended that learned Claims Tribunal erred in awarding a compensation of Rs. 1,11,123/- as 'Loss of Salary suffered by the daughter' of the injured (now deceased) as she has already received the benefit of leave from her office to take care of her father {the injured (now deceased)}. Learned counsel further contended that the grant of compensation of Rs.1,00,000/- under the head 'Attendant Charges' was perverse and tantamount to duplication of compensation as the learned Tribunal has already awarded compensation of Rs. 1,11,123/- for the daughter of the petitioner for seeking leave for taking care of her father. Learned counsel further contended that the compensation awarded under the heads 'Physiotherapy Charges' and 'Attendant Charges' are awarded without documentary proof and are on a higher side. Learned counsel rested his arguments by contending that the compensation of Rs. 60,000/- under the head 'Future treatment' granted by the learned Claims Tribunal needs to be reduced as the injured died in the year 2013 during the pendency of the present appeal.

SUBMISSION OF THE RESPONDENT

5. Per Contra, Mr. Sanjeev Behl learned counsel appearing on behalf of Respondent No. 1 submitted that there is no perversity or illegality in the impugned Award. Learned counsel for the Respondent submits that the learned Claims Tribunal awarded the compensation based on the uncontroverted evidence adduced by the Respondent. Learned counsel further contended that the injured (now deceased) was working as a Senior Marketing Manager with Rama Steel Tubes Ltd. and was earning Rs. 25,000/- per month (which includes perks of Rs. 2,500/-) at the time of alleged incident. Learned counsel further submitted that compensation awarded under the head 'Loss of salary suffered by daughter' is distinct from the compensation awarded under the head 'Attendant Charges'. Regarding the physiotherapy charges, Future medical expenses etc, the Respondent adduced evidence. The Appellant failed to counter the same by adducing any evidence to the contrary. Hence, the impugned Award is based on the uncontroverted evidence adduced by the Respondent.

LEGAL ANALYSIS

6. This Court has heard the arguments advanced by learned counsel for both the parties and perused the documents on record relied upon by the parties.

7. The Appellant is challenging the impugned Award on the following grounds (i) Compensation of Rs. 2,00,000/- without documentary proof under the head 'Loss

of Wages' is arbitrary and illegal; (ii) Compensation of Rs. 1,11,123/- as 'Loss of Salary suffered by the daughter' of the injured (now deceased) is arbitrary and unjust as she has already availed leave from her office; (iii) Compensation of Rs. 1,00,000/- under the head 'Attendant Charges' is perverse and tantamount to duplication of compensation; (iv) Compensation awarded under the heads 'Physiotherapy Charges' without any documentary proof is perverse; and (v) Compensation of Rs. 60,000/- under the head 'Future treatment' needs to be reduced as the injured died in the year 2013 during the pendency of the present appeal.

8. Before dwelling into the arguments raised by respective counsels, at the outset we deem it appropriate to mention that the Motor Vehicles Act, 1988 (herein after referred to as 'the Act') is a beneficial legislation. The Hon'ble Supreme Court has time and again reiterated that the Act stipulates that there should be grant of "just compensation". Thus, it becomes a challenge for the court of law to determine "just compensation" which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance. The Courts should pragmatically compute the loss sustained which has to be in the realm of realistic approximation.

9. In the case of Pappu Deo Yadav Vs Naresh Kumar and Ors reported as 2020 SCC OnLine SC 752, the Hon'ble Supreme Court while dealing with the issue of granting compensation to an accident victim has held that severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life under Article 21) of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived. The relevant portion of the same reads as under:-

"In parting, it needs to be underlined that Courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim's having to live in a world entirely different from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the judge's mind, whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life under Article 21) of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived, hitherto. From the world of the able bodied, the victim is thrust into the world of the disabled, itself most discomfiting and unsettling. If courts nit-pick and award niggardly amounts oblivious of these circumstances, there is resultant affront to the injured victim."

(i) Whether the grant of Compensation of Rs. 2,00,000/- without documentary proof under the head 'Loss of Wages' is arbitrary and illegal?

10. Mr. Sanjeev Behl, learned counsel appearing on behalf of Respondent No. 1

submitted that there is no perversity in the impugned Award and contended that the injured (now deceased) was working as a Senior Marketing Manager with M/s Rama Steel Tubes Ltd. and was earning Rs. 25,000/- per month (which includes perks of Rs. 2,500/-) at the time of alleged incident. In order to substantiate his arguments, learned counsel relied upon the testimony of PW-2, the injured (now deceased) and PW-5, Mr. Raj Kumar Malik, Accounts Manager M/s Rama Steel Tubes Ltd.

11. For the purpose of determining this issue, it is relevant to examine the evidence of PW-2 and PW-5. PW-2, the injured (now deceased) during his cross-examination deposed that 'At the time of the accident I was working at M/s Rama Steel Tubes Ltd, Asaf Ali Road. I have been working since 1988'. PW-5, Mr. Raj Kumar Malik, Accounts Manager M/s Rama Steel Tubes Ltd. who proved (i) Ex. PW-5/3, salary and wages paid to the injured, (ii) Ex. PW-5/4, attendance record April-2010 to March-2012, (iii) Ex. PW-5/5, GPA in favour of the injured, (iv) Ex. PW-5/6, Form-16 issued to the petitioner, (v) Ex-PW-5/7, certificate showing that his term was extended till 31.12.2008. During cross-examination, PW-5 deposed that the injured had retired in the year 2001 and his services were extended by the company from time to time after his superannuation. As per Ex. PW-5/7, it is evident that the injured (now deceased) was employed in M/s Rama Steel Tubes Ltd. upto 31.12.2008. The witness further admitted that on the date of incident also, the injured (now deceased) was working in their company.

12. From a perusal of the evidences of PW-2 and PW-5, it is explicit that the injured (now deceased) was working with M/s Rama Steel Tubes Ltd. even after his superannuation. The attendance record produced on record also proves that the injured (now deceased) was working till the date of the incident. At the time of accident, deceased was 67 years of age and there was no working contract issued by the company in favour of the injured (now deceased) hence it cannot be presumed till how long he would have continued in the service. The learned Claims Tribunal after taking into consideration all the relevant documents and evidence on record has awarded a lump sum compensation of Rs. 2,00,000/-. In view of the above discussion, this Court is in agreement with the lumpsum compensation awarded by the learned Claims Tribunal under the head 'Loss of wages' and as such the argument raised by learned counsel for the appellant in the relation to reduction of the compensation stands rejected.

(ii) Whether Compensation of Rs. 1,11,123/- as 'Loss of Salary suffered by the daughter' of the injured (now deceased) is arbitrary and unjust as she has already availed leave from her office?

(iii) Whether Compensation of Rs. 1,00,000/- under the head 'Attendant Charges' was perverse and tantamount to duplication?

13. Mr. Sanjeev Behl, learned counsel appearing on behalf of Respondent No. 1 submitted that compensation awarded under the head 'Loss of salary suffered by daughter' is distinct from the compensation awarded under the head 'Attendant

Charges'. Learned counsel further submitted that the compensation for loss of salary has been awarded to the daughter as she remained on leave for the period from 17.09.2010 to 06.12.2010 which stood proved on record. He further contended that compensation for Attendant Charges have been awarded by the learned Claims Tribunal after taking into account the testimony of PW-1, PW-2 and PW-3 who have testified that an attendant, PW-1/Rajender was kept from the date of incident to take care PW-2/the injured (now deceased). As such the learned Claims Tribunal has correctly granted compensation under both the heads separately.

14. PW-3/Pooja Madhok, daughter of the injured (now deceased) by way of her evidence tendered by way of affidavit (Ex. PW-3/A) has categorically stated that 'The deponent could not attend her duties due to the injuries sustained by the petitioner in accident in question and remained at home from, the period 17.09.2010 to 06.12.2010. The salary/ perks of the deponent were also not paid to the deponent due to absence of the deponent from the duties'. During cross-examination, the witness confirmed her statement tendered by way of affidavit that she remained on leave from 17.09.2010 to 06.12.2010. No documentary proof or evidence has led by any of the respondents or the appellant before the learned Claims Tribunal to invalidate the statement made by PW-3 and as such remained uncontroverted. PW-3 further deposed that PW-1/Rajender has been engaged to take care of his father on a full time basis and he has been paid Rs. 650/- per day. The testimony of PW-3 also remained uncontroverted and no evidences either documentary or oral have been produced by the respondents and appellant herein to prove to the contrary. Moreover, PW-1/Rajender (Attendant) during his evidence tendered by way of affidavit (Ex. PW-1/A) stated that he was working full time, day and night, with the injured (now deceased) for remuneration of Rs. 650/- per day. He further stated that he was employed by the injured (now deceased) w.e.f. 17.10.2010. The statement made PW-1 remained uncontroverted. No evidence was led by any of the respondents or appellant in the present appeal to negate the statement of PW-1. Further, PW-2 (the injured) also entered the witness box and deposed on the same lines testifying that PW-1 was employed as his full day attendant w.e.f. 17.10.2010. The witness further corroborated his evidence during cross-examination. From a conjoint reading of the aforementioned evidence tendered by way of affidavits and also the examination-in-chief and cross-examination of PW-1, PW-2 and PW-3, it is beyond doubt that PW-3 remained on leave for the period from 17.09.2010 to 06.12.2010, for which she was not paid any salary and PW-1/Rajender was employed by them as an Attendant on full time basis to take care of the injured w.e.f. 17.10.2010. Accordingly, the arguments raised by learned counsel for the appellant challenging the compensation awarded for the head 'Loss of wages to the daughter' and 'Attendant charges' holds no ground and both are held to be distinct heads.

(iv) Whether Compensation awarded under the head 'Physiotherapy Charges' without any documentary proof is perverse?

15. Learned counsel for the respondent no.1 contended that the arguments raised by learned counsel for the appellant in relation to grant of compensation for 'Physiotherapy Charges' is contrary to record and without any basis. He further relied on the testimony of PW-4, Sh. Shyam Lal Bhatia, Physiotherapist who proved that the injured was under his treatment w.e.f. 17.10.2010. He further relied on the testimony of PW-3 daughter of the injured who vide Ex. PW-3/3 (colly) and Ex. PW-3/5 (colly) proved the bills of physiotherapist.

16. A perusal of the testimony of PW-4/Sh. Shyam Lal Bhatia, Physiotherapist demonstrates that he was practicing physiotherapist and the injured was under his treatment w.e.f. 17.10.2010 for a charge of Rs. 300/- per sitting. PW-3 proved the physiotherapy bills as Ex. PW-3/3 (colly) and Ex. PW-3/5 (colly).

17. Learned Claims Tribunal while dealing with the issue of physiotherapist has observed as under:-

"72. PW-7 Dr. Raj Kumar has stated that petitioner is in need of physiotherapy exercises. He is being given physiotherapy exercises by PW-4 Sh. Sham Lai Bhatia since 17.10.10 @Rs. 300/-per day.

73. Last bill of physiotherapy is of September, 2012. Though petitioner had filed additional bills on record till 22.01.13 but there is no bill of physiotherapy after September, 2012. It shows claimant is no more in need of physiotherapy.

74. Till September, 2012, claimant was spending Rs. 9000/- per month or Rs. 1,08,000/- p.a. on physiotherapy alone.

75. Physiotherap who is giving physiotherapy exercises to the petitioner is examined as PW-4. Bills of physiotherapy worth Rs. 2,05,800/- are on record. Therefore, claimant is granted a compensation of Rs. 2,05,800/- for Physiotherapy Charges."

18. The learned Claims Tribunal after examining the evidence as also the physiotherapy bills has granted the compensation of Rs. 2,05,800/- to the injured. It has been categorically recorded by the learned Claims Tribunal that Physiotherapy bills have been placed on record. The learned Claims Tribunal on being satisfied with the authenticity of the bills has granted the compensation under the head 'Physiotherapy Charges'. This Court is in agreement with the finding of the learned Claims Tribunal in relation to compensation under the head 'Physiotherapy Charges' and accordingly, rejects the argument of learned counsel for the appellant for reducing the same from the total compensation awarded by the learned Claims Tribunal.

(v) Whether Compensation of Rs. 60,000/- under the head 'Future treatment' needs to be reduced as the injured died in the year 2013 during the pendency of the present appeal.?

19. As discussed above, it is evident that the injured (now deceased) was under medical treatment and was undergoing physiotherapy. It was also proved on

record that he suffered disability for which he required support of an attendant. Taking into account all the factors, this Court does not deem it appropriate to interfere with the impugned Award with regard to reduction of compensation under the head 'Future Medical Treatment' and accordingly rejects the argument raised by the learned counsel for the appellant.

20. In view of the above discussion, this Court does not find any merit in the present appeal and same is accordingly dismissed.

21. Before concluding, this Court deems it appropriate to refer to the judgment of Hon'ble Supreme Court in the case of Skandia Insurance Co. Ltd. v. Kokilaben Chandravandan reported as (1987) 2 SCC 654, wherein the need for beneficial construction of the provisions of the Motor Vehicles Act, 1988 was emphasized by the Hon'ble Supreme Court in the following terms:-

"13. In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third-party risk by enacting Section 94? Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. ..In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the

dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation provision has therefore to be interpreted in the twilight of the aforesaid perspective.”

“14. What the legislature has given, the Court cannot deprive of by way of an exercise in interpretation when the view which renders the provision potent is equally plausible as the one which renders the provision impotent. In fact it appears that the former view is more plausible apart from the fact that it is more desirable. When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependents on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obeisance to, the doctrine of 'reading down' the exclusion clause in the light of the 'main purpose' of the provision so that the 'exclusion clause' does not cross swords with the 'main purpose' highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose.”

(emphasis supplied)

22. To give full effect to the beneficent nature of the Act, the Court must ensure that the compensation amount is disbursed to the claimants at the earliest.

23. The affidavit attached with CM No. 14927/2015 contains no objection from other legal heirs of the deceased for release of the awarded amount in favour of Ms. Pooja Madhok, legal heir of the deceased (the injured) is quantified to be 60% of the awarded amount. Further, as per office report, in terms of order dated 24.08.2015, an amount of Rs. 6,35,525.50/- towards 50% of the awarded amount has been released to the daughter of the injured (now deceased) namely Ms. Pooja Madhok. The Registry is directed to release the balance awarded amount along with interest accrued thereon to the legal heirs of the deceased (the injured) in equal proportion within a period of 4 weeks. It is further directed that the statutory amount, if any, alongwith interest be deposited in the present appeal and be released in favour of Delhi High Court Legal Service Committee within a period of 2 weeks.

24. With the above directions, appeal stands dismissed. No order as to costs.