

(2010) 04 BOM CK 0052
In the Bombay High Court
Case No : First Appeal No. 821 of 2009

Kamlabai Dabhalkar and Others

APPELLANT

Vs

Rahimunissa Abdul Sama and The Oriental Insurance
Company Ltd.

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 158(6), 166, 168

Citation : (2011) ACJ 2673 : (2010) 112 BOMLR 2486

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : K.S. Narwade, for the Appellant; D.N. Kukday and A.M. Qazi, for the Respondent

Final Decision : Allowed

Judgement

C.L. Pangarkar J.

1. Rule. Rule returnable forthwith. Heard finally with consent of parties.
2. All these three appeals have been preferred by the original claimants against the award passed by the Motor Accident Claims Tribunal Buldhana.
3. Facts giving rise to the appeals are as follows:

On 14.07.2000 all the deceased in the appeal boarded Autorikshaw No. MH 28-C/7214. They were to go to their village. While the autorikshaw was passing by the National Highway it is alleged that truck No. MWD-8561 coming from the opposite direction gave a dash to the said autorikshaw as a result of this autorikshaw was dragged by the said truck up to the distance of 30 ft. The occupants of the autorikshaw suffered injuries and died. The claimants contended that they were entitled to compensation of Rs. 10,00,000/- but restricted their claim to Rs. 1,00,000/- on account of paucity of funds to pay court fee. They however assured to pay court fee if the amount exceeding the

claim of Rs. 1,00,000/- is awarded by the Tribunal.

4. The said applications were opposed by the respondents- the owner of the truck and the Insurance Company.

5. The learned Judge of the Tribunal recorded the evidence and found that claimants were in fact entitled to more amount than what was claimed by them in the petition but the Tribunal ultimately passed award of Rs. 1,00,000/- since the claim was restricted by the claimants to Rs. 1,00,000/-. The claimants feel aggrieved by this order of not passing an award to the extent of the amount to which they were found to be entitled to.

6. I have heard the learned Counsel for the appellants and the respondent- Insurance Company.

7. The claimants had restricted their claim to Rs. 1,00,000/- though they had in fact pleaded that they were entitled to higher amount of compensation. I quote here the relevant pleadings in the claim petition:

year, and would have easily earned more than Rs. 10,00,000/- but as the claimant are not in position to make expenses for the huge amount, now for the time being, the claim Rs. 1,00,000/- & undertakes to pay the differences of the Tribunal fees, if the Hon"ble Tribunal grant enhanced compensation that claimed.

It is obvious that claimants in fact contend that they were entitled to more compensation but since they were unable to meet the expenses they were restricting the claim to Rs. 1,00,000/-. It is also clear from the pleadings that the claimants have assured to pay court fee if the Court found that they were entitled to any sum exceeding Rs. 1,00,000/-.

8. In these cases i.e. in First Appeal No. 912 of 2008 i.e. Claim Petition No. 202 of 2000 the Tribunal found that claimants were entitled to compensation of Rs. 1,94,000/- but passed an award of Rs. 1,00,000/- as the claim was restricted to that sum.

First Appeal No. 917 of 2008 i.e. Claim petition No. 182 of 2000 the Tribunal found that claimants were entitled to Rs. 1,48,500/- but again passed an award of Rs. 1,00,000/- only.

Similarly in First Appeal No. 821 of 2009 i.e. Claim Petition No. 237 of 2000 the claimants were entitled to Rs. 1,71,500/- but the award is for Rs. 1,00,000/-.

9. Thus although upon consideration of the evidence tendered before it Tribunal found as a fact that claimants were entitled to more compensation. Tribunal awarded that sum only, which was actually claimed in the petition. Therefore, the question as to whether the Tribunal can and could have awarded the compensation beyond the claim laid. To my mind the answer has to be in the affirmative. From the wording of Section 168 of the Motor Vehicles Act, it is clear that the Court should award that compensation which appears to it to be just. Once the Court comes to a conclusion about just amount of compensation that

has to be awarded by the Tribunal. The award of any sum which is less than just would in fact be unjust. The payment of deficit court fee also cannot come in the way of the Court as the Court can always direct the deficit court fee to be recovered from the compensation deposited in Court or send the copy of the award to the Collector to recover the deficit court fee as arrears of land revenue. In the instant case the claimants had specifically pleaded that they were entitled to more compensation and had shown their willingness to pay deficit court fee. In such circumstances, I find that there was infact no impediment in passing the award to the extent to which the compensation was determined by the Court as a just compensation.

10. Supreme Court had an occasion to deal with similar situation in Nagappa Vs. Gurudayal Singh and Others, . The Court observed as under:

7. Firstly, under the provisions of Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act"), there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is-it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made [a] by the person who has sustained the injury; or [b] by the owner of the property; or [c] where death has resulted from the accident, by all or any of the legal representatives of the deceased; or [d] by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the provisions of Sub-section [1], all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said section is Sub-section [4] which provides that "the Claims Tribunal shall great any report of accidents forwarded to it under Sub-section [6] of Section 158 as an application for compensation under this Act". Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed.

10. Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must b e "just". There is no other limitation or restriction on its power for awarding just compensation.

15. Mr. P.K. Chakravarty, the learned Counsel appearing for the insurance company, in support of his contention that the Tribunal has no jurisdiction to

award higher amount of compensation than what is claimed even though it is not likely to cause prejudice to the insurance company, heavily relied upon the decision rendered by the Full Bench of the High Court of Gujarat in *Dr. Urmila J. Sangani v. Pragjibhai Mohanlal Luvana* 2000 SCJ 1125 (Guj). In that case the High Court after considering relevant decisions on the subject observed thus:

...We may mention that when the claimant feels that he is entitled to more compensation than what is claimed in the petition, it is always open to him/her to amend the claim petition and if the same is in consonance with the equity, justice and good conscience, there is no reason why the Claims Tribunal should not grant amendment. Before compensation more than claimed is awarded, the opposite parties should be put to notice, the requisite additional issue/issues should be raised and the parties should be permitted to adduce their evidence on the additional issues, but if no such opportunity is given the procedure would obviously suffer from material irregularity affecting the decision.

21. For the reasons discussed above, in our view, under the M.V. Act, there is no restriction that Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under Sub-section (4) to Section 166, even report submitted to the Claims Tribunal under Sub-section (6) of Section 158 can be treated as an application for compensation under the M.V. Act. If required, in appropriate cases, court may permit amendment to the claim petition. It is permissible under the Act to award compensation by installments or recurring compensation to meet the future medical expenses of the victim?

For the reasons as stated by me and the ratio as laid down by the Supreme Court all these appeals will have to be allowed and the awards modified. In the circumstances the appeals are allowed and the awards are modified as follows:

In Claim Petition No. 202 of 2000 the respondents therein shall jointly and severally pay Rs. 1,94,500/- instead of Rs. 1,00,000/-. Interest shall be as awarded by the tribunal.

In Claim Petition No. 182 of 2000 respondents shall pay Rs. 1,48,500/- instead of Rs. 1,00,000/- and interest as directed by the Tribunal.

In Claim Petition No. 237 of 2000 the respondents shall pay Rs. 1,71,500/- instead of Rs. 1,00,000/- and interest as directed by the Tribunal. Appeals are allowed accordingly.

Claimants shall be entitled to the costs of these appeals.