
(2015) 04 BOM CK 0377
In the Bombay High Court
Case No : First Appeal No. 370 of 2001

Lakhiramji and Others

APPELLANT

Vs

Sahid Hussain and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2015) 04 BOM CK 0377

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : J.J. Kataria, for the Appellant

Final Decision : Partly Allowed

Judgement

A.S. Chandurkar, J.—This appeal filed under Section 173 of the Motor Vehicles Act, 1988 (for short, the said Act) by the legal representatives of original claimant seeks enhancement in the amount of compensation that has been awarded by the Claims Tribunal, Nagpur.

2. One Lakhiram was involved in an accident that took place on 11/04/1994 wherein the said claimant suffered various injuries to his right foot. The disability was assessed at 50% as per the medical records. The injured/claimant therefore sought compensation of Rs. 3,50,000/- for injuries sustained in said accident. The claim was opposed by respondent No. 2-Insurance Company and the Claims Tribunal by the impugned judgment held the respondents jointly and severally liable to pay compensation of Rs. 90,000/- with 9% interest to the original claimant. Said claimant had therefore filed the present appeal seeking enhancement in the amount of compensation. During pendency of the appeal, the claimant expired and his legal representatives are prosecuting the said appeal.

3. Learned counsel for the appellants submitted that the original claimant was aged about 35 years when the accident took place. It was submitted that

multiplier of 16 was required to be taken into account while determining the compensation. It was also submitted that the original claimant was getting income of Rs. 40,000/- per year from his agricultural field and the 7/12 extracts were also filed on record. It was then submitted that on account of injuries sustained in the accident, the right leg of the original claimant was required to be amputated due to which there was loss of future earning. Due to aforesaid, the original claimant could not undertake agricultural operations on his own after the accident. It was therefore submitted that the Claims Tribunal was not justified in granting sum of Rs. 90,000/- only towards compensation.

4. The learned counsel for the appellants relied on following judgments of Hon"ble Supreme Court in support of her submission that a case of enhancement of compensation had been duly made out.

"(1) Puttamma and Others Vs. K.L. Narayana Reddy and Another, ,

(2) Sri Kumaresh Vs. The Divl. Manager National Insurance Company Ltd. and Another, ,

(3) Rajesh and Others Vs. Rajbir Singh and Others, ,

(4) Santosh Devi Vs. National Insurance Company Ltd. and Others, and

(5) Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, ."

5. Though the learned counsel for the appellants was heard on 01/04/2015, none appeared for the respondents on said date. On 06/04/2015 also none appeared for the respondents. Today also, there is no appearance on behalf of the respondents.

6. The following point arises for consideration:

"Whether the amount of compensation as awarded by the Claims Tribunal deserves to be enhanced?"

7. The original claimant had examined himself vide Exhibit-31. He had placed on record the disability certificate at Exhibit-37, Income Certificate at Exhibit-40 as well as 7/12 extracts of his agricultural field. He also stated that due to amputation of his leg, he could not walk and cultivate his land. In the cross examination besides certain suggestions, nothing adverse had been extracted from the original claimant. Similarly one Muniram was also examined vide Exhibit-42 who supported the case of the claimant. He was driving the vehicle wherein the claimant was pillion rider. Even in his cross examination, nothing substantial has been extracted.

8. The Claims Tribunal while awarding compensation held that loss sustained after accident had not been duly proved. Amount of Rs. 10,000/- was granted for pain and suffering and Rs. 10,000/- for loss of amenities, for hospitalization amount of Rs. 3000/- was granted while amount of Rs. 5000/- was granted for special diet. A sum of Rs. 2000/- was granted towards medicines and in all sum

of Rs. 90,000/- was awarded.

9. The evidence on record indicates that the original claimant suffered disability to the extent of 50% as his right leg was required to be amputated. The evidence further indicates that the original claimant was an agriculturist owning land admeasuring about 6 acres. The income certificate at Exhibit 40 shows annual income of Rs. 40,000/-. As noted above, the aspect of income of the original claimant was not seriously challenged in the cross-examination. In case of Kumaresh (supra), compensation was sought on account of injuries suffered resulting in amputation of the right leg. In said case, considering the age of the claimant which was 20 years, the multiplier of 18 was applied. Thereafter considering the fact that the claimant therein had been working as a Labourer, it was held that future prospects of earning had been severely affected. Various amounts were awarded towards pain and suffering, medical expenses for life, food and nourishment.

In the present case, the age of the original claimant when the accident took place was about 35 years. In view of the decision of the Supreme Court in Sarla Verma(supra), the multiplier required to be applied would be 16. As per the Income Certificate at Exhibit 40, the annual income would have to be taken at Rs. 40,000/-. Thereafter, from the amount of annual income, deduction of one third amount towards personal expenses would be required to be made. On the basis of said deduction, two third annual income would be Rs. 26,667/-. By considering the multiplier at 16, the amount arrived at would be Rs. 4,26,672/-.

10. As held by the Supreme Court in Rajesh (supra), compensation that is just, fair and reasonable has to be granted. Insofar as self employed person or persons with fixed wages, some addition can be made towards future prospects. In the present case, original claimant was an agriculturist and hence, considering said aspect, a further amount of 25% towards future prospects can be considered just and reasonable. Hence, to the amount of Rs. 4,26,672/-, one fourth amount of Rs. 1,06,668/- has to be added. Insofar as medical expenses are concerned, it is to be noted that the accident took place on 11/4/1994 and the claimant expired on 25/9/2013. In the facts of the case, medical expenses of Rs. 50,000/- would meet the ends of justice.

11. In view of the aforesaid discussion, it is clear that the case for enhancement of compensation has been made out. The point as framed is, accordingly, answered in the affirmative. Accordingly, it is held that present appellants, who are legal representatives of the original claimants are entitled for sum of Rs. 4,26,672 + Rs. 1,06,668/- + Rs. 50,000 being total of Rs. 5,83,340/- towards compensation under Section 166 of the said Act. The enhanced amount of compensation shall be payable at the rate of 9% per annum which was the rate of interest granted by the Claims Tribunal. This amount shall include amount of no fault liability which amount has already received. The interest would be payable from the date of application till realization.

The first appeal is, thus, partly allowed in aforesaid terms with no order as to costs.