
(2016) 04 BOM CK 0123
In the Bombay High Court
Case No : First Appeal No. 2084 of 2015

Laxman

APPELLANT

Vs

Rajesh

RESPONDENT

Date of Decision : 12-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 1415 : (2016) 5 ALLMR 543

Hon'ble Judges : V.K. Jadhav, J.

Bench : Single Bench

Advocate : Mr. M.R. Deshmukh, Advocate, for the Appellant; Mr. R.F. Totla, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

V.K. Jadhav, J.—Being aggrieved by the judgment and award dated 15.04.2015 passed by learned Member, MACT, Beed in MACP No. 20 of 2014, the original claimant has preferred this appeal to the extent of quantum.

2. Brief facts giving rise to the present appeal are as follows:

On 30.01.2011 at about 1.30 p.m., appellant-claimant was proceeding to Beed from Naigaon on his motorcycle. He was riding said motorcycle from the correct left side of the road in moderate speed. On way, within the limits of Village Pimpargavan, one TATA Indica Car bearing registration No. MH-28/V-143 came from his backside in speed. It was being driven in rash and negligent manner by its driver. Said car gave dash to the motorcycle, in consequence of which, the appellant-claimant sustained grievous injuries to both the legs and other parts of his body. He was immediately taken to Civil Hospital, Beed and therefrom, he was shifted to Government Medical College and Hospital, Aurangabad. The appellant-claimant had taken treatment in various hospitals, however his right leg above the knee was amputated. The appellant-claimant accordingly filed claim petition before MACT, Beed for grant of compensation under various heads.

Respondent No.2-insurer has strongly resisted the claim petition by filing written statement. Learned Member of MACT, Beed, by its impugned judgment and award dated 15.04.2015, partly allowed the claim petition the thereby directed the respondents to pay compensation of Rs. 7,30,400/- jointly and severally, including NFL amount, to the appellant-claimant. Being aggrieved by the quantum, the appellant-claimant has preferred this appeal.

3. Learned counsel for the appellant-claimant submits that he appellant-claimant was working as Bataidar in the field of one Shobha Tandale. The appellant-claimant has specifically pleaded his income from cultivating the land on Batai basis in the claim petition and he has also deposed on oath before the court. Learned counsel submits that the appellant-claimant was earning Rs. 1,00,000/- by cultivating the land of said Shobha Tandale on Batai basis and a Batai Patra Exh.39 is also placed on record before the tribunal. Learned counsel submits that even though no evidence in rebuttal is given by the other side with regard to the income as pleaded by the claimant and stated on oath before the tribunal, the tribunal has discarded the income of claimant from doing work as Bataidar and erroneously considered the notional income of claimant at Rs. 3,000/- per month only. Learned counsel submits that the accident took place in the year 2011 and while computing the notional income, the tribunal ought to have considered the price index, inflation in the economy, increase in rates etc. Learned counsel, by referring various cases, submits that the Apex Court has also considered this aspect and introduced change in the context of notional income. Learned counsel submits that as per the Government Notification issued by Industries, Energy and Labour Department, State of Maharashtra dated 20.07.2010, minimum rates of wages for unskilled employees is mentioned as Rs.3750/- in Zone II category. Zone comprises of all the areas falling within the local limits of Municipal Corporations and Zone II comprises of all other areas in the State which are not included in Zone I. Learned counsel submits that said minimum rates of wages payable to the employees are revised from time to time and in the year 2014, the same has been reached to more than Rs. 6,000/- per month. Learned counsel submits that under the provisions of The National Rural Employment Guarantee Act, 2005, the Ministry of Rural Development has issued a Notification dated 23.03.2012, wherein, the State-wise Wage rate for Unskilled Manual Workers is mentioned/fixed and so far as the State of Maharashtra is concerned, the same is specified at the rate of Rs. 145.00 per day. Learned counsel, in support of his submissions, placed all the Notifications before this Court.

4. Learned counsel submits that so far as the unorganized sectors like agricultural labour in the State of Maharashtra are concerned, rates of wages are not specified in progressive State like Maharashtra. Learned counsel submits that the tribunal has considered notional income of Rs. 3,000/- per month without considering the rates of minimum wages earned by the labours/employees in other sectors. Learned counsel submits that the rates of wages of agricultural labour, thus, are required to be worked out by considering the price index, inflation in economy etc. Learned counsel, in order to substantiate his

submissions with regard to the notional income, placed reliance on the following cases:

1. Syed Sadiq etc. v. Divisional Manager, United India Ins. Co., AIR 2014 SC 1052,
2. Arun Kumar Agrawal v. National Insurance Company Limited, (2010) 9 SCC 218,
3. Judgment delivered by Hon'ble Supreme Court in the case of Smt. Neeta W/o Kallappa Kadolkar and Ors. Etc. v. The Div. Manager, MSRTC, Kolhapur (Civil Appeal Nos. 348-349 of 2015),
4. Kala Devi v. Bhagwan Das Chauhan, 2014 ACJ 2875,
5. Judgment delivered by the Supreme Court in the case of Sanobanu Nazirbhai Mirza & ors. v. Ahmedabad Municipal Transport Service, (Civil Appeal No. 8251 of 2013) and
6. Puttamma v. K.L. Narayana Reddy, AIR 2014 SC 706.

5. Learned counsel for the appellant-claimant further submits that in cross-examination, the claimant has stated his date of birth and as on the date of accident, he was 49 years of age. However, the tribunal has considered the age of claimant as 51 years and erroneously applied multiplier 11 instead of 13.

6. Learned counsel submits that the tribunal has awarded paltry sum of Rs. 25,000/- towards medical treatment. Learned counsel submits that though major treatment of the claimant was taken in Government Hospital, yet he was required to spend amount towards his stay, attendance, medicine bills, food, diet etc. Learned counsel submits that the tribunal has not considered the same. Furthermore, the claimant also requires future medical treatment and even he opt for fixing artificial leg, however, tribunal has failed to consider this aspect of the matter as well.

7. Learned counsel submits that if the victim is aged between 40 to 50 years, while computing just compensation, there shall be addition of 30% of income towards "loss of future prospects". Learned counsel submits that considering the age of claimant in the present case, the tribunal ought to have added 30% of amount to his actual income as future prospects.

8. Learned counsel submits that the tribunal has awarded interest at the rate of 7.5% per annum, however, the same ought to have been at the rate of 9% per annum from the date of application till the date of its realisation. In support of this submission, learned counsel placed reliance on the decision in following cases :

1. Sarla Verma (smt.) v. Delhi Transport Corporation, 2009 (6) SCC 121 and
2. Rajesh v. Rajbir Singh, (2013) 9 SCC 54.

9. Learned counsel for respondent No.2-insurer submits that the claimant has failed to prove his income from cultivating land of said Shobha Tandale on Batai basis. Learned counsel submits that even though affidavit of said Shobha Tandale was placed before the tribunal, she failed to appear before the tribunal. Learned counsel submits that thus, the contents of so called Batai Patra cannot be read in the evidence. Learned counsel submits that in absence of any income proof, the tribunal has rightly considered notional income of the claimant at Rs. 3,000/- per month as an agricultural labour. Learned counsel submits that claimant was doing labour work in rural place like Naigaon, and therefore, the tribunal has rightly considered his notional income at Rs. 3,000/- per month. Learned counsel submits that the tribunal has awarded a lump sum amount for sustaining permanent disablement, pains and sufferings and also for loss of future amenities in life. Learned counsel submits that the tribunal has awarded just and reasonable compensation. Even the tribunal has considered medical expenses in absence of any documents. Learned counsel submits that the claimant has taken his treatment in Government Hospital free of costs. Learned counsel submits that the claimant had no permanent employment and he was also not earning any fixed income. In view of this, there is no reason to consider the addition of income towards future prospects. Learned counsel submits that there is no merit in the appeal and the appeal is, thus, liable to be dismissed.

10. The claimant has proved that he has sustained permanent disability in the accident occurred on 30.01.2011 due to rash and negligent driving of vehicle TATA Indica Car bearing registration No. MH-28/V-143. The same is also not disputed by respondent-insurer. Owner of the said vehicle involved in the accident remained absent before the tribunal though duly served. Therefore, the claim petition ordered to proceed ex parte against him. Even respondent No.2-insurer has failed to prove contributory negligence on the part of claimant while riding his motorcycle at the time of accident. Respondent No.2-insurer has also not preferred any appeal/cross objection for alleged breach of terms and conditions of the policy.

11. In view of this, the following points arise for my determination and I have recorded my findings to those points for the reasons given below :

Points

Findings

1. Whether the tribunal has correctly assessed the compensation under various heads?

Partly in the negative.

2. Whether the impugned judgment and award calls for an Interference?

Partly in the affirmative.

3. What order ?

As per final order.

Reasons

12. Admittedly, right leg of the claimant above the knee is amputated. PW2 Doctor Pravin Deshmukh has deposed that claimant has sustained permanent disability to the extent of 90% and issued certificate Exh.45 to that effect. Even assuming that claimant was doing agricultural work, the amputation of his right leg above knee has affected his earning capacity to the extent of 100%.

13. Claimant has failed to prove his earning by cultivating land of one Shobha Tandale on Batai basis. According to the claimant, he was earning Rs. 1,00,000/- per annum by cultivating the land of said Shobha Tandale on Batai basis. Said Shobha Tandale has failed to appear before the tribunal for her cross-examination. As per the affidavit of evidence of claimant, he was cultivating the land admeasuring 1H 85R owned by said Shobha Tandale on Batai basis and as per Batai Patra, he was getting ?th of the income after deducting expenses incurred by him. The claimant neither proved the contents of said Batai Patra, nor lead any evidence to show his actual income from the said land after deducting expenses incurred by him as per the agreement of Batai Patra. Consequently, the tribunal has rightly discarded his income from cultivating land on Batai basis.

14. Learned Member of the tribunal has considered the notional income of claimant at Rs. 3,000/- per month as agricultural labour. So far as the notifications issued by the Industries, Energy and Labour Department, State of Maharashtra, relied upon by learned counsel for the applicant, are concerned, those rates of wages specified in the Notification are payable to the employees employed in any industry engaged in the scheduled employment in the State of Maharashtra. The said rates are fixed by calculating average of the "Cost of Living Index Number" applicable to the said employees. Thus, the same can not be considered while deciding the notional income of an agricultural labour in the State of Maharashtra.

15. Learned counsel placed reliance on certain provisions of The National Rural Employment Guarantee Act, 2005. The said Act provides for enhancement of the livelihood security of the households in the rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to such households, whose adult members volunteer to do unskilled manual work. As per the Notification dated 23.03.2012, State-wise wage rates for Unskilled Manual Workers are specified. So far as the State of Maharashtra is concerned, the same is specified as Rs. 145/- per day with effect from 1st April, 2012. Said Notification is subject to outcome of Special Leave to Appeal pending before the Supreme Court. Learned counsel for the appellant has not brought to the notice of this Court the decision, if any, rendered in the said Special Leave to Appeal, as referred to in the said Notification.

16. It appears from the said Notification that the Central Government specified

the wage rates payable to the Unskilled Manual Workers working under various schemes under the provisions of The National Rural Employment Guarantee Act, 2005. It also appears from the provisions of the said Act of 2005 that for the purpose of giving effect to the guarantee of rural employment to household, every State Government is required to make a scheme for providing not less than 100 days of guaranteed employment in one financial year to every household in rural areas covered under the scheme. It thus appears that, the wages are specified considering the provisions of said Act and for implementation of a scheme for the purpose of giving effect to the provisions of the said Act by the State. In absence of any fix minimum wages for agricultural labour in the State, I am not inclined to consider the above rates as specified considering the provisions of the said Act.

17. Learned Member of the tribunal has, thus, rightly considered the notional income of claimant at the rate of Rs. 3,000/- per month as the income of an agricultural labour. In addition to that, even though the claimant has no permanent job or any fixed income as such, the tribunal has made addition of income of 15% by considering his future prospects. In the case of *Shashikala v. Gangalakshamma & another*, 2015 ACJ 1239, since the Supreme Court has disagreed only so far addition towards future prospects in the case of self employed or fixed wages to be added to the compensation towards dependency, the matter was requested to be placed before the Hon'ble Chief Justice of India for appropriate order for constitution of a suitable larger Bench to decide the said issue. Furthermore, in the case of *National Insurance Co. Ltd v. Pushpa*, (Special Leave to Appeal (c) No. 8058/2014) decided by the Supreme Court on 02.07.2014, considering the divergent opinion as regards the manner of addition of income for future prospects, the Supreme Court referred the matter to the larger Bench for the authoritative pronouncement. In view of this, I do not want to interfere in the judgment and award passed by learned Member of the tribunal to the extent of considering notional income of claimant at Rs. 3,000/- and addition of 15% of income towards future prospects.

18. So far as the multiplier is concerned, there is apparent mistake in applying multiplier 11 instead of 13. Thus, recalculation of grant of compensation is required to be done by applying multiplier 13. Learned Member of the tribunal has awarded substantial amount for the disablement, pains and sufferings, loss of amenities in future life. Admittedly, the claimant has taken treatment in Government Hospital. He was admitted in Government Hospital for a period of one month after the accident and after discharge, he was again admitted in one private hospital for a period of four days. According to the claimant, he has incurred medical expenses more than of Rs. 25,000/-. Even though the claimant has taken treatment in Government Hospital at Aurangabad, he had to incur expenses like travelling, staying, diet expenses etc. Considering the same, it would be just and appropriate to award Rs. 25,000/- more under the heads of medical expenses, travelling for medical purpose, staying and diet expenses. The tribunal has also erroneously awarded interest at the rate of 7% per annum

instead of 9% per annum.

19. In view of the above discussion, the break up of compensation which can be broadly categorized as under:

1. Loss of future income (3000 notional income + 15% addition towards future prospects=3450X12 X13=5,38,200)

Rs. 5,38,200/-

2. Permanent disablement

Rs. 1,00,000/-

3. Pains and sufferings

Rs. 50,000/-

4. Loss of future amenities

Rs. 1,00,000/-

5. Medical expenses

Rs. 50,000/-

TOTAL

Rs. 8,38,200/-

20. The claimant is, thus, entitled for a total amount of Rs.8,38,200/-. I answer point Nos. 1 and 2 accordingly and proceed to pass the following order:

ORDER

I. The First Appeal is hereby partly allowed with proportionate costs.

II. The judgment and award dated 15.04.2015 passed by learned Member, MACT, Beed in MACP No. 20 of 2014, is hereby modified in the following manner:

Respondent Nos. 1 and 2 shall jointly and severally pay compensation of Rs. 8,38,200/-, including the "no-fault liability", to the claimant with interest at the rate of 9% per annum from the date of application till its realization.

III. Rest of the judgment and award stands confirmed.

IV. Award be drawn up accordingly.

V. The First Appeal stands disposed of.