

(2005) 08 CHH CK 0007
In the Chhattisgarh High Court

M. Sannu Ram Mandavi

APPELLANT

Vs

C. Mohan and Others

RESPONDENT

Date of Decision : 04-08-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 162, 165, 166, 167

Citation : (2006) 4 ACC 505

Hon'ble Judges : A.K. Patnaik, C.J;Agnihotri, J

Bench : Full Bench

Judgement

A.K. Patnaik, C.J.—This is an appeal u/s 173 of the Motor Vehicles Act, 1988 against the common award dated 31st March, 1997 passed by the Motor Accident Claims Tribunal, Jagdalpur in Claim Case Nos. 67 of 1996 and 68 of 1996.

2. The facts briefly are that the appellants along with his wife Sukhmati were travelling on a Moped (Luna) bearing registration No. MP 25-1543 from Village Cholnar to Kirandul. A truck bearing registration No. MRS-9878 came from the opposite direction and dashed with the Moped. In the accident, the wife of the appellant died on the spot and the appellant sustained injuries on his left thigh and suffered a fracture on the knee. The appellant filed Claim Case No. 67 of 1996 for compensation for the death of his wife and also filed Claim Case No. 68 of 1996 for compensation for the injuries suffered by him. The Tribunal clubbed the two claim cases and after recording evidence and hearing the parties awarded a sum of Rs. 55,000 in Claim Case No. 67 of 1996 and a sum of Rs. 90,000 in Claim Case No. 68 of 1996 by a common award dated 31st March, 1996. As per the award, the compensation awarded was to be paid by respondent No. 2, New India Assurance Company Limited, which had insured the truck. Aggrieved by the said common award, the appellant has filed this appeal.

3. Mr. Prashant Jayaswal, learned Counsel appearing for respondent No. 2, the New India Assurance Company Limited, raised a preliminary objection. He submitted that since two separate claim cases had been filed by the appellant

and the Tribunal had awarded compensation separately in the said claim cases by a common award, two appeals should have been filed by the appellant and instead only one appeal has been filed against the common award and such an appeal against the common award was not maintainable. He pointed out that Section 176 of the Motor Vehicles Act, 1988 empowered the State Government to make rules for the purpose of carrying into effect the provisions of Sections 165 to 174, and in particular, to make rules providing for the form and the manner in which the fees on payment of which an appeal may be preferred against an award of a Claim Tribunal and in exercise of such powers u/s 176, the Government of Madhya Pradesh had framed the Madhya Pradesh Motor Vehicles Rules, 1994 and provided in Rule 242(3) of the said Rules that the provisions of Order 41 of the First Schedule of the Code of Civil Procedure, 1908 shall mutatis mutandis apply to appeals preferred to the High Court u/s 173 of the Motor Vehicles Act, 1988. He submitted that it will be clear from the proviso to Order 41 Rule 1 of the Code of Civil Procedure, 1908 as amended that where two or more suits have been tried together and a common judgment has been delivered therefore and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment. He argued that it will be clear from the language of the said proviso to Order 41 Rule 1 of the Code of Civil Procedure, 1908 that in case of a common judgment delivered by the Trial Court, the Appellate Court may dispense with filing of more than one copy of the judgment but two separate appeals have to be preferred by the appellant.

4. Mr. Prafulla Bharat, learned Counsel appearing for the appellant, on the other hand, submitted that since the two claim cases had been clubbed together and a common award had been made by the Tribunal, the appellant who had filed two claim cases, could file a single appeal against the common award.

5. Section 173 of the Motor Vehicles Act, 1988 (for short the Act) provides for appeals against an award of a Claims Tribunal and reads as follows:

173. Appeals.-(1) Subject to the provisions of Sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court, unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.

From the language of said Section 173 of the Act it appears that any person aggrieved by an award may prefer an appeal to the High Court. The expression "award" has not been defined in the Act but its meaning can be gathered from Section 168 of the Act which is titled "award of the Claims Tribunal". The said Section 168 is quoted herein below:

168. Award of the Claims Tribunal.--(1) On receipt of an application for compensation made u/s 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation u/s 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

(Emphasis supplied)

6. It will be clear from the italicised words used in Section 168 of the Act that the Claims Tribunal is to hold an inquiry "into the claim or, as the case may be, each of the claims" and, make an award determining the amount of compensation which appears to be just and specifying "the person or persons" to whom compensation shall be paid. Thus, where the claims have arisen out of one accident, the Tribunal is to enquire into not just one claim but each of the claims arising out of the accident and determine the amount of compensation payable to not just one person but several persons by a common award. If the award of a Claims Tribunal can be common u/s 168 of the Act one appeal can be filed against such a common award u/s 173 of the Act. There is nothing in Section 173 of the Act which prohibits the filing of one appeal against a common award. Rather Section 173 read with Section 168 of the Act shows that an appeal can be filed against a common award on several claims. The provisions of Rule 242 of the Motor Vehicles Rules, 1994 and Order 41 of the Code of Civil Procedure, 1908

have to be read subject to the provisions of the Act and not in a manner contrary to the provisions of the Act. Hence, the preliminary objection raised by Mr. Jayaswal, learned Counsel appearing for respondent No. 2 is without any merit.

7. Mr. Prafull Bharat, learned Counsel appearing for the appellant submitted that it is in evidence that the wife of the appellant was earning Rs. 1,200 per month and thus the wife was contributing to the common pool of the family of the appellant and due to death of the wife, the appellant suffered a loss of dependency. He submitted that since the family of the wife of the appellant consisted of two members only, the loss of dependency would work out to Rs. $1,200/2 \times 12$ per annum and since the age of the wife of the appellant was 30 years, the appropriate multiplier as per the Second Schedule to the Act is 18 and the loss of dependency will be $1200/2 \times 12 \times 18 =$ Rs. 1,29,600. He submitted that as against the loss of dependency of Rs. 1,29,600, the Tribunal has awarded only Rs. 5,000 towards loss of consortium and Rs. 50,000 towards loss of dependency after taking a view that the appellant is not dependent on his wife. He vehemently argued that u/s 166 of the Motor Vehicles Act, 1988, an application for compensation arising out of an accident can be filed by any of the legal representatives of the deceased and since the appellant was the legal representative of his deceased wife, he was entitled to file an application for compensation u/s 166 of the Motor Vehicles Act, 1988.

8. Mr. Bharat relied on the decision in Madhya Pradesh Road Transport Corporation v. Sudhakar and Ors. AIR 1977 S.C. 1189 in which the Supreme Court has held that even where the husband may not be dependent on his wife's income, the basis of assessing the damages payable to the husband for the death of his wife would be similar. He also cited the decision of the Madhya Pradesh High Court in M.P. Electricity Board Vs. Ram Mohan Shrivastava and Others, wherein a Division Bench of the Madhya Pradesh High Court has held that since the deceased was one of the earning members of the family it is impossible to assume that the deceased was not contributing by her earnings to the common pool which was utilized for the lodging and boarding for the family and, therefore, the legal representatives were entitled to claim compensation. He pointed out that in the said case the deceased was lady and was an earning member of the family and the husband and daughter of the deceased were claimants before the Tribunal. He also relied on the decision of the Supreme Court in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, , for the proposition that the legal representatives of the deceased are entitled to file an application for compensation.

9. Mr. Prashant Jayaswal, learned Counsel appearing for respondent No. 2, New India Assurance Company Limited, on the other hand, submitted that the evidence before the Tribunal discloses that the deceased was contributing out of her income of Rs. 1,200 only Rs. 700 to the family of appellant and, therefore, if any, compensation is to be determined towards loss of dependency, Rs. 700 should be divided into two units as the family of the appellant comprised two persons.

10. The language of Section 166 of the Act makes it clear that an application for compensation arising out of an accident can be filed by all or any of the legal representatives of the deceased. Since the appellant was the legal representative of the deceased who was his wife, there can be no doubt, that the appellant could file Claim Case No. 67 of 1996 for compensation for the loss suffered by him on account of the death of the deceased. But as to what would be actual quantum of such loss of dependency suffered by the appellant and as to what would be just compensation which should be awarded by the Tribunal to the appellant for the death of his wife is a matter to be decided on the facts and evidence before the Tribunal. The evidence in this case shows that the deceased was earning a sum of Rs. 1,200 per month as a daily labourer and even though the appellant was also earning, the loss suffered by the appellant on account of the death of his wife cannot be held to be nil. In *Madhya Pradesh State Road Transport Corporation v. Sudhakar and Ors.* (supra), the Supreme Court held:

A method of assessing damages, usually followed in England, as appears from *Malett v. McMonagle* (supra) is to calculate the net pecuniary loss upon an annual basis and to "arrive" at the total award by multiplying the figure assessed as the amount of the annual "dependency" by a number of "year's purchase", (p. 178) that is, the number of years the benefit was expected to last, taking into consideration the imponderable factors in fixing either the multiplier or the multiplicand. The husband may not be dependent on the wife's income, the basis of assessing the damages payable to the husband for the death of his wife would be similar.

Thus, in the aforesaid judgment, the Supreme Court held that even when the husband may not be dependent on the income of his wife, the basis of assessing the damages payable to the husband for the death of his wife would be similar and in such cases the total award has to be worked out by calculating the net pecuniary loss on annual basis and multiplying such net pecuniary loss by the appropriate multiplier. The appropriate multiplier in this case as per the Second Schedule of the Act is 18 as the age of the deceased wife is between 25 to 30 years. Accordingly, the loss of dependency or loss of benefit suffered by the appellant on account of the death of his wife in the accident would be Rs. $1,200/2 \times 12 \times 18 =$ Rs. 1,29,600. To the aforesaid figure, Rs. 5,000 towards loss of consortium and Rs. 2,000 towards funeral expenses have to be added and the total compensation amount works out to Rs. 1,36,600.

11. Regarding Claim Case No. 68 of 1996, Mr. Prafull Bharat, learned Counsel appearing for the appellant submitted that the evidence before the Tribunal furnished on behalf of the appellant was that he was earning an income of Rs. 1,500. He submitted that Ext. P-1, Medical Certificate, before the Tribunal indicated that the appellant suffered disability of 60%. He submitted that the Second Schedule of the Act would show that the appropriate multiplier in this case for calculating the loss of earning of the appellant would be 17, the appellant being aged about 35 years. Accordingly, the compensation should have

been calculated as follows:

Rs. 1,500 x 12 x 60/100 x 17 = Rs. 1,83,600.

He submitted that as against the aforesaid amount of Rs. 1,83,600, the Tribunal has awarded Rs. 30,000 towards physical disability, Rs. 10,000 towards medical treatment and Rs. 50,000 towards medical bills. He also cited a decision of the Madhya Pradesh High Court in Mool Chand Vs. S.S. Parihar and Others, , in which the Tribunal had awarded only a sum of Rs. 25,000 under the head of non-pecuniary damages for the injury to the right femur and shaft of the victim in that case and the Division Bench of the High Court enhanced the said sum to Rs. 50,000. He submitted that in the present case therefore, the award of Rs. 30,000 towards physical disability was on the lower side.

12. Mr. Prashant Jayaswal, learned Counsel appearing for respondent No. 2, on the other hand, submitted that the appellant had not suffered any permanent disability and disablement, if any, was temporary. He submitted that the award of Rs. 30,000 towards physical disablement besides Rs. 10,000 towards medical treatment and Rs. 50,000 towards medical bills was just and reasonable.

13. On a reading of the Medical Certificate (Ext. P-1) on which great reliance has been placed by the learned Counsel for the petitioner, we find that Dr. P.V. Shyam Prasad, M.S., Consultant Orthopaedic Surgeon, has certified as follows:

Medical Certificate

This is to certify that Mr. M. Sannu Ram has sustained fracture (L) Femur fracture (L) tibia and fracture Pelvic and was under my treatment at C.D.R. Hospital from 12th April, 1996 to 10th May, 1996. He was operated on the left leg and had loss of lower three teeth and upper 1/2 tooth.

The injuries are grievous, and may require future surgeries and the present disability would be around 60% (sixty percent).

Sd/ Dr. P.V. Shyam Prasad, M.S. Regd. No. 16964 Consultant Orthopaedic Surgeon Tel. 574033 (R)

There is no mention in the aforesaid certificate to the effect that the appellant suffered "permanent" partial disability of 60%. Thus, there is no proof adduced by the appellant that the disability suffered by him was permanent disability. In the Second Schedule of the Act, serials 4 and 5 provide for general damages in case of injuries and disabilities and disability in non-fatal accidents and are quoted herein below:

4. General damages in case of injuries and disabilities- (i) Pain and sufferings: (a) Grievous injuries Rs. 5,000 (b) Non-grievous injuries Rs. 1,000 (ii) Medical expenses-actual expenses incurred supported by bills/vouchers but not exceeding as one time payment Rs. 15,000 5. Disability in non-fatal accidents-

The following compensation shall be payable in case of disability to the victim

arising out of non-fatal accidents:

Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks.

Plus either of the following-

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in permanent total disablement/permanent partial disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923.

It will be clear from serial No. 4 extracted above that in case of injuries and disabilities a claimant would be entitled to Rs. 5,000 towards pain and sufferings plus medical expenses as per actual expenses. It will also be clear from serial No. 5 that the compensation that will be payable in case of disability to a victim arising out of non-fatal accidents would be loss of income if any for actual period of disablement not exceeding fifty-two weeks. In this case, Mr. Prafull Bharat very fairly submitted that the actual period of disablement would be for the period of treatment which was approximately six months. If the income is taken at Rs. 1,500 per month, the loss of income for a period of six months would be $\text{Rs. } 1,500 \times 6 = \text{Rs. } 9,000$ on account of disablement. It will be further clear from serial No. 5 of the Second Schedule quoted above that it is only in case of permanent total disablement or in case of permanent partial disablement that a further amount is to be payable towards compensation in addition to the loss of income for the actual period of disablement not exceeding fifty two weeks. As we have held above, there is no proof before the Tribunal in this case of any permanent disablement suffered by the appellant.

14. In *Mool Chand v. S.S. Parihar and Ors.* (supra), cited by Mr. Prafull Bharat, the Division Bench of the Madhya Pradesh High Court found that the right femur and shaft were operated upon and steel plates with Richard screws and 13 other screws were fixed for the reunion of the fractured bones and the Madhya Pradesh High Court accordingly held that merely because the fracture has reunited, it cannot be held that the appellant had not suffered permanent disability. The Madhya Pradesh High Court was of the view that a minimum compensation of Rs. 50,000 ought to have been awarded as the injuries had resulted in permanent disablement of the victim in that case. In the present case, as we have held, there is no proof before the tribunal that the appellant having suffered any permanent disablement and thus the amount of Rs. 30,000 awarded by the Tribunal towards physical disablement of the appellant was reasonable and just

and it is not a fit case in which the High Court should enhance the award in Claim Case No. 68 of 1996.

15. In the result, the appeal as against the award in Claim Case No. 67 of 1996 is enhanced to the extent indicated above. The amount of compensation determined in this judgment less the amount of compensation already paid in Claim Case No. 67 of 1996 will be deposited with the Tribunal by respondent No. 2, New India Assurance Company Limited within two months from today. Considering the fact that the amount as awarded by the Tribunal has been paid with interest @ 12%, we direct that the enhanced amount will carry on interest @ 9% per annum calculated from the date of the application with the Tribunal. The appeal against the award in Claim Case No. 68 of 1996 stands dismissed.