(2015) 02 DEL CK 0292

In the Delhi High Court

Case No : MAC. App. 633/2012

National Insurance Co Ltd. APPELLANT

Vs

Salma Farheen and Others RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Motor Vehicles Act, 1988 — Section 158, 166

Citation : (2015) 02 DEL CK 0292

Hon'ble Judges : G.P. Mittal, J.

Bench : Single Bench

Advocate : Manoj Ranjan Sinha and Vikas Singh, for the Appellant; Elahi, Advocates for the Respondent

Final Decision : Disposed off

Judgement

G.P. Mittal, J.—The appeal is for reduction of compensation of Rs.41,30,100/- awarded by the Motor Accident Claims Tribunal(the Claims Tribunal) in favour of a young girl Salma Farheen, who suffered serious injuries in her right lower limb and brain in a motor vehicular accident which occurred on 16.09.2006.

2. It is urged by the learned counsel for the Appellant that there was only 50% disability in respect of the claimant''s left lower limb. There is moderate level mental disability. The Claims Tribunal erred in assessing loss of earning capacity to the extent of 90%. It is urged that the Claims Tribunal erred in taking the loss of projected income of Respondent no.1 as Rs.15,000/- per month. It is stated that the compensation awarded towards non- pecuniary damages is also on the higher side.

3. The compensation awarded by the Claims Tribunal is tabulated hereunder:

4. The compensation under item 2 ''Compensation for Expenses incurred on Medical Treatment, Special Diet, Conveyance and Attendant Charges'' comprised of a sum of Rs.2,47,737/- towards cost of treatment, Rs.5,000/- towards special

diet, Rs.7,000/- towards conveyance charges and Rs.40,000/- towards attendant charges.

5. While dealing with the aspect of potential income of Respondent no.1, the Claims Tribunal observed as under:

To compensate under this head, I will have to assume the annual income of petitioner in this case as she was not working at the time of her accident being student. The second schedule specifies Rs.15,000/per annum to be assumed as income in the case of nonworking victims. However, I find this wholly inadequate in the present time. Moreover, petitioner was a student of B.A Program in St. Stephen College. She was also doing two years course of Global Aviation and Hospitality Management diploma from Air Hostess Academy Pvt. Ltd. and was studying in the final year of the said course at the time of her accident. PW 3 Om Prakash Jha has been examined from Air Hostess Academy Pvt. Ltd., who has proved these facts. He has also proved that students after passing out get jobs in Hotel and Airlines and initial starting pay in Hotels is around Rs. 15,000/-while in Airlines, it is around Rs. 25,000/. PW 7 Sh. Khem Singh, Clerk, St. Stephen College, Delhi University has also been examined and has proved the fact that petitioner had taken admission in St. Stephen College in B.A Program in the year 2005-2006 and had completed one year and had been promoted to second year and thereafter, she stopped attending. Considering all these facts, I am of the view that petitioner seemed to be setting for a successful future had she not met with accident. Therefore, considering all contingencies, calamities and disadvantages that may have occurred in the petitioner''s normal future into account, I take annual income of the petitioner as Rs.1,80,000/- which is reasonable for the purpose of future loss of earning capacity due to disability. 6. Respondent no.1 Salma Farheen was a brilliant student having excellent academic record. She was a student of St. Stephens College studying in IInd year. Her performance in B.A. Ist year was quite good. In spite of the fact that she was also pursuing Arts stream, in addition Respondent no.1 was also pursuing a professional course in Air Hostess Academy as she wanted to become an Air Hostess. Admittedly, Respondent no.1 did not have any income on the date of the accident. It is well settled that potential income of a student, particularly pursing professional course must be taken into consideration to award loss of earning capacity or loss of dependency.

7. In the case of Haji Zainullah Khan (Dead) by Lrs. Vs. Nagar Mahapalika, Allahabad, , death of a young boy aged 20 years took place in an accident which happened in the year 1972. The deceased was a student of B.Sc Ist year (Biology) and a compensation of Rs.1,46,900/- was granted which was increased and rounded off to Rs.1,50,000/-.

8. In Ganga Devi and Ors. v. New India Assurance Co. Ltd. and Ors., MAC APP. 359/2008, decided by this Court on 23.11.2009, which related to the death of a student (studying medicine) who was doing internship and was to be awarded the MBBS degree in a short time, the Tribunal awarded a compensation of Rs.

9,35,352/- on the basis of the minimum wages of a Graduate. This Court observed that although the deceased was getting a stipend of Rs.5,000/- per month at the time of his death due to the accident, he would have ultimately joined as a doctor at a salary ranging between Rs. 16,000/- per month to Rs. 25,000/- per month. Thus, the average monthly income of the deceased was taken as Rs. 18,000/- per month and after adding 50% towards future prospects, the compensation was enhanced to Rs. 21,36,000/-.

9. In Ramesh Chand Joshi v. New India Assurance Company, MAC APP.212-213/2006 decided on 20.01.2010, this Court took the potential income of a BE (Bio-Technology) first year student of Delhi College of Engineer (DCE) as Rs.38,333/- per month.

10. The gross salary of a Group ''A'' officers in the Central and the State Govt. on the date of the accident i.e. 19.11.2004 on the basic pay of Rs.8,000/- was Rs.17,980/- per month. If a qualified degree holder Engineer joined Govt. service in the year 2004, he would have got a salary of Rs.8,000/- per month plus all allowances. Also the placements in Private Sectors were on a much higher salary.

11. This accident took place on 16.09.2006. I will compare the potential income of Respondent no.1 to any Group ''A'' Officer in the Government. In the year 2006, the salary of a Group ''A'' employee was about Rs.20,000/- per month. To my mind, the Claims Tribunal was very conservative in taking the potential income of Respondent no.1 to be Rs.15,000/- per month. The same is raised to Rs.20,000/- per month taking into consideration the fact that Respondent no.1 was a student of St. Stephen College and was also pursuing a professional course in Air Hostess Academy.

12. Apart from the fact that Respondent no.1 suffered 50% permanent disability in respect of her left lower limb, she also suffered moderate level mental disability. The Claims Tribunal dealt with the loss of earning capacity of Respondent no.1 as under:

In view of the principle enumerated in the abovesaid case law, I have to assess the future loss of earning capacity due to permanent physical disability as well as mental disability.

As per permanent disability certificate Ex. PW 11/1, petitioner has suffered 50% permanent physical disability in respect of movement of right knee. Disability refers to any restriction or lack of ability to perform activities in the manner considered normal for a human being. Where the claimant suffered permanent disability as a result of injuries, assumption of compensation under this head would depend on the effect and impact of such disability on earning capacity. I have to consider the effect of the disablement of right lower limb of petitioner and the functioning of the entire body. In my view, this permanent physical disability would certainly effect the earning capacity of petitioner in future in some way or other. Therefore, I take functional disability of petitioner as 20% on account of 50% permanent physical disability suffered by petitioner in respect of movement of right knee.

It is submitted by counsel for petitioner that she has suffered mental disability as mentioned in disability certificate Ex. PW12/1 issued by Medical board, constituted by IHBAS. He has further stated that because of permanent mental disability, petitioner cannot do any kind of job/work. On the other hand, counsel for insurance company submits that evidence of petitioner was recorded after a considerable period of accident and she was able to depose and answer to each and every question without any difficulty and hence, she cannot be taken to have suffered any mental disability.

I considered the submissions of counsel for petitioner and counsel for insurance company as above. I also gone through the evidence on this point. I have gone through the permanent disability certificate Ex. PW 12/1 issued by Medical board, IHBAS and it has been opined by medical board that patient has organic personality disorder (post head injury squalae) and the neuropsychological assessment revealed moderate impairment in frontal and parietal lobe functions and mild impairment in temporal lobe functions along with neurological impairments and all these findings contributed to moderate level of disability.

PW 12 Dr. Vijender Singh, Associate Professor of Psychiatry, IHBAS, Delhi, was examined who was one of the members of medical board which had issued the mental disability certificate Ex. PW 12/1. He has stated that "There is no specific instrument/scale to quantify the percentage of mental disability in such cases". He has further stated that "However, the quantum of disability may be broadly classified as Mild, Moderate or Severe". He has further stated that "Under Moderate condition, patient can take care of herself or himself, as the case may be". He has further stated that "Patient can eat, can rest and can bath, herself or himself, as the case may be without any assistance. He has further stated that "Under this condition, patient cannot do complex transaction like traveling, money transaction, bank a/c operation, without any assistance". During cross examination, he has stated that "Patient cannot do complex tasks alone and without any assistance". He has further stated that "However, she can perform the simpler tasks like that of peon.

13. Thus, from the testimony of the Doctor examined by Respondent no.1, particularly PW-12 Dr. Vijender Singh, it is evident that Respondent no.1 who suffered moderate mental disability can now perform only simpler tasks, like she can eat, bath, rest etc. without any assistance from a third person. However, she cannot perform complex transactions like travelling, money transactions, bank account operations etc. without any assistance. Although PW-12 admitted that Respondent no.1 will be in a position to perform simpler task like that of a Peon but with her qualification and background when she wanted to become an Air Hostess and was midway in the goal, she cannot be compelled to work as a Peon. Taking into account the mental disability suffered by Respondent no.1 when she cannot perform complex things, it shall be assumed that her loss of earning capacity was 100% as against 90%. The loss of earning capacity thus,

comes to Rs.41,22,000/- (Rs.20,000/- x 12 - Rs.11,000/-(Income Tax) x 18).

14. In Raj Kumar Vs. Ajay Kumar and Another, , it was laid down that when any compensation towards loss of earning capacity of more than 50% is awarded, the compensation of loss of amenities and loss of expectancy of life would be duplication of the award. Similarly, the award of compensation on account of wasting of fee will also amount to duplication when full compensation is being awarded towards loss of earning capacity.

15. The theory of not awarding compensation more than the amount claimed got a sea change with the judgment of the Supreme Court in Nagappa Vs. Gurudayal Singh and Others, , wherein the Supreme Court held that 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 the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such an award. The Supreme Court said that the only embargo was that it should be ''just'' compensation, that is to say, it should be neither arbitrary or fanciful nor unjustifiable. Para 21 of the report is extracted hereunder:

21. 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. 16. In National Insurance Company Ltd. Vs. Rani, Hebasiba, Rameshkumar and P. Shanmugam, , a Division Bench of the Madras High Court held that without filing any Appeal or Cross-Objections, the High Court is competent to enhance the compensation in favour of a victim of a motor vehicle accident by invoking provisions of Order XLI Rule 33 of the Code of Civil Procedure, 1908 (CPC). Para 16 of the report is extracted hereunder:

16. At the risk of repetition it may be stated that the contention put forward is that the Court is duty bound to fix the just compensation. The fact that the Claimants have not filed any cross objection would not stand in the way and further the Court can by invoking the powers conferred under Order XLI Rule 33 of CPC, is satisfied, can enhance the compensation and call upon the Claimants to pay necessary court fee. In that context, the learned counsel also submitted, when the Supreme Court has ruled that even at the appellate stage original petition can be amended claiming enhanced compensation, the Court enhancing compensation in the instant case, if satisfied, invoking powers under Order XLI, Rule 33 will certainly be in order. 17. Further, in Oriental Fire and Genl. Ins. Co.

Ltd. Vs. Amarsing Pratapsing Sikliker and Others, , a Division Bench of Gujarat High Court held that the Appellate Court was empowered to grant adequate compensation so as to do substantial justice between the parties even in absence of Cross- Objections or Appeal. Para 17 of the report is extracted hereunder:

17. It becomes very clear from the aforesaid provisions that the appellate Court is empowered to grant adequate relief so as to do substantial justice between the parties even in absence of cross-objections or appeal. 18. Similarly, in Sonaram Vs. Jaiprakash and Others, , the High Court of Madhya Pradesh exercising power under Order XLI Rule 33 of the CPC enhanced the compensation granted by the Claims Tribunal even though no Appeal was preferred by the Claimant. In the case of Sewaram alias Sewan Vs. Nanhe Khan alias Asgar Beg and Others, also, the High Court of Madhya Pradesh awarded 10% interest on the compensation amount in the absence of any Appeal or Cross-Objections by the Claimants.

19. A learned Single Judge of this Court in National Insurance Co. Ltd. Vs. Komal and Others--> referred to the judgments of the Supreme Court in Pannalal Vs. State Bombay and Others, ; Rameshwar Prasad and Others Vs. Shyam Beharilal Jagannath and Others, ; Nirmala Bala Ghose and Another Vs. Balai Chand Ghose and Others, ; Giasi Ram and Others Vs. Ramjilal and Others, ; Harihar Prasad Singh and Others Vs. Balmiki Prasad Singh and Others, ; Mahant Dhangir and Another Vs. Madan Mohan and Others, ; The State of Punjab and Others Vs. Bakshish Singh, and judgments of various High Courts to opine that the High Court is empowered to enhance the compensation without filing any Appeal or Cross-Objections by a Claimant.

20. In Ibrahim Vs. Raju and Others, , a compensation of Rs.3,00,000/- was claimed by the Appellant which resulted in an award of Rs.60,000/- by the Claims Tribunal. The compensation was enhanced to Rs.1,89,440/- by the High Court, which was enhanced to Rs.6,00,000/- by the Supreme Court. Para 21 of the report is extracted hereunder:

21. We are conscious of the fact that in the petition filed by him, the Appellant had claimed compensation of Rs. 3 lacs only with interest and cost. It will be reasonable to presume that due to financial incapacity the Appellant and his family could not avail the services of a competent lawyer and make a claim for adequate compensation. However, as the Tribunal and the High Court and for that reason this Court are duty bound to award just compensation, (emphasis supplied) we deem it proper to enhance the compensation from Rs. 1,89,440/- to Rs. 6 lacs. This approach is in tune with the judgment in Nagappa Vs. Gurudayal Singh and Others, . In that case, the Court considered a similar issue, referred to the judgments of the Bombay High Court in Municipal Corporation of Greater Bombay and Another Vs. Kisan Gangaram Hire and Others, , Orissa High Court in Mulla Md. Abdul Wahid Vs. Abdul Rahim and Another, and Punjab and Haryana High Court in Devkinangan Bangur and Others Vs. State of Haryana and Others, . 21. In New India Assurance Co. Ltd. v. Gopali and Ors., Civil

Appeal No. 5179 of 2012 (arising out of SLP (C) No. 11345 of 2007) decided by the Supreme Court on 05.07.2012, the New India Assurance Co. Ltd. challenged an award of compensation of Rs.6,45,300/-. The compensation was, however, enhanced to Rs.10,63,040/- by the Supreme Court.

22. The compensation is thus, recomputed as under:

23. The compensation is therefore, enhanced by Rs.7,91,637/- which shall carry interest @ 7.5% per annum from the date of filing of the claim petition till its payment.

24. 80% of the enhanced compensation shall be held in Fixed Deposit for a period of five, ten and fifteen years. Rest shall be released on deposit. Respondent no.1 shall be entitled to quarterly interest on the amount held in fixed Deposit.

25. The Appellant Insurance Company is directed to deposit the enhanced compensation along with interest in the name of Respondent no.1 in UCO Bank, Delhi High Court Branch, New Delhi within six weeks, failing which the enhanced compensation shall carry interest @ 12% per annum from the date of this judgment.

26. The appeal is disposed of in above terms.

27. Pending applications also stand disposed of.

28. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

29. Copy of the judgment be given Dasti to the parties.

