(2015) 04 BOM CK 0250

In the Bombay High Court

Case No : First Appeal No. 260 of 2004

National Insurance Company Limited — APPELLANT

Vs

Manohar and Others — RESPONDENT

Date of Decision : 28-04-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2015) 04 BOM CK 0250

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

Bench : Single Bench

Advocate : D.N. Kukday, for the Appellant; A. Shelat, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.S. Chandurkar, J.—This appeal filed under Section 173 of the Motor Vehicles Act, 1988 (for short the said Act) challenges the judgment dated 11-12-2003 passed by the Motor Accident Claims Tribunal, Nagpur wherein it proceeded to grant compensation to the tune of Rs. 15,44,000/-to the respondent No. 1 under Section 166 of the said Act

2. On 29-11-1994, when the respondent No. 1 along with some others was travelling in a Van, the same met with an accident with a Truck that was duly registered with the present appellant. The respondent No. 1 suffered various injuries due to which he was required to undertake treatment for considerable period of time. He, therefore, filed petition under Section 166 of the said Act claiming compensation to the extent of Rs. 26,95,334/-. This petition was opposed by the present appellant by filing written statement. The respondent No. 1 thereafter led evidence and examined five witnesses in support of the claim for compensation. The Tribunal after considering the entire evidence on record found the respondent No. 1 entitled for compensation for an amount of Rs. 15,44,000/- with a direction to pay said amount within a period of 45 days failing which it was to be recovered with 12% interest per annum. Being aggrieved by the aforesaid

award, the Insurance Company has preferred the present appeal.

3. Shri D.N. Kukday, learned Counsel appearing for the appellant submitted that the Tribunal was not justified in awarding aforesaid amount of compensation as the respondent No. 1 had not proved his entitlement to said amount. He submitted that though it was the case of the respondent No. 1 that he had suffered permanent disability, no such certificate was placed on record. In absence of such certificate being placed on record, the Tribunal erred in treating the disability of the respondent No. 1 as 100% and hence, the compensation could not have been granted on said basis. In that regard, he placed reliance upon decision of the Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) ACJ 1 : (2011) 2 RCR(Civil) 101 : (2010) 12 SCALE 265 : (2011) 1 SCC 343 : (2011) 1 SCC(Cri) 1161 : (2011) 1 TAC 785 and especially paras 10 and 11 of the judgment wherein it is observed that the extent of disability has to be duly proved. He then submitted that the amount of compensation that was granted for loss of future earnings and also for future expenses of the attendant was without any evidence and same was also on a higher side. He then submitted that the direction to pay 12% interest in case of non-payment of compensation within a period of 45 days of the order was contrary to law laid down by the Supreme Court in National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, (2004) 1 ACC 581 : (2004) ACJ 648 : AIR 2004 SC 1581 : (2004) 118 CompCas 500 : (2004) 2 JT 282 : (2004) 137 PLR 47 : (2004) 2 SCALE 126 : (2004) 2 SCC 370 : (2004) 1 SCR 861 : (2004) AIRSCW 7409 : (2004) AIRSCW 737 : (2004) 1 Supreme 749 : (2004) 7 Supreme 102 . He, therefore, submitted that the amount of compensation as granted deserves to be reduced and the direction to pay penal interest is also required to be set aside.

4. Shri A. Shelat, learned Counsel appearing for the respondent No. 1 on the other hand supported the findings recorded by the Tribunal as regards permanent disability of the respondent No. 1. He submitted that various doctors who had treated the respondent No. 1 had been duly examined and they had specifically stated that on account of injuries suffered in the accident, the disability of the respondent No. 1 was of a permanent nature. He submitted that even the Medical Reports and the discharge card clearly indicated that the disability of the respondent No. 1 was permanent. He also referred to the statements made on oath in Civil Application No. 2340/2012 that even after passage of time the nature of disability had not reduced and the respondent No. 1 continued to be permanently disabled. He then submitted that it was, in fact, a case for enhancing the compensation considering the nature of disability. He submitted that even if the respondent No. 1 had not preferred in cross objection or a cross appeal, if it was found that the claimant was entitled for additional amount of compensation, the same could always be granted. In that regard, he relied on judgment of the Delhi High Court in MAC APP 629/2010 (Oriental Insurance Co. Ltd. Vs. Mamta Kumari and Ors.) decided on 6-9-2012. He also relied on decision of the Supreme Court in Jakir Hussein Vs. Sabir and Others(2015) 2 ACC 1 : (2015) ACJ 721 : (2015) 2 AD 567 : (2015) 2 RCR(Civil)

141 : (2015) 2 SCALE 582 : (2015) 3 SCJ 5 to urge that the respondent No. 1 had not been granted any compensation on account of loss of earning during the period of treatment as well as for future medical treatment. He also referred to the decision in Kavita Vs. Deepak and Others, (2012) ACJ 2161 : AIR 2012 SC 2893 : (2012) 7 JT 595 : (2013) 169 PLR 140 : (2012) 4 RCR(Civil) 273 : (2012) 7 SCALE 500 : (2012) 8 SCC 604 : (2012) AIRSCW 4771 : (2012) 6 Supreme 261 in that regard. He, therefore, submitted that in the facts of the present case, the respondent No. 1 was entitled to a higher amount of compensation.

5. The following point arises for consideration in the first appeal:

Whether the amount of compensation as awarded by the Claims Tribunal is just and proper or whether the same needs to be enhanced?

6. I have carefully considered the respective submissions and I have also gone through the records of the case. In support of the claim of compensation, the respondent No. 1 had examined one Dr. Gautam Darda vide Exhibit-40. He had stated that after the accident, the respondent No. 1 was initially admitted at Mayo Hospital and thereafter, he was admitted in CIIMS Hospital. He had treated the respondent No. 1 for head injury. He stated that the respondent No. 1 was unconscious for about 25 days. He referred to the discharge card at Exhibit-41 and admitted the contents of the discharge card. He then stated that he had seen the patient six months before deposing on 17-9-2003 and stated that the respondent No. 1 was not able to talk properly and was also not in a condition to move. He then stated that there was no chance of improvement in his condition for his entire life. In his cross-examination, he stated that on account of injuries suffered in the accident, the respondent No. 1 had become permanently disabled.

7. The claimant thereafter examined Dr. Ravindra Pralhad Bhajani vide Exhibit-55 who was an Orthopedic Surgeon. He treated the respondent No. 1 for a period of 1 1/2 months. He referred to the Discharge Card at Exhibit-56. He also stated that at the time of discharge, the respondent No. 1 was suffering from 100% disability. In his cross-examination, he stated that 100% disability means the patient can not speak, express his willingness and can not do his own work. The claimant required assistance for his day to day pursuits. Another doctor examined was Dr. Rajkumar Choudhary at Exhibit-143. He was working with Bombay Hospital. He stated that the respondent No. 1 had been admitted at Bombay Hospital for treatment in the month of August and September, 1997 and thereafter till June, 1998. In his cross-examination, he stated that as per records, the respondent No. 1 had not recovered from the injuries. These are the witnesses who have been examined to prove the nature of injuries and the treatment that was given to the respondent No. 1.

In Rajkumar (supra), the Supreme Court observed about the manner in which permanent disability has to be ascertained. It was held that the evidence of such doctors who have issued disability certificate without treating the injured should not be readily accepted. Similarly, mere production of a disability certificate or a

Discharge Certificate would not be proof of extent of disability stated therein unless the Doctor who treated the claimant or who medically examined him is tendered for cross-examination. If the Tribunal is not satisfied with the medical evidence, a Medical Board can be constituted.

If in the backdrop of aforesaid observations the evidence on record is examined then it is clear that DW 1 and DW-3 who had stated that the respondent No. 1 had suffered 100% disability had stated so on the basis of treatment given by them. In the Discharge Cad at Exhibit-56, it has been specifically mentioned that the respondent No. 1 was suffering from 100% disability when he was discharged. This fact has also been stated by DW-1 and he has also opined that there were no chances of improvement in his condition. DW-4 also stated that the respondent No. 1 had not recovered from his injuries. Similarly, perusal of various medical papers in relation to the treatment taken at Bombay Hospital also reveal the manner in which the respondent No. 1 was taken to said Hospital as he was unable to walk or move independently. The photograph at Article ''C'' that was also considered by the Claims Tribunal when it proceeded to hold that the disability suffered by the respondent No. 1 was 100% discloses nature of disability of the respondent No. 1. Hence, in the facts of the present case, especially when the Doctors who had treated the respondent No. 1 for disability had opined that the same was to the extent of 100% which fact is also mentioned in the Discharge Certificate at Exhibit-56, said finding recorded by the Claims Tribunal regarding extent of disability does not deserve to be interfered with.

8. It is, therefore, now necessary to consider the quantum of compensation as awarded by the Claims Tribunal and whether the same is fair and just compensation in the facts of the case. To prove the income of the respondent No. 1, his wife was examined vide Exhibit-201. She had stated that the respondent No. 1 was a partner in a Firm called Wasudeo Traders. She placed on record Income Tax returns for aforesaid period along with a deed of partnership signed by all the partners. She further stated that after the accident, the respondent No. 1 was unable to do any activities. In her cross-examination, she stated that after the accident though the partnership Firm was doing business, her husband had retired from the Firm. She stated that she would produce the Certificate from the Registrar of Firms in that regard. The Claims Tribunal after considering the Income Tax returns for the years 1993-1994 and 1994-1995 at Exhibit Nos. 204 and 205 proceeded to calculate average annual income of Rs. 50,000/-. It thereafter proceeded to calculate the future loss of income on that basis after providing for deduction of 1/3rd amount. On that count, it granted an amount of Rs. 7,33,400/-. Considering the income tax returns filed by the claimants, the amount of average annual income of Rs. 50,000/-appears to be justified.

9. In so far as the amount granted for proposed future expenses on the attendant, the Tribunal has held that in view of the 100% disability suffered which was to last life long, the claimant was held entitled to an amount of Rs.

600/-per month. Hence, taking an annual amount of Rs. 7200/-for a period of 31 years by treating the longevity of the claim to be 70 years, a total amount of Rs. 2,23,200/-came to be granted. As the finding regarding permanent disability has been found to be based on evidence, the aforesaid amount granted towards future expenses on the attendant is also reasonable. It is to be noted that an amount of Rs. 600/-per month on said amount cannot be said to be unjustified especially in the present times. Hence, grant of sum of Rs. 2,23,200/-stands confirmed.

10. The learned Counsel for the respondent by relying upon the judgment of the Delhi High Court in Oriental Insurance Co. Ltd. (supra) sought enhancement in the amount of compensation. In aforesaid case, after relying on the judgment of the Supreme Court in Nagappa Vs. Gurudayal Singh and Others, (2003) ACJ 12 : AIR 2003 SC 674 : (2002) 10 JT 144 : (2003) 2 SCC 274 : (2003) 1 UJ 159 , it was held that even without filing any appeal or cross objections, the High Court could enhance the amount of compensation. This view was reiterated by the Supreme Court in Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 by observing that it is the duty of the Tribunal/Court to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation. Hence, in view of aforesaid law as laid down by the Supreme Court, the claim for enhancement in the amount of compensation can be considered.

According to the learned Counsel for the respondent, the Tribunal erred in not granting amounts towards the future medical expenses with regard to physiotherapy and loss of earning during the period of treatment. In that regard, he had relied upon the decision of the Supreme Court in Kavita and Jakir Hussein (supra).

11. From the evidence available on record, it is clear that after the accident occurred on 29-11-1994, the respondent underwent treatment for a considerable period of time. He initially took treatment at Mayo Hospital and thereafter at CIIMS Hospital. He was then admitted at Bombay Hospital for about two months and again in June 1998, he took treatment there. Thus, a period of roughly three years can be taken as the period spent for treatment. Considering the fact that the amount of average annual income has been taken at Rs. 50,000/-, a sum of Rs. 1,50,000/-can be awarded for the loss of earning during the period of treatment of three years.

12. Similarly, for the claim towards future medical expenses, an amount of Rs. 1,50,000/- can be granted as reasonable amount of compensation. Thus, the respondent No. 1 is entitled for enhanced compensation of Rs. 3,00,000/-.

13. As regards the submission made on behalf of the appellant that the direction to pay 12% interest in case of non-payment of compensation within a period of

45 days of the order, it is to be noted that in view of the law as laid down in National Insurance Company Limited (supra), such direction could not have been granted. There could not have been stipulation for higher rate of interest in case of failure to pay the compensation. To that extent, the contention of the learned Counsel for the appellant will have to be accepted.

14. Hence, for aforesaid reasons, the points as framed are answered by holding that there is no reason to reduce amount of compensation granted by the Claims Tribunal. However, a case has been made out for granting higher compensation. Hence, the following order is passed:

ORDER

(1) The judgment of the Claims Tribunal is partly modified and it is held that the respondent No. 1 is entitled for a total of amount of compensation of Rs. 18,44,000/-. An amount of Rs. 15,44,000/- has already been granted by the Claims Tribunal.

(2) The entire amount of compensation shall be payable with interest @ 9% per annum from the date of the petition till its realization. The amounts already paid shall not be liable for such interest.

(3) The respondent No. 1 shall be paid the amount of compensation which is lying in deposit in terms of interim orders passed in the present appeal. The same shall be paid by drawing a cheque in the name of the respondent No. 1 which shall be handed over to the person authorized by him to collect the same. This be done within a period of three months from today.

(4) The appeal stands disposed of with aforesaid directions. No costs.

