
(2010) 09 MP CK 0031

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 372 of 2009

New India Assurance Co. Ltd.

APPELLANT

Vs

Jagdish Chandra Gehlot and Others

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2011) 1 TAC 677

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Judgement

J.K. Maheshwari, J.—This appeal has been filed u/s 173 of the Motor Vehicles Act, against the award dated 25th October, 2008 passed by 8th Additional Motor Accident Claims Tribunal (Fast Track Court), Ujjain in Claim Case No. 31/2007, by which the Claims Tribunal has awarded the compensation to the tune of Rs. 11,12,350/- which has been assailed by Insurance Company only on the ground of quantum.

2. As per the claim petition, on 24th April, 2006 when the claimant alongwith other persons were coming in tractor trolley bearing registration No. M.P.-13-K-168/169 after attending the Kisan Rally at that time from opposite side Tanker bearing registration No. M.P.-33-H-0107 driven by Respondent No. 2-Santosh Kumar rashly and negligently dashed the tractor and trolley. On account of the said accident, claimant has suffered grievous injuries in the back lower portion. After having long treatment, claimant has suffered paraplegia and became bed ridden. It is said that claimant was earning Rs. 5,000/- per month. However, the application seeking compensation to the tune of Rs. 3,45,000/- was filed before the Claims Tribunal. Non-applicants 2 and 3 were remained ex parte and not put any defence before the Claims Tribunal.

3. Insurance Company by filing written statement has denied the averments made in the claim petition. It is specifically denied that the claimant was earning Rs. 5,000/- per month at the time of accident. The accident has also been denied

from the said vehicle and contended that claim petition was filed on frivolous ground. It is also contended that the driver was not possessing the valid driving licence, however, on account of violation of terms and conditions of the policy, compensation cannot be awarded against the Insurance Company and prayed for rejection of claim.

4. The Claims Tribunal has recorded the finding that on account of rash and negligent driving of the vehicles particularly Tanker bearing registration No. M.P.-33-H-0107 driven by Respondent No. 2-Santosh Kumar, accident took place wherein the claimant has received various injuries. The Tribunal has further observed that in the light of the statement made before it and in the light of the judgment of the Apex Court, just and reasonable compensation has been awarded on the following details:

(1) Loss of future Income Rs. 9,72,000/- (2) Medical expenses Rs. 73,313/- (3) Conveyance and Special diet Rs. 24,000/- (4) Loss of income Rs. 18,000/- (5) Pain and suffering Rs. 25,000/- Rs. 11,12,313/-

5. Shri S.V. Dandwate, learned Counsel for the Appellant submits that the Tribunal has committed an error in calculating future loss of earning due to the disability of the claimant accepting his earning of Rs. 4,500/- per month. It is contended by him that as per the certificate (Ext. P/94) of permanent disability, the doctor stated the said disability is to the extent of 60%. The compensation in the said head is exorbitantly and is on the higher side. Therefore, the compensation as awarded by the Tribunal, may be reduced reasonably. It is further contended by him that the claimant resides in a remote area within the district of Ujjain. However, earning of Rs. 4,500/- per month as accepted by the Tribunal is on higher side. At the last it is urged by him that if the total amount of compensation as awarded by the Tribunal is deposited in the Bank, the claimant may get interest about Rs. 8,000/- per month. Further it is contended that in such circumstances the compensation as awarded by the Tribunal is exorbitantly on higher side and it may be reduced. It is further submitted by him that as per the statement of contractor, it is apparent that the claimant was merely labourer. In view of the above submissions, he prayed that the appeal may be allowed reducing the compensation reasonably.

6. Shri V.P. Saraf, learned Counsel for Respondent No. 1-claimant, per contract, submits that the Claims Tribunal in Para-29 has discussed in detail the evidence adduced before it. The reasons have also been assigned by the Tribunal why the 100% permanent disability has been assessed. As per disability certificate (Ext.P/94) of the doctor. It is to the extent of 60%. It is contended by him that the doctor himself has admitted in his cross-examination that the claimant has become 100% disabled and he is not in a position to get up and move. It is also apparent from the finding that to answer the call of nature, he is unable to sit. It is also apparent that for the whole life he requires the aid of attendant. However, in such circumstances, the Tribunal found it a case of 100% disability and reasonably awarded the compensation which may not be reduced as in the

peculiar facts of the case the compensation as awarded is just and proper. On the point of earning, it is urged by him that the claimant was working as a Electrician with the contractor who has come forward in the witness box and supported the statement of the claimant that he had. Earned Rs. 4,500/- on installation of metre. The contractor used to pay Rs. 20/- meterwise to him. Considering the aforesaid, the earning of Rs. 4,500/- as accepted by the Tribunal is just and proper in the facts and circumstances of the case. It is also submitted that considering the condition of the claimant, it is a case of 100% permanent disability in view of the statement of doctor. However, after applying multiplier Rs. 9,72,000/- has rightly been awarded in future loss of income on account of the said disability. It is lastly contended by him that the claimant is present in the Court and he has come with the aid of 3-4 persons. He is totally bedridden. However, in the peculiar facts of the case the claimant is required attendants for whole life and on that basis the award cannot be seems to be on higher side. However, the appeal filed by the Appellant be dismissed.

7. I have heard the rival contention of learned Counsel appearing for the parties and seen the claimant who is present in the Court and come on the support of 3-4 persons, examined by the doctor of the Dispensary of High Court. The doctor has concurred that it is a case of paraplegia and claimant is unable to answer the call of nature and to sit. The evidence which has come on record further indicate that on account of injuries in back lower limb, the claimant suffered totally paralysis. In this context, it is to be determined whether the compensation as awarded by the Tribunal is on higher side or just and reasonable.

8. It is to be seen from the record that the claimant has filed claim petition and contended that he was earning Rs. 5,000/- at the time of accident. In the evidence it has come on record that he was working with a contractor namely M.S. Rawat having electrician work. In the statement of contractor, he has stated that claimant was working as electrician and doing the work of fitting of meter. He used to give Rs. 20/- per installation of meter. Accordingly, it is stated by the contractor that he was paying Rs. 20/- per meter and every day he used to install 8-9 meters. It is further stated that in view of such electrician work, claimant was earning Rs. 4000-4500/- per month. However, the argument as advanced by learned Counsel for the Appellant that the claimant was not earning Rs. 4,500/- per month as accepted by the Tribunal, is without any substance and is not acceptable by this Court.

9. On going through the statement of Dr. Vinod Lahri (AW-4) it is apparent that the certificate of permanent disability has been given by him to the extent of 60% but looking to the physical condition of the injured, it is a case of 100% disability. In the opinion of this Court, the claimant has suffered paraplegia and on account of the said injury he is not in a position to get up and move and to answer the call of nature. In such a case if the Tribunal recorded it a case of 100% disability, the said finding cannot be said to be faulty. In view of the aforesaid discussion, the compensation is required to be calculated Rs.

9,72,000/- as awarded in the head of future loss of earning is just and proper which is not liable to be interfered. In other heads, the Tribunal has rightly awarded the compensation.

10. Now the arguments as advanced by learned Counsel for the Appellant that on depositing of the same amount the claimant may get Rs. 8,000/- interest is required to be dealt with. In the present case, the claimant is a bed ridden person, he is not in a position to get up without any assistant. However, in such a case, a person who is just like alive corpse (jinda Lash) and lost sic aminities of life and if such a person is not in a position to maintain his family, if the compensation of Rs. 11,12,313/- has been awarded, that cannot be treated exorbitant and unreasonable. On depositing the said amount and to get the interest thereon as submitted by the learned Counsel for the Appellant is not applicable. In peculiar facts of the case, this Court is of the opinion, the compensation as awarded by the Tribunal is just and proper and cannot be interfered on appeal filed by the Insurance Company on the point of quantum.

11. In view of foregoing, I do not find any substance in this appeal and the same is dismissed.