
(2013) 01 AHC CK 0414
In the Allahabad High Court
Case No : F.A.F.O. No. 3717 of 2012

New India Assurance Co. Ltd.

APPELLANT

Vs

Ramesh Chandra and Another

RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2013) 1 AWC 598

Hon'ble Judges : Sunil Ambwani, J; Aditya Nath Mittal, J

Bench : Division Bench

Advocate : Aijaz Ahmad Khan, for the Appellant; A.T. Pandey and R.P.S. Chauhan, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani and Aditya Nath Mittal, JJ.—We have heard Shri A.A. Khan, learned counsel for the New India Assurance Co. Ltd., the appellant. Shri A.T. Pandey appears for the respondent claimant. The insurance company has filed this F.A.F.O. u/s 173 of the Motor Vehicles Act. 1988. against the award of compensation dated 30th July. 2012 passed by Motor Accident Claims Tribunal/ Addl. District and Sessions Judge, Court No. 14, Aligarh awarding compensation of Rs. 3,90,000 with 6% interest towards the injuries caused to the claimant on which he has been rendered 100% disabled for carrying out any gainful employment.

2. Brief facts giving rise to this case are that on 25.8.2007 at about 7.00 p.m., when the claimant was travelling alongwith his wife and other passengers in a Bus No. U.P. 82-A-9379 from Jaharveer Rajasthan, the driver of the bus lost control on the vehicle. The bus collided with a tree and then fell down in a ditch on G.T. Road in front of Dadari Telephone Exchange. Shri Ramesh Chandra, the claimant and other passengers suffered serious injuries in the accident. The claimant and his wife were admitted to Guru Teg Bahadur Hospital, Delhi where the wife died. The claimant suffered serious injuries in his back bone causing

fracture and that both his legs were crushed, causing total functional disability of the lower limbs.

3. The claimant filed the injury report, first information report charge-sheet filed against the driver for rash and negligent driving, site plan; case diary and inspection report; technical report; the orders by which the vehicle was released original disability certificate issued by the Superintendent of the Safdarjung Hospital, New Delhi and other documents.

4. The Tribunal after considering the documentary and oral evidence found that the accident was caused on account of rash and negligent driving of the driver of the bus in which the bus dashed against the tree and overturned. The conductor of the bus and Guddi Devi the wife of the claimant died due to fatal injuries caused in the accident. The bus was insured by the appellant company. It was not denied by the insurance company that the driver of the bus had a valid driving licence on the date of the accident.

5. The award has been challenged on the ground that the doctor who had examined the claimant and issued the medical certificate was not examined. The medical certificate did not prove the disability to the extent of 100%, and further that the income of the deceased was assessed at higher side.

6. The Tribunal has relied upon original medical certificate of the Medical Superintendent in the office of the Safdarjung Hospital, New Delhi dated 25.2.2011 in which it was verified that the petitioner has lost the ability to use both his legs. He has become a cripple and will be confined to wheel chair. He is unable to walk and has difficulty in performing daily routine including passing of urine and stool.

7. The claimant-respondent claimed Rs. 11,25,000 towards loss of income from his occupation as painter and Rs. 4 lacs towards medical bills.

8. The Tribunal found that the claimant could not prove the employment in the painting work and thus calculated compensation of loss at notional income of Rs. 3,000 per month in accordance with Laxmi Devi and Others Vs. Mohammad Tabbar and Another, : Laxmi Devi and Others Vs. Mohammad Tabbar and Another, . The Tribunal found that the medical bills were not proved and awarded Rs. 5,000 in lump sum towards medical bills. After giving 1/3rd deduction from the income towards personal expenses it allowed Rs. 3,60,000 as compensation for 100% disability suffered by the claimant and further amount of Rs. 30,000 towards medical expenses pain and suffering and for future medical treatment.

9. The Tribunal has given an award of Rs. 3,90,000 with direction that an amount of Rs. 2,90,000 will be immediately paid to the claimant. The remaining amount will be kept in fixed deposit initially for a period of 5 years in nationalised bank.

10. We do not find any error on the findings recorded by the Tribunal on the issue of rash and negligent driving of the vehicle nor the finding were challenged by learned counsel appearing for the insurance company.

11. Learned counsel for the insurance company submits that the doctor should have been examined to prove the disability and that bills for medical expenses were not proved.

12. In the present case, the Tribunal has relied paper No. 23Ga, which is original disability certificate issued by the office of the Medical Superintendent, Safdarjung Hospital, New Delhi on 25.2.2011 verifying that the claimant has suffered 100% functional disability of lower limbs as both his legs have been permanently damaged and he will not be able to carry out the vocation pursued by him. The injured claimant will be confined to wheel chair.

13. The Tribunal has awarded only Rs. 5,000 towards medical expenses as medical bills could not be proved.

14. There is no error in the award to cause interference in this first appeal from order. The disability has not been denied. The loss of the use of the two lower limbs, by any stretch of imagination cannot be treated to be disability, which is less than 100% for the purposes of any gainful occupation. It is true that the claimant respondent is able to use his hands and may be able to pursue some employment. The disability, however, on the loss of two lower limbs even as scheduled injury would be 100% for claiming compensation. The first appeal from order is dismissed. The amount of Rs. 25,000 deposited as precondition of filing of this appeal shall be remitted to the Tribunal within a month.