
(2014) 02 DEL CK 0003

In the Delhi High Court

Case No : MAC. APP. No. 423 of 2012 and C.M. No. 7097 of 2012

New India Assurance Co. Ltd.

APPELLANT

Vs

Riya Dutta and Others

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Citation : (2014) 2 ACC 56

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Kanwal Chaudhary, Advocate for the Appellant; Nilofar Qureshi and Ms. Rehnuma, Advocates for the Respondent No. 1, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.

MAC. APP. No. 423/2012 1.

1. The present appeal is preferred against the impugned award dated 30.11.2011, whereby the learned Tribunal has granted compensation as under:

Interest at the rate of 7.5% per annum from the date of filing of the petition till realization of the amount was also awarded by the learned Tribunal. Learned Counsel appearing on behalf of the appellant/Insurance Company has argued that the learned Tribunal has erred in awarding the compensation despite the fact it has specifically held that no compensation can be granted on account of loss due to permanent disability since neither PW5 Dr. N.Z. Farooqui, Member of Board constituted by Deen Dayal Upadhyay Hospital (for short "DDU") nor the Board constituted by All India Institute of Medical Sciences (for short "AIIMS") has assessed percentage of disability.

2. Learned Counsel further submitted that due to accident the claimant/respondent No. 1 is suffering from Post Traumatic Trigeminal Neuralgia and 7th Nerve Paresis with persistent Epiphora. As per the statement of Dr. S.K. Khokhar,

it may have permanent effect as claimant may start headache at any time and it may create hindrance in her studies, however, stated that no permanent disability was assessed by the Medical Board. Despite that, the learned Tribunal has awarded a sum of Rs. 1,00,000 for pain and suffering on a higher side.

3. Learned Counsel further submitted that while granting compensation on account of loss of amenities of life, the learned Tribunal has ignored the fact that the claimant/respondent No. 1 had suffered only permanent disease, namely. Neuralgia and regular watering of eyes, not a permanent disability. Hence, the compensation granted under this head, i.e., Rs. 1,00,000 is on a very higher side.

4. Learned Counsel further submitted that in reply to the Court question whether the patient was suffering from Post Traumatic Trigeminal Neuralgia and 7th Nerve Paresis with persistent Epiphora, PW6, Dr. S.K. Khokhar replied that "Yes, neuralgia will have permanent effect as the patient, may start half headache at any time during her lifetime. Watering in the eyes is possible at any time. It may create hindrance in studies".

5. Learned Counsel further submitted that since no disability was assessed by the Medical Board of AIIMS, therefore, on request of the claimant, the Court directed the DDU Hospital to assess the disability. Accordingly, the Medical Board was constituted by the Medical Superintendent of DDU Hospital, which examined the claimant/respondent No. 1. In its report Ex. PW5/A, it is stated that patient was examined by three Eye Surgeons and a Plastic Surgeon of DDU Hospital, who specifically opined that no visual deficit was present.

6. Learned Counsel further submitted that PW5 Dr. N.Z. Farooqui has specifically stated that Post Traumatic Trigeminal Neuralgia with 7th N. Paresis with persistent Epiphora as per report Ex. PW5/A of R.P. Centre, AIIMS vide, letter No. 5-3/RPC/20114 dated 28.1.2011 does not come under the category of physical disability and thus percentage of visual disability cannot be determined.

7. To a Court question that "After sustaining injury the right eye of the patient has slightly squeezed, do you think this itself amounts to disability to the patient especially she is young unmarried girl and student also", PW5 Dr. Farooqui replied as under:

As per the guidelines for determining the disability, there is no provision for determining disability of patient in case he/her eye has been squeezed due to the accidental injury or especially case of young unmarried girl/student. Therefore, the board cannot give any opinion in that regard if that amounts to any disability to the patient.

8. Learned Counsel further submitted that to a Court question that "If the board has considered all above three things while giving its report regarding this patient.

The doctor has opined that:

These three things are not mentioned in our notes at the time of examination and these three things were not mentioned in the guidelines for determining the visual disability.

9. Learned Counsel submitted that neither PW5, Dr. N.Z. Farooqui, Member of the Board constituted by DDU Hospital, nor the Board constituted by AIIMS gave percentage of disability of the claimant/respondent No. 1, therefore, the learned Tribunal has not awarded any compensation on account of loss due to permanent disability. However, without establishing any permanent disability and without producing any witness that due to the injuries received in the accident, the claimant/respondent No. 1 suffered loss of studies or marriage prospects, the compensation granted by the learned Tribunal is on a very higher side.

10. While concluding the arguments, learned Counsel for the appellant/Insurance Company has submitted that the compensation should be just and to be compensated in proportion to the injuries received. In the present case, there is no permanent disability; however, the learned Tribunal has awarded compensation, which is on a very higher side.

11. Admittedly, the learned Tribunal has not granted any compensation for loss of earning capacity on account of permanent disability. It is noted, father of the claimant has admitted that he had not incurred any amount on the medical treatment, therefore, the learned Tribunal has not awarded any compensation towards the same.

12. Since the accident has not been disputed, therefore, it is not required in what manner the accident had taken place, however, few facts are necessitated to be noted to adjudicate the instant appeal.

13. On 7.2.2007 at about 9.45 am, after giving her practical examination of Social Studies, the claimant/respondent No. 1 was returning from her school in the offending bus bearing No. DL1PA 4721. As soon as she put her first foot down from the bus near Happy Model School Bus Stand, B-1 Block, Police Picket, suddenly respondent No. 2, i.e., driver of the offending vehicle started the bus without ensuring that the claimant/respondent No. 1 had alighted from the bus or not. As a result, she fell down from the bus resulting in head injury and she became unconscious on the spot. She was removed to a nursing home, namely, Amar Leela, Janakpuri, by a Constable Kuldeep Singh posted at the Police Picket. Thereafter, shifted to AIIMS by her mother, where she remained admitted for treatment.

14. The claimant filed her affidavit Ex. P-2, whereby she deposed that because of the accident she had suffered fracture of temporal bone, another facial bone had been affected, got paralytic attack on her face, her right eye squint and her mouth also has paralytic sign. She further deposed that doctor had advised that she may develop head injury like cognitive deficits and late onset seizures. She could not give proper attention to her studies due to severe headache and being under heavy stress and mental torture which had affected her studies because

she could not sit long to study her course. Further deposed, she was still getting treatment from AIIMS and had been taking medicines advised by the doctors.

15. PW5 Dr. N.Z. Farooqui has deposed that patient was suffering from Post Traumatic Neuralgia with 7th N. Paresis with persistent Epiphora as per report Ex. PW5/A of Dr. R.P. Centre, AIIMS vide letter No. 5-3/RPC/20114 dated 28.1.2011.

16. Besides, the injuries received by the claimant/respondent No. 1 have been certified vide certificate Ex. PW6/A dated 25.1.2011 issued by the Medical Board of Dr. R.P. Centre, AIIMS, New Delhi, of which PW6 Dr. S.K. Khokhar was one of the members. It has been specifically stated therein that the claimant Riya Dutta was suffering from Post Traumatic Trigeminal Neuralgia and 7th Nerve Paresis with persistent Epiphora.

17. In reply to the Court question whether the patient was having any permanent disability, Dr. Khokhar has replied as under:

Yes, neuralgia will have permanent effect as the patient may start half headache at any time during her lifetime. Watering in the eyes is possible at any time. It may create hindrance in studies.

18. It is true that the claimant/respondent No. 1 has not suffered any permanent disability, however, suffered a permanent disease, namely, Neuralgia and regular watering of eyes. The injured is a young girl having whole life to live and stand herself in life. As per the opinion of Dr. Khokhar, the permanent disease suffered by the claimant would put restrictions on the enjoyment of her life and study as well. She has to use spectacles otherwise she would feel headache. Her right eye has squeezed. The injuries resulted in to physical disfigurement such as squeezing of right eye and persistent watering of the eyes. She may have any problem during her life including cognitive deficits and late onset seizures etc. The facial disfigurement cannot be compensated in terms of money. Whole life she has to face hard realities of the Society due to physical disfigurement/disability. The facial beauty of a young girl is of a paramount importance in the Indian Society. However, because of the injuries sustained in the accident, the claimant has suffered loss of facial beauty.

19. It cannot be overlooked that due to suffering of permanent disease, physical disfigurement, reduction of facial beauty due to squeezing of right eye, the marriage prospects of the claimant/respondent No. 1 have been substantially diminished. At the time of the accident, she was a young girl of 18 years and the facial beauty of a young unmarried girl plays a vital role in matrimonial prospects in the Indian Society.

20. The claimant/respondent No. 1 has specifically stated that because of the injuries, she cannot give proper attention to her studies. It cannot be disbelieved that severe headache, heavy stress and strain and mental torture would definitely affect her studies. She cannot sit long to study as she is suffering from

constant headache. She missed her goal of life to go for Medical or Engineering course as she is unable to give long sitting for her studies.

21. In her cross-examination, she specifically deposed that she wanted to do Engineering and had taken admission in Science Stream and studied for four month but could not continue due to reasons mentioned above.

22. The injuries cannot be compensated in terms of money, however, it is the utmost duty of the Court to compensate the claimants in proportion to the injuries received.

23. In the present case, the claimant/respondent No. 1 met with an accident at the age of 18 years. She received a permanent disease due to which she will suffer throughout her life. Moreover, she had to go to AIIMS from Janakpuri for the treatment. Her career was at stake. Her parents must have spent huge amount on conveyance and special diet.

24. The learned Tribunal keeping in mind the facts and circumstances of the case, material placed on record and the evidence produced before it, granted just and fair compensation.

25. In view of the above discussion, there is no merit in the instant appeal.

26. Hence, the appeal is dismissed. Consequently, the Registry of this Court is directed to release the statutory amount in favour of the appellant and the balance compensation amount with up-to-date interest accrued thereon in favour of the respondent No. 1/claimant on taking necessary steps by her.

CM No. 7097/2012 (for stay)

With the dismissal of the appeal itself, this application has become infructuous. The same is accordingly dismissed.