

(2012) 03 DEL CK 0579

In the Delhi High Court

Case No : MAC App. 1011 of 2011 and MAC APP. 265 of 2012

New India Assurance Company Ltd.

APPELLANT

Vs

Pradeep Kumar and Others
 Pradeep Kumar and
Others Vs New India Assurance Company Ltd.

RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Citation : (2012) 03 DEL CK 0579

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

Bench : Single Bench

Advocate : K.L. Nandwani, in MAC app. 1011/2011 and Mr. Peeush Sharma, in MAC app. 265/2012, for the Appellant; Peeush Sharma, for R-1, in MAC APP. 1011/2011 and Mr. K.L. Nandwani in MAC APP. 265/2012, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.

CM APPL.20729/2011 (delay) in MAC APP. 1011/2011

1. There is a delay of 30 days in filing the Appeal. For the reasons stated in the application, the same is allowed. Delay of 30 days in filing the Appeal is condoned.

2. The application stands disposed of.

MAC APP. 1011/2011 and MAC APP. 265/2012

3. These are two cross Appeals.

4. MAC APP.1011/2011 is filed by the Appellant New India Assurance Company Limited (the Insurer) on the ground that there was contributory negligence on the part of the first Respondent (the Claimant) and that the compensation awarded is exorbitant and excessive.

5. The first Respondent has filed the Cross Objections being MAC APP. 265/2012

on the ground that the Motor Accident Claims Tribunal (the Claims Tribunal) erred in taking the Appellant's notional income of Rs. 15,000/- per annum only. The Claims Tribunal ought to have been taken atleast the minimum wages of a Graduate as the potential income of the first Respondent. The Claims Tribunal also reduced the functional disability to 20% when the actual disability was 40% in respect of the right lower limb. The Claimant thus seeks enhancement of compensation to Rs. 10,00,000/-.

NEGLIGENCE

6. In order to prove the negligence, the Claimant filed his Affidavit Ex.PW-1/A testifying the manner of the accident. He deposed that on 15.04.2006 at about 9:30 A.M. while he was proceeding to his College a Canter bearing registration No. UP-14Z-9422 driven by the third Respondent in a rash and negligent manner came on the wrong side of the road and dashed against him. This part of the Claimant's testimony was not challenged in cross-examination. The driver of the offending vehicle (the third Respondent) was not produced to rebut the Claimant's testimony. In the circumstances, the Claims Tribunal's finding that the accident occurred on account of rash and negligent driving by the third Respondent cannot be said to be erroneous. I agree with the conclusion reached by the Claims Tribunal that the third Respondent was responsible for causing the accident.

QUANTUM OF COMPENSATION

7. By the impugned judgment, the Claims Tribunal awarded a compensation of Rs. 4,08,000/- under the following heads:-

Sl. No.

Compensation under various heads

Awarded by the Claims Tribunal

1.

Special Diet

Rs. 15,000/-

2.

Conveyance Allowance

Rs. 15,000/-

3.

Loss of study year, mental pain, agony, Loss of Enjoyment of life, Loss of Prospectus of marriage, disfigurement and Disability

Rs. 3,00,000/-

4.

Functional Disability

Rs. 54,000/-

5.

Medical Expenses

Rs. 24,000/-

Total

Rs. 4,08,000/-

8. The Claimant suffered multiple fracture on his right leg i.e. fracture of right femur with fracture both bone right leg with fracture patella right. He was admitted in GTB Hospital, Dilshad Garden, Delhi immediately after the accident on 15.04.2006 and was discharged on 02.05.2006 (Ex.PW-1/3). Debridement of wound was done. Stabilization was done with Ilizarov ring fixator. The bones could not unite and the Claimant was readmitted in GTB hospital on 07.12.2006. He underwent surgery on 12.12.2006 and bone grafting was also done. He was discharged from the hospital on 19.12.2006. The Claimant was again admitted in the hospital on 04.03.2008 for removal of implant and was discharged on 20.03.2008. On account of serious multiple fractures in the right leg and femur bone, the Claimant could not fully recover resulting in permanent disability to the extent of 40% in respect of the right lower limb (Ex.PW-1/2) even after 21/2 years of the accident. The Claimant could not stand without the help of crutch.

9. The Claimant was a student of B.A. Ist year on the date of the accident. He remained confined to hospital for various periods as stated earlier and was under treatment for 21/2 years.

10. The Claimant deposed that on account of injuries suffered in the accident, he could not continue his studies and became junior amongst his classmates. He deposed that he could not concentrate on his studies and on account of disability he might not get a suitable employment. His future prospects have been adversely affected; he would not be able to get a suitable match for his marriage.

11. In the case of Raj Kumar Vs. Ajay Kumar and Another, the Supreme Court brought out the distinction between "permanent disability" and "functional disability" affecting earning capacity. Para 10 and 14 of the report are extracted hereunder:-

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is,

percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

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14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

12. The Claimant was aged about 22 years at the time of the accident. After three years, he still continued with his studies. It is not sure as to what profession he would follow. The nature of injuries suffered by him would always be a handicap in his mobility in standing, walking, running, etc. The Claims Tribunal was, therefore, justified in making a guess work and taking permanent disability vis-?-vis the whole body to the extent of 20%. Although, the Claimant was not working at that time, he being a student, but his earning capacity have been of a Graduate, as he would have completed his studies after two years of the accident. Thus, instead of taking the notional income of Rs. 15,000/-, the Claims Tribunal ought to have awarded him compensation on loss of earning capacity on the minimum wages of a Graduate which was his potential employment. He would be rather entitled to more compensation if it is presumed that he would not be able to complete his Graduation on account of the injuries suffered by him. I would, thus, award him a compensation of Rs. 1,74,139/- (4031/- x 20% x 12 x 18) on account of loss of his earning capacity.

13. It is difficult to measure the pain and suffering in terms of the money on

account of serious injuries suffered in a motor accident. Since the compensation is required to be paid for pain and suffering an attempt must be made to award compensation which may have some objective relation with the pain and suffering underwent by a victim of a motor accident. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the parts of the body where the injuries were sustained; surgeries (if any) underwent by the victim; confinement in the hospital and the duration of the treatment.

14. Considering that the Claimant underwent successive surgeries and remained under treatment for more than two years, he was entitled to a compensation of Rs. 50,000/- towards pain and suffering.

15. I have also mentioned about the loss of amenities and inconvenience which he will suffer throughout his life. He would be entitled to compensation of Rs. 1,00,000/- towards loss of amenities in life and disfigurement. Claimant marriage prospects would be seriously affected on account of disfigurement and permanent disability. Considering his young age, I would award him a compensation of Rs. 50,000/- towards loss of marriage prospects and Rs. 50,000/- towards loss of studies and loss of two years in life.

16. The overall compensation is recomputed as under:-

Sl. No.

Compensation under various heads

Awarded by the Claims Tribunal

Awarded by this Court

1.

Special Diet

Rs. 15,000/-

Rs. 15,000/-

2.

Conveyance Allowance

Rs. 15,000/-

Rs. 15,000/-

3.

Loss of study year, mental pain, agony, Loss of Enjoyment of life, Loss of Prospectus of marriage, disfigurement and Disability

Rs. 3,00,000/-

Awarded separately below

4.

Functional Disability affecting earning capacity

Rs. 54,000/-

Rs. 1,74,139/-

5.

Medical Expenses

Rs. 24,000/-

Rs. 24,000/-

6.

Pain and suffering

Rs. 50,000/-

7.

Loss of amenities in Life and Disfigurement

Rs. 1,00,000/-

8.

Loss of marriage prospects

Rs. 50,000/-

9.

Loss of studies and loss of two years in life

Rs. 50,000/-

Total

Rs. 4,08,000/-

Rs. 4,78,139/-

17. The compensation is thus enhanced from Rs. 4,08,000/- to Rs. 4,78,139/-. The enhanced compensation of Rs. 70,139/- shall carry interest @ 8% per annum from the date of filing of the petition till the date of payment, as awarded by the Claims Tribunal.

18. Respondent New India Assurance Company Limited is directed to deposit the enhanced amount along with upto date interest within 30 days with Registrar General of this Court which shall be released/held in fixed deposit in UCO Bank, Delhi High Court, New Delhi as per the Claims Tribunal's order.

19. In view of the above, MAC APP.1011/2011 filed by the Insurer is devoid of

any merit. The same is accordingly dismissed.

20. MAC APP. 265/2012 filed by the Claimant is allowed in above terms.

21. No costs. Pending applications also stand disposed of.