

(2012) 10 DEL CK 0211
In the Delhi High Court
Case No : MAC. APP. 945 of 2012

New India Assurance Company Ltd.

APPELLANT

Vs

Rahul Kumar and Others

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2, Order 12 Rule 6, 35
Motor Vehicles Act, 1988 — Section 163A, 166
Suits Valuation Act, 1887 — Section 9

Citation : (2012) 10 DEL CK 0211

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

Bench : Single Bench

Advocate : Punit Vinay, with Mr. Abhishek Kumar, for the Appellant; S.K. Vashisht, for R-1, for the Respondent

Judgement

G.P. Mittal, J.—This Appeal arises out of a judgment dated 18.05.2012 passed by the Motor Accident Claims Tribunal (the Claims

Tribunal) in MACT Case No. 43/2010 whereby a compensation of Rs. 1,11,500/- was awarded in favour of the First Respondent for having

suffered injuries in a motor vehicle accident which occurred on 19.06.2009. On 19.06.2009, the First Respondent was travelling in a bus bearing

No. DL-1PB-2379. When the bus reached near Puth Khurd, the fire broke out inside the bus as a result of which the First Respondent suffered

burn injuries on both of his hands. The burns were assessed to be 35%. The First Respondent suffered permanent disability to the extent of 14.4%

on account of contraction of fingers of both the hands. The Claims Tribunal assessed the partial permanent disability of 14.4% to be 35%

functional disability and awarded the compensation, which is tabulated hereunder:-

2. Since this Petition was filed u/s 163-A of the Motor Vehicles Act, 1988 (the Act), the Claims Tribunal took the First Respondent's income to

be Rs. 15,000/- per month to assess the loss of earning capacity.

3. The following contentions are raised on behalf of the Appellant:-

(i) Since the permanent disability was to the extent of 14.4%, the Claims Tribunal erred in awarding loss of earning capacity to the extent of 35%.

(ii) The award of interest @ 9% per annum was exorbitant and excessive.

(iii) The award of Rs. 20,000/- towards Counsel's fee was excessive and award of Rs. 5,000/- towards out of pocket expenses by the Claims

Tribunal was illegal.

4. In Raj Kumar Vs. Ajay Kumar and Another, , the Supreme Court brought out the difference between permanent disability and functional

disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted in

accordance to the nature of job undertaken by the victim of motor accident. Paras 11 and 14 of the report are extracted hereunder:

11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after

assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of

earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on

appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is

approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for

determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and

Another, and Yadava Kumar Vs. The Divisional Manager, National Insurance Co. Ltd. and Another, .

x x x

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.

5. Although, there was no expert evidence as to the effect of the disability on the earning capacity, yet from the disability certificate it is apparent that there is contraction of fingers of both the hands which would substantially reduce the First Respondent's earning capacity. In the absence of any medical evidence, the Claims Tribunal made a guess work that he (the First Respondent) had suffered 35% functional disability, which I am not inclined to interfere.

6. The accident took place in the year 2009. The award of interest by the Claims Tribunal is compensation for the retention of the money held by the Insurance Company. The rate of interest was very low till about the year 2006. It started rising since the year 2007. From the year 2009 onwards, the interest on long term deposit is in the vicinity of about 9% per annum. Thus, award of interest @ 9% per annum by the Claims Tribunal cannot be said to be exorbitant or unreasonable.

7. Coming to the award of Counsel's fee, this Court while deciding bunch matters titled ICICI Lombard General Insurance Co. Ltd. v. Kanti Devi & Ors., MAC APP. 645/2012, decided on 30.07.2012 dealt with the question of award of Counsel's fee in great detail. Paras 17 to 22 of the report are extracted hereunder:-

17. Section 35 & Order XXA of the Code which deal with the payment of costs

and Rule 1; Rule 1A; Rule 2; Rule 8; Rule 9; Rule 12 and Rule

16 of Chapter 16 Volume 1 Part B of the Delhi High Court Rules (for short the Rules), which deals with the Counsel's fee are extracted

hereunder:-

35. Costs.

Subject to such conditions and limitations as may be prescribed, and to the provisions of law for the time being in force, the costs of an incident to

all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what

extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try

the suit shall be no bar to the exercise of such powers.

Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

ORDER XXA. COSTS

Rule 1. Provisions relating to certain items:-

Without prejudice to the generality of the provisions of this Code relating to costs, the Court may award costs in respect of-

expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;

expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before

the institution of the suit;

expenditure incurred on the typing, writing or printing of pleadings filed by any party;

charges paid by a party for inspection of the records of the Court for the purposes of the suit;

expenditure incurred by a party for producing witnesses, even though not summoned through Court, and

in the case of appeals, charges incurred by a party for obtaining any copies of judgments and decrees which are required to be filed along with the

memorandum of appeal.

2. Costs to be awarded in accordance with the rules made by High Court-The award of costs under this rule shall be in accordance with such rules

as the High Court may make in that behalf.

x x x

Rule 1. Suit for recovery of property, breach of contract or damages--In suits for the recovery of money or of specific property or a share of

specific property, whether immovable or moveable, or for the breach of any contract or for damages:-

If the amount or value of property, debt or damages decreed shall not exceed Rs. 25,000/- at 10 per cent on the amount or value decreed.

If the amount of value shall exceed Rs. 25,000/- and not exceed Rs. 50,000/-, on Rs. 25,000/- at 10 per cent and on the remainder at 8 per cent.

If the amount or value shall exceed Rs. 50,000/- and not exceed Rs. one lakh, on Rs. 50,000/- as above and on the remainder at 4 per cent.

If the amount or value shall exceed Rs. 1,00,000/- and not exceed Rs. 5,00,000/- on Rs. 1,00,000/- as above and on the remainder at 2 per cent.

If the amount or value shall exceed Rs. 5,00,000/- on Rs. 5,00,000/- as above and on the remainder at one per cent subject, however, that in no

case the amount of fee shall exceed Rs. 20,000/-.

Rule 1A. In the case of:

Summary suits under Order XXXVII of the first Schedule to the Code of Civil Procedure, 1908, where the defendant does not appear or where

leave to defend is refused or where a decree is passed on the defendant failing to comply with the conditions on which leave to defend was granted

and appeals against decrees in suits.

(ii) Suit, the claim in which is admitted but only time or installment for payment is asked for.

(iii) Suit which is got dismissed by a plaintiff for want of prosecution before settlement of issues or recording of any evidence, except evidence

under Rule 2 of Order X of the Code of Civil Procedure.

(iv) Suit which is withdrawn before the settlement of issues or recording of any evidence except evidence under Rule 2 of Order X of the Code of

Civil Procedure.

(v) Suit in which judgment is given on admission under Rule 6 of Order XII in the First Schedule to the Code of Civil Procedure, 1908, before the

settlement of issues or recording of any evidence except evidence under Rule 2

of Order X of the Code of Civil Procedure.

(vi) Short causes, commercial causes and long causes in which no written statement is filed and appeals from decrees in such suits.

(vii) Suits compromised before the settlement of issues or recording of evidence except evidence under Rule 2 of Order X of the Code of Civil

Procedure.

(viii) Any formal party to a suit or appeal, e.g., a trustee or estate holder who only appears to submit to the orders of the Court and asks for his

costs.

(ix) A suit or appeal which has abated.

(x) A Plaintiff returned for presentation to the proper Court, the amount of Advocate's fees to be allowed shall be fixed by the Court disposing of

the matter and shall not exceed 1/2 of that payable according to the rate specified in sub-rule (1) above:

Provided that in no case falling under this sub-rule the Advocate's fee shall be less than Rs. 500/-

Rule 2. Others Suits--In suits for injuries to the person or character of the plaintiff, such as for assault or defamation or for injuries to the property,

or to enforce rights where the pecuniary value of such injury or right cannot be exactly defined, as in suits for the partition of joint property where

partition is improperly resisted or any other suit of the kinds specified in the rules made by the High Court u/s 9 of the Suits Valuation Act, 1887

for the valuation of suits which do not admit of being satisfactorily valued, if the plaintiff succeeds, the Court may order the fee allowed to the

plaintiff to be calculated with reference either to the amount decreed or according to the valuation of the suit according to such a sum as the Court

shall think reasonable and shall fix with reference to the importance of the subject of dispute but the same shall not be less than Rs. 500/- and shall

not exceed Rs. 5,000/-.

Rule 8. Miscellaneous proceedings--In any miscellaneous proceedings or for any matter other than that of appearing, acting or pleading in a suit

prior to decree, the fee shall not exceed:

rupees two hundred and forty in the Court of a District Judge or of an officer exercising the powers of a Subordinate Judge of the 1st, 2nd, 3rd

and 4th class or in a Court of Small Causes; and

(ii) rupees forty-eight in the Court of an officer exercising the powers of a Subordinate Judge in respect of cases the value of which is below Rs.

1,000.

Rule 9. Undefended suits--If a suit in any Court of original jurisdiction be undefended, the fee shall be calculated at one-half the sum at which it would have been charged had the suit been defended.

x x x

Rule 12. Appeals--In appeals the fee shall be half of the fee calculated on the same scale as in the original suits and the principles of the above rules as to original suits shall be applied, as nearly as may be.

x x x

Rule 16. Certificate as to fees to be filled by counsel in the Court of District Judges--Not withstanding anything contained in the rules and not

withstanding any order of the Presiding Officer, no fee to any legal practitioner appearing in civil appeals, or original suits in the Court of District

Judges shall except, as in these rules hereinafter provided, be allowed on taxation between party and party, or shall be included in any decree or

order, unless the party claiming to have such fee allowed shall, before the final hearing, fill in the Court, a certificate signed by the legal practitioner

certifying the amount of the fee or fees actually paid by or on behalf of his client to him or to any other legal practitioner in whose place he may

have appeared.

18. A perusal of Section 35 read with Order XXA of the Code would show that normally the costs shall follow the event and in case the Court

directs otherwise, it is required to state reasons in writing. It is further revealed that expenditure in serving any notice required by law or even

otherwise; expenditure incurred on typing, writing and printing of pleadings; charges paid by party for inspection of the Court's record; expenditure

incurred by a party for producing witnesses; and in case of Appeal the charges incurred by a party for obtaining copy of the judgment and decree;

are broadly payable without limiting the scope of the costs.

19. It is urged on behalf of the Appellant Insurance Companies that the proceedings in a Petition u/s 166 of the Act or for that matter u/s 163-A of

the Act are miscellaneous proceedings covered under Rule 8 of the Rules and the Counsel's fee shall be payable on the scale as mentioned in Rule

8. Rule 8 extracted earlier apply to misc. proceedings or for any matter other than that of appearing, pleading etc. in a suit prior to the decree.

20. On the other hand, Rule 1 of Chapter 16 Volume 1 Part B of the Rules is very widely worded and also includes Suit for damages. A Claim

Petition u/s 166/163-A is in respect of damages for the injuries caused to the Claimant payable by the driver, the owner and the Insurer. Thus, in

my view Rule 1 is the appropriate Rule which would apply to the Claim Petition under the Act. In the circumstances, apart from the award of costs

under other heads, as mentioned under Order XXA, the Counsel's fee shall be payable on the scale as given in Rule 1.

21. It may be mentioned that the inquiry conducted by a Claims Tribunal is not more complex than a recovery suit or a suit for breach of contract

or for damages. Thus, the scale of fees in Rule 1 of the Rules would be more than adequate to meet the expenses towards the Counsel's fee.

22. Moreover, as per Rule 1A in case of a decision made in a Claim Petition decided without contest, the payment of fees is not to exceed one-

half of what is provided in Rule 1, as extracted earlier.

8. Thus, at the most, if the Counsel had submitted the certificate of fee with the Claims Tribunal before conclusion of the hearing that could have

been awarded as costs of the Claim Petition. The Counsel's fee would have been payable as per the scale of fee. Moreover, there is no provision

for awarding out of pocket expenses to the Counsel. The costs take care of the actual expenses as admissible under the High Court Rules. The

order awarding out of pocket expenses of Rs. 5,000/- was illegal.

9. The impugned order awarding Counsel's fee of Rs. 20,000/- and out of pocket expenses of Rs. 5,000/- is set aside. On the other hand, it is

directed that the Claim Petition shall be deemed to be allowed with costs and the First Respondent shall be entitled to the costs including the

Counsel's fee in terms of the High Court Rules and Orders as stated by this Court in Kanti Devi.

10. The Appeal stands disposed of in above terms.

11. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant Insurance Company, subject to making up deficiency in the Court fee

within two weeks. Pending Applications stand disposed of.