

(2011) 03 JH CK 0235

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 148 Of 2009

Oriental Insurance Co. Ltd. Branch Office Dharamshala Road
Daltonganj

APPELLANT

Vs

Dr. Thakur Surendra Kumar Singh And Anr

RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Indian Penal Code, 1860 — Section 279, 338
Motor Vehicles Act, 1988 — Section 140

Citation : (2011) 2 JLJR 56

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Advocate : Alok Lal, Arbind Kumar Lal, Rajiv Prasad

Final Decision : Dismissed

Judgement

1. The instant appeal arises out of a judgment and Award dated 17th December 2008 passed by the Presiding Officer, Motor Vehicle Accidents Claim Tribunal, Ranchi, in Compensation Case No. 35 of 2003. The appeal has been preferred by the Oriental Insurance Co. Ltd. Challenging the Award to a tune of Rs. 16,48,887/-, which was liable to be paid by the insurer-appellant to the opposite party, who has suffered a permanent disability.

2. The facts of the case are that the claimant Dr. Thakur Surendra Kumar Singh was traveling in his Maruti car bearing registration No. BR-26A-0949 from Latehar to Ranchi. When he reached near village Hutap River Bridge on NH-75, then all of a sudden a truck bearing registration No. JH-03A-1124, which was being driven rashly and negligently by the driver came from the opposite side and violently dashed with his Maruti car, as a result the doctor/claimant sustained grievous multiple injuries on his person and the car was also badly damaged. Dr. Thakur Surendra Kumar Singh was taken to a nearby hospital at Latehar for his first aid and subsequently he was referred to R.M.C.H., Ranchi. A first information report was also registered on 10.12.2002 against the driver of

the truck. After investigation the police submitted charge sheet under sections 279 and 338 of the Indian Penal Code against the driver Brijnandan Prasad Mehta.

3. The claim set up by the injured was that he was posted as a doctor at R.M.C.H., Ranchi and was getting salary of Rs. 15,098/- At the time of accident he was a surgeon. He sustained multiple grievous fracture injuries on almost all parts of his body including on his chest and face. He was finally referred to All India Institute of Medical Science, New Delhi and also under went medical treatment at Safdarganj Medical Hospital, New Delhi, and also at Pune. The fracture injuries received by the claimant entailed lengthy surgery including plating, nailing as well as screwing operations as well as plaster from chest to toe of his right leg. The claimant had undergone a number of other operations on his person. He suffered from physical pain as well as mental agony and was bed ridden for about eight months. He was unable to discharge his daily routine works and the treatment called specialized surgery. The claimant himself was a surgeon and passed a masters degree in Surgery. He also had a diploma as an anesthesiologist but after the accident he is unable to perform any surgery as his disability is to the extent of 70%. His disability certificate is on record.

4. The claim petition was contested by the owner of the truck as well as the Insurance Company. Written statements were filed with an assertion that there is no cause of action and the accident took place due to the own fault of the claimant because he was driving his Maruti car rashly and negligently. The contention on behalf of the opposite party before the Tribunal was that the truck was being driven in a normal speed very carefully and the accident did not take place on account of any fault of the driver of the truck. It was also brought on record that the truck was insured with the Oriental Insurance Company Ltd. (appellant) at the time of accident vide Policy No. 2152/2003 and the same was effective from 14.11.2002 to 13.11.2003. A copy of the Insurance Policy was also brought on record and, therefore, it was the Company, who was liable to indemnify the claimant.

5. A number of issues were framed and the claim petition was allowed and the Award was given, which is under challenge in the instant appeal.

6. The main ground of challenge in the instant appeal is that the Tribunal has wrongly awarded an exorbitant amount towards loss of future earning capacity. The amount should have been awarded in accordance with the Schedule of the Act and, therefore, on the basis of principles laid down in various decisions amount of Rs. 14,63,207/- is excessive and very high.

7. The contention raised by the learned counsel for the appellant is that the earning income of the claimant has not been reduced. He was working as a Government Doctor and he is still continuing to work and, therefore, the Award for the loss of pecuniary future income applying multiplier has resulted in excess Award which is sought to be reduced. Learned counsel has emphatically stated

that the claimant will continue to work till the date of his retirement and he will also get his post retirement benefit. He is thus not entitled to the amount of Rs. 14,63,207/-, specially on the face of his salary certificate which indicates that there is no loss in his remuneration. The learned counsel appearing on behalf of the Insurance Company has submitted firstly that the capacity of future income should have been calculated after taking into consideration that the rank of the claimant was not lowered. On the contrary he was allowed to continue as a Doctor, though as an anesthetist instead of a surgeon. The second argument is regarding inadequate application of multiplier and third argument regarding physical disability of the claimant.

8. Counsel appearing on behalf of the appellant has placed reliance on a number of decisions; firstly in the case of United India Insurance Co. Ltd. Puthur Trichy v. Vellingiri reported in 2011 (1) T.A.C. 329 (Mad), another decision of the Karnataka High Court in the case of B.H. Rangaiah v. H.R.V. Basavaraju, reported in AIR 2000 Karnataka 324, third decision is in the case of State of Haryana v. Jasbir Kaur, reported in 2003 AIR SCW 4198 and one another unreported decision has also been placed before decided by the Apex Court in Civil Appeal No. 8981 of 2010 (arising out of SLP (C) No. 10383 of 2007) Raj Kumar v. Ajay Kumar (now reported in 2011 (1) S.C.C. page 343.

9. The learned counsel has led emphasis on paragraph 10 of the Apx Court decision, which is being quoted herein below:

"Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. 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 find suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, any 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. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may".

10. The argument of the appellant's counsel has been vehemently disputed on behalf of the respondents. The assertion is that since the claimant was a specialized surgeon, but on account of his disability he is unable to perform surgery any more, which definitely has a greater avocation towards earning capacity and as a surgeon he could have availed opportunity of starting his private work and definitely as a surgeon his income would have been many folds than that earning as a Government Doctor. The counsel has also stressed his argument that at present on account of his permanent disability the claimant has no option but to continue in the Government job within the limited earnings as he is only functioning as an anesthetist, whereas he has specialized qualification in surgery as well as an anesthesiologist. Reliance has been placed on a decision of the Rajasthan High Court in the case of *New India Assurance Co, Ltd. v. Lalit Kumar Bhutani* reported in 2007 (3) T.A.C. 33 (Raj) as well as an another decision of the Delhi High Court at New Delhi in the case of *Klaus Mittelbachert v. East India Hotels Ltd.* reported in 1999 ACJ 287. The decisions are on the basis of the prospects of future earning and also having specialized qualification in one of the branches of the medical Science. The claimant could have very well availed offer from other county as well as augment his income by conducting surgery in private clinics or set up his own nursing home. Learned counsel has also placed reliance on an another decision of the Madras High Court in the case of *B. Imtiaz Ahamed v. G. Banumathi* reported in 2001 (3) T.A.C. 361 (Mad).

11. I have perused the judgment and Award given by the Claims Tribunal and given a careful consideration to the argument and the citation placed before me. No doubt the Supreme Court has given certain guidelines while awarding the compensation towards permanent disability, but I cannot loose sight of the fact that the claimant has suffered 70% disability and the fact that Dr. Thakur Surendra Kumar Singh after completing his M.B.B.S. has taken Masters Degree in surgery and diploma in anesthesiologist. Definitely the masters degree in surgery would have enabled the Doctor future high capacity of earning as a

surgeon. Diploma in anesthesiologist has somehow made him to continue in the government job but it has limited him to work as an anesthetic, which definitely brings him a lesser income than that of surgeon. In case the claimant would have continued as a surgeon he definitely had a chance of unlimited income, surgery is a skill which is in high demand. Surgeons today are working in a number of private nursing homes and earning many folds than what a government Doctor earns in a Government hospital. It is apparent that though it has not been expressed in so many words, but it was taken into consideration by the Tribunal and on the basis of the guidelines given by the apex Court while granting an extra amount towards future earnings capacity Award was calculated on a higher side for those very reasons. These are valid consideration which has to be weighed and therefore I am of the view that Claim Tribunal has correctly awarded Rs. 14,63,207/- towards future earnings capacity and it cannot be said to be excessive at all.

12. In view of what has been stated above, I am of the considered opinion that the claim petition has rightly been decided by the Claim Tribunal and the objections raised on behalf of the Insurance Company (appellant) that the Award towards future earnings capacity calculated is excessive cannot be accepted.

13. I do not agree with the submissions made on behalf of the appellant Insurance Company. There is no merit in the appeal and the same is accordingly dismissed. The Insurance Company is liable to disburse the amount forthwith after deduction of the amount already deposited under section 140 of the Motor Vehicles Act, 1988 or any other deposits made pursuant to any other order.

14. Accordingly, for the reasons stated herein above, the present appeal stands dismissed.