

(2011) 04 CHH CK 0038
In the Chhattisgarh High Court
Case No : M.A. (C) No. 629 of 2007

Oriental Insurance Company Ltd.

APPELLANT

Vs

Vinay Singh Chauhan and Others

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Chhattisgarh Motor Vehicles Rules, 1994 — Rule 226
Motor Vehicles Act, 1988 — Section 140, 142, 143, 162, 163A

Citation : (2011) 4 CGLJ 90

Hon'ble Judges : Manindra Mohan Shrivastava, J; I.M. Quddusi, J

Bench : Full Bench

Advocate : Sudhir Agrawal, for the Appellant;

Final Decision : Allowed

Judgement

Hon'ble Shri I.M. Quddusi, J.—This appeal has been filed by the Insurance Company against the impugned award dated 25.01.2007 passed by the II Additional Motor Accident Claims Tribunal, Raipur (C.G) in Claim Case No.86/2006 on the question of quantum.

2. The appellant had got permission u/s 170 of the Motor Vehicles Act to challenge the quantum.

3. Brief facts of the case as per the version of the claimant injured are that on 03.04.2006 he was going to Kawardha from Raipur by his Motorcycle bearing Regn. No.M.P.20-KG/2371. On the way, at 10.00 a.m. near Kanhora turning Truck No.M.P.06-E/4625 (Old No.C.G.04/J/5979) which was being driven by respondent No.2 in a rash and negligent manner dashed the motorcycle of the injured claimant, as a result of which he sustained serious injuries. He had undergone treatment in various hospitals and spent huge amount for his treatment He became permanently disabled and is unable to work on account of the injuries sustained by him in the accident. At the time of accident, the injured was aged about 40 years and was earning Rs.8000/- per month by doing

contract works. The appellant has filed claim petition for the award of a total compensation of Rs. 19,75,000/- under various heads.

4. The learned Claims Tribunal held that the offending truck which was being driven by respondent No.2 dashed the appellant, as a result of which, he sustained injuries and became permanently disabled to the extent of 50%. It has taken the income of the deceased as Rs.8000/- per month and Rs. 96,000/- per annum. After deducting 50% with reference to permanent disability, the annual loss of income has been assessed as Rs.48,000/- and further on applying multiplier 15, the total loss of income has been worked out to Rs.7,20,000/-. Besides this, the Tribunal has also granted Rs.75,000/- for treatment & medical expenses, Rs. 15,000/- for pain and suffering, Rs.4,850/-for taxi hire and Rs. 15000/- for future treatment.

5. We have perused the records of the Tribunal and found that the treating Medical Officer was not examined. However, Dr. Sandeep Sahu (A.W.2) came into witness box and stated that he had issued the permanent disability certificate (Ex.P-45) to the claimant and mentioned that the claimant got 15% permanent disability in respect of his hand and 35% in respect of his foot. The Tribunal added the percentages of both the disabilities and assessed the total permanent disability as 50% (15% + 35%) and awarded compensation."

6. In our opinion, the Tribunal was not justified in adding the percentages of both the disabilities in ascertaining the total permanent disability of the body of the injured for the purpose of assessing the future loss of earnings due to permanent disability suffered by the injured. Whether it is to be added or not that should be ascertained by the medical expert by calling any Member of the Medical Board for that purpose.

7. Permanent disability has not been defined except in Section 142 which reads as under :

142. Permanent disablement.-For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving:-

(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

(b) destruction or permanent impairing of the powers of any member or joint; or

(c) permanent disfiguration of the head or face.

8. Section 143 provides for applicability of the chapter of Motor Vehicle Act to certain claims under Workmen Compensation Act, 1923.

9. Explanation to sub Section (1) of Section 163 A of the Motor Vehicles Act express that for the purpose of that sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen Compensation Act, 1923.

In Second Schedule of Section 163-A at clause 5, the description of "disability in non-fatal accidents" has been given and after sub-clause (b), it has been mentioned that "Injuries deemed to result in Permanent Total Disablement/ Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule-I under Workmen's Compensation Act, 1923".

10. In the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, four Judges of Hon''ble Apex Court have held in paragraph 5 thus as under :-

5. The expression "total disablement" has been defined in Section 2 (1)(1) of the Act as follows:-

(1) total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates workman for all work which he was capable of performing at the time of the accident resulting in such disablement." It has not been disputed before us that the injury was of such a nature as to cause permanent disablement to the respondent and the question for consideration is whether the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:-

The injured workman in this case is carpenter by profession... By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only." This is obviously a reasonable and correct finding. Counsel for the appellant has not been able to assail it on any ground and it does not require to be corrected in this appeal. There is also no justification for the other argument which has been advanced with reference to Item 3 of Part II of Schedule I, because it was not the appellant's case before the Commissioner that amputation of the arm was from 8" from tip of acromion to less than 4 1/2" below the tip of olecranon. A new case cannot therefore be allowed to be set up on facts which have not been admitted or established.

11. In the case of National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, , the Hon''ble Apex Court has held in para 8 as under :-

Loss of earning capacity is, therefore, not a substitute for percentage of the physical disablement. It is one of the factors taken into account. In the instant case the doctor who examined the claimant also noted about the functional disablement. In other words, the doctor had taken note of the relevant factors relating to loss of earning capacity. Without indicating any reason or basis the High Court held that there was 100% loss of earning capacity. Since no basis was indicated in support of the conclusion, same cannot be maintained. Therefore, we set aside that part of the High Court's order and restore that of the Commissioner, in view of the fact situation. Coming to the question of liability to pay interest, Section 4-A(3) deals with that question. The provision has been quoted above.

12. In the case of Oriental Insurance Co. Ltd. Vs. Mohd. Nasir & Ann AIR 2009 SCW 3717 the Hon"ble Supreme Court has held thus in paragraphs 8, 10, 11, 12, 13, 14 & 16 as under :-

8. Both, the 1923 Act and 1988 Act are beneficent legislation insofar as they provide for payment of compensation to the workmen employed by the employers and/or by use of motor vehicle by the owner thereof and/or the insurer to the claimants suffering permanent disability.

10. Both the Acts aim at providing for expeditious relief to the victims of accident. In these cases, the accidents took place by reason of use of motor vehicles.

Both the statutes are beneficial ones for the workmen as also the third parties. The benefits thereof are available only to the persons specified under the Act besides under the Contract or Insurance.

The statutes, therefore, deserves liberal construction. The legislative intent contained therein is required to be interpreted with a view to give effect thereto.

11. With the aforementioned backdrop, we may analyse the contentions raised before us by the learned counsel for the parties.

Both the statutes provide for the mode and manner in which the percentage of loss of earning capacity is required to be calculated. They provide that the amount of compensation in cases of this nature would be directly relatable to the percentage of physical disability suffered by the injured vis-a-vis the injuries specified in the First Schedule of the 1923 Act. Indisputably where injuries are specified in the First Schedule, the mode and manner provided for the purpose of calculating the amount of compensation would be applicable.

12. The statutes provide for determination of the extent of physical disability suffered by a qualified medical practitioner so as to enable him to assess the loss of earning capacity. Explanation 1 appended to clause

(c) of sub-section (1) of Section 4 provides that where there are more injuries than one, the aggregate amount of compensation has to be taken but the same should not exceed the amount which would have been payable in case of permanent total disablement.

It is also beyond any doubt or dispute that while determining the amount of loss of earning capacity, the Tribunal or the High Court must record reasons for arriving at their conclusion.

The 1923 Act which would also be the claims applications arising out of use of motor vehicles in terms of the provisions of 1988 Act would for the purpose of determination of the amount of compensation where the victim of the accident suffers from disability in the cases coming within the purview thereof. The Note appended to the Second Schedule of the 1988 Act raises a legal fiction, stating that "injuries deemed to result in Permanent Total Disablement/Permanent

Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under the Workmen's Compensation Act, 1923". Permanent disability, therefore, for certain purposes have been correlated with functional disability.

13. As to what, therefore, in our opinion, would be relevant is to find out the nature of injuries and as to whether the same falls within the purview of Part I or Part II thereof. We have noticed hereinbefore that whereas part I specifies the injuries which would deem to result in permanent total disablement, Part II specifies injuries which would be deemed to result in permanent partial disablement. The distinction between the "permanent total disablement/and "permanent partial disablement" is that whereas in the former it is 100% disablement, in the latter it is only the disablement to the extent specified in the Schedule.

14. Similar terms have been used in clauses (a) and (b) of paragraph 5 of the Second Schedule of the Motor Vehicle Act. It, by reference, incorporates the provisions of the First Schedule of the 1923 Act. Indisputably, therefore, the Note appended thereto would not only be applicable to the cases falling under the 1923 Act but apply to the cases which fall under the 1988 Act as well.

16. In determining the amount of compensation, several factors are required to be taken into consideration having regard to the Note. Functional disability, thus, has a direct relationship with the loss of limb.

Mohd. Nasir was a driver. A driver of a vehicle must be able to make use of both his feet. It was the case of the claimant that he would not be in a position to drive the vehicle and furthermore would not be able to do any other work. He was incapable of taking load on his body. It, however, appears that in his cross-examination, he categorically stated that only Chief Medical Officer had checked him in his office. No disability certificate had been granted. He admitted that he had not suffered any permanent disability. He, even according to the Chief Medical Officer who had not been examined, suffered only 15% disability. The Tribunal has arrived at the following findings:

On page 16 original of disability certificate the prescription of medicine X-Ray report of Sarvodaya and of Mohan X-Rays have been produced which reveals the fracture of right leg. CMO certificate 0/ M 9/2003 dated 21.3.2005 has also been produced which is alleged to be false by insurance Co. I have perused them carefully which bears signature of Deputy CMO officer of Disability Board, Moradabad had it shown that the applicant had appeared before them for medical check up and whose examination was done by senior orthopedics surgeon Dr. R.K. Singh on the basis of recommendation of Dr. Bansal operation was done on 2.10.2004 the applicant walk with the help of the support and is not competent to drive the heavy motor vehicle the said certificate was issued with recommendation that after six months his conditions is to be reviewed.

That document was filed on 29.3.2005. Insurance company has stated the doctor who has issued disability certificate has not been produced in the court. But

looking into the aftermath situation the plea of insurance company that the said certificate is forged and the same has not been issued by the MBBS doctor, carries no force.

13. Therefore, permanent disability has direct link with the functional capacity of the injured. In the instant case, the Tribunal has not assessed future loss of earning of the claimant due to actual permanent disability rather in a cyclostyle manner after adding 15% disability part on the upper side of the body and 35% disability part on the lower side awarded compensation treating loss of income as 50% which is not proper. In such circumstances, the Tribunal should have conducted proper enquiry as laid down in Rule 226 of the C.G. Motor Vehicles Rules, 1994 and Section 168 of the Motor Vehicles Act, 1988.

14. It has been provided in Rule 226 of C.G. Motor Vehicles Rules, 1994 that the Claims Tribunal shall obtain whatever information and documents which may be found necessary from the police, medical and other authorities and proceed to award the claim whether the parties who were given notice, appear or not, on the appointed date. Further we cannot ignore the provisions of section 168 of the Motor Vehicles Act, 1988 which provides that on receipt of an application for compensation made u/s 166, the Claims Tribunal shall after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim and subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just. However, the Tribunal has not conducted any enquiry in the manner indicated above.

15. Further in Raj Kumar Vs. Ajay Kumar and another IV (2010) ACC 815 (SC) decided on 18th October, 2010 Hon"ble the Apex Court laid down vide para 11 as under:

11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to "hold an inquiry into the claim" for determining the Must compensation". The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the "just compensation". While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the

Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

(Emphasis supplied)

16. Therefore, we are of the opinion that the matter requires reconsideration at the end of the Tribunal in respect of quantum part i.e., assessment of the compensation to be awarded to the claimant injured with reference to the permanent disability. For the above purpose, the Tribunal shall conduct proper enquiry and find out the future loss of earning of the claimant with reference to the permanent disability and for that, the Tribunal may get the opinion of the Medical Board. It will also be open for the claimant to get the salary certificate proved by producing the employer, if so advised.

17. The appeal is allowed in part. The impugned award is set aside. The matter is remitted back to the Tribunal for decision afresh in view of the observations made herein above. No order as to cost(s).

18. Needless to mention that the parties shall be allowed to amend the pleadings, adduce further evidence, file documents or get the documents verified etc., and thereafter decision shall be taken afresh. The Tribunal shall conduct an enquiry, which is necessary for adjudication of future loss of earning of the claimant injured due to permanent disability.

19. The parties shall appear before the Claims Tribunal on 15th June, 2011. The LCR shall be sent back without further delay.

20. If the amount is deposited by the Insurance Company, the same shall be kept in a fixed deposit in a Nationalized Bank for a period of six months extendable from time to time. However, if the sum or any part of the sum has been paid to the claimant, the same shall not be recovered during the pendency of the claim petition. No order as to costs.