

(2024) 02 BOM CK 0015
In the Bombay High Court
Case No : First Appeal No. 420 Of 2009

Ranjit Arunkumar Jaiswal

APPELLANT

Vs

Ashok Manikrao Khopade And Others

RESPONDENT

Date of Decision : 08-02-2024

Acts Referred:

Maharashtra Motor Vehicles Rules, 1989 — Rule 254, 255
Indian Penal Code, 1860 — Section 279, 304A
Motor Vehicles Act, 1988 — Section 140, 163A

Citation : (2024) 02 BOM CK 0015

Hon'ble Judges : Anil L. Pansare, J

Bench : Single Bench

Advocate : S.O. Ahmed, A.W. Paunikar, Mrunal Naik

Final Decision : Partly Allowed

Judgement

Anil L. Pansare, J

1. The appellant-original claimant is aggrieved by the judgment and award dated 4/3/2006 passed by the Member, Motor Accident Claims Tribunal, Amravati in Claim Petition No. 2/1999. Respondent no.1 is the owner of luxury bus bearing registration no. MH-18/C-7699, respondent no.2 is the insurer of the luxury bus and respondent no.3 is the insurer of Truck bearing no. MH-04/H/1938.

2] The appellant suffered multiple injuries in an accident that occurred on 15/11/1997. The bus and truck had head-on collision. The drivers of both the vehicles died on the spot. The owner of the Truck has also expired. Hence, owner and driver of Truck have been not made party. An offence came to be registered under Sections 279 and 304A of the Indian Penal Code, 1860 vide Crime No. 68/1997. The appellant has blamed both the vehicles for rash and negligent driving and held them responsible for the injuries sustained by him in the accident.

3] According to the appellant, he was 29 years old and was earning Rs.3,000/-

per month. He is involved in the business of running Funfair as well as Mini Bazar at various places throughout the State of Maharashtra. He was travelling in the luxury bus while returning from Mumbai, when the accident occurred. He was admitted at NM Hospital, Nashik for a period from 5/11/1997 to 14/1/1998. He claimed to have suffered permanent disability to the extent of 40%. He claimed expenses to the tune of Rs.2,09,735/- towards medicine and treatment at NM Hospital. He also claimed compensation under other heads, viz., mental shock, loss of income, diet money, etc., total amounting to Rs.10,20,350/-. Respondent nos. 2 and 3 contested the petition.

4] The Tribunal has held that the accident has occurred because of negligence of both the vehicles. The Tribunal, however, has held that the appellant failed to prove that he has incurred permanent disability in the said accident. On the point of entitlement, the Tribunal held the appellant to be entitled for Rs.1,10,000/- towards medical bills, which was directed to be paid by respondent nos. 2 and 3.

5] Having heard both the sides and having gone through the record, the following points arise for my consideration :

Sr. No

Points

Finding

1

Whether the petitioner has proved nexus between the accidental injuries and the handicapped certificate ?

In negative

2

Whether the Tribunal has committed an error in calculating the amount of compensation ? If yes, to what amount the appellant is entitled for.

Yes, appellant is entitled for Rs.2,22,199/

3

Whether interference is called for in the impugned judgment and award ?

In affirmative

4

What order ?

As per final order

REASONS

As to point no.1

6] The issue revolves around the handicapped certificate (Exh. 41). I have gone through the said certificate. It is titled as 'Permanent Handicapped Certificate'. It has been issued on 28/6/2001, i.e., after about 3 years and 8 months of the accident. The certificate indicates that the appellant was examined on 26/6/2001. He was found to be in the category of physically handicapped persons in terms of the definition laid down by the Maharashtra Government under Government Resolution dated 23/5/1978. The certificate has been issued to enable him to register his name as physically handicap person in the employment exchange for employment assistance. The nature of disability is arthritis right hip with shortening Iirt trauma. The permanent disability of the deformity is mentioned as 40%.

7] The learned Counsel for the appellant submits that the certificate has been issued by the office of Civil Surgeon, General Hospital, Amravati. It has been signed by the Member, Handicap Board and Orthopedic Surgeon, who is also the President of the Handicap Board. According to him, this certificate having been issued by the Medical Board, examination of doctor was not necessary. The Tribunal has committed an error in not relying upon this certificate.

8] As against, Shri Paunikar, learned Counsel for respondent no.2 and Ms Naik, learned Counsel for respondent no.3 submitted that the certificate cannot be said to be the disability certificate as envisaged under Rule 255 of the Maharashtra Motor Vehicles Rules, 1989 (for short "Rules of 1989"), which requires disability certificate in form "COMP-B", issued by doctor treating the injured. The learned Counsels further submitted that the certificate having been not issued by the doctor who has treated the injured, it could not be admitted in evidence without examining the doctor.

9] The Tribunal has noted that the appellant has not filed injury certificate from the Government Hospital but has filed handicap certificate. The Tribunal noted that the certificate has been issued for the purpose of employment and cannot be termed as medical certificate.

10] The record indicates that the appellant has filed discharge summary of the hospital where he was admitted for the period from 5/11/1997 to 13/1/1998. The clinical summary indicates that the appellant suffered hip dislocation.

Surgery of hip was postponed. It was opined that hip will require THR.

11] It appears from the record that the appellant was thereafter under treatment for some days with Kulkarni Hospital. However, what had happened subsequent thereto is not on record. Admittedly, the appellant has not filed disability certificate.

12] As such, the argument put forth by the learned Counsel for the Insurance Company that the appellant is duty bound to furnish disability certificate in form "COMP-B" in terms of Rule 255 of the Rules of 1989 is not acceptable. The said Rule deals with application seeking compensation under Section 140 of the Motor

Vehicles Act, 1988 (for short "Motor Vehicles Act") and provides for appending medical certificate (and not disability certificate) with application seeking compensation on the principle of no fault liability. Form COMP-B refers to name of hospital, name of patient, accident date, duration of admission, nature of injury etc. The certificate does not prescribe disability. The argument that certificate of disability must be in form COMP-B is, thus, misconceived.

13] Rule 254 deals with application for compensation arising out of an accident. The application filed under this Rule shall be appended with injury certificate in case of an injury claim. Thus, what is required is injury certificate and not certificate in form "COMP-B". This is so because it is understood that permanent disability certificate may not be issued immediately after the accident because the period of healing injuries will have to let go before ascertaining permanent disability. In that sense, disability certificate may be filed at a later stage. At the same time, its importance will have to be recognized while ascertaining the injury claim.

14] It is well settled that a person claiming compensation for permanent disability has to prove the same through cogent evidence. The degree of proof may not be high but the applicant will have to prove such disability on preponderance of probability. In the present case, there are two difficulties to grant relief to the appellant. Firstly, the appellant has not produced disability certificate. He has produced handicap certificate. Secondly, he has not examined any doctor, treating or who has issued handicap certificate to prove the nexus between the accidental injuries and the permanent disability. As stated earlier, the appellant was examined by the Handicapped Board after about 3 years and 8 months of the accident. What had happened in between is not on record. The handicap certificate nowhere indicates that the appellant suffered permanent disability because of the accidental injuries under question.

15] There is a difference between a person suffering disability and a person who is handicap. A disability is an inability or restrict ability to perform an activity within the normal human range. As against, handicap is a disadvantage resulting from impairment or disability that limits the social role of an individual. A handicap is the effect of a disability. Being handicapped denotes an external source as it is focused on the obstacle in education, communication, occupation and other kinds of environment. On the other hand, being disabled is internal as it is centered on an individual's reduced capacity to perform certain activities. Therefore, there is a concept of 'functional disability' while awarding compensation to persons, like the appellant. Thus, there is every reason to believe that different parameters are applicable while issuing disability certificate and handicapped certificate. The appellant, therefore, ought to have examined the doctor, who has treated him or who has issued certificate in order to prove that the handicapped certificate, showing permanent disability of 40%, has direct nexus with the accidental injuries sustained by the appellant. Having not done so, it will be impermissible to grant benefit to the appellant on the basis of

handicapped certificate.

16] The learned Counsel for the appellant has relied upon the judgment of a Co-ordinate Bench of this Court in the case of Shaikh Saddam Shaikh Salim Vs. Maharashtra State Road Transport, through its Divisional Controller [First Appeal No. 839/2004 decided on 24/7/2020]. The Tribunal had ignored the permanent handicapped certificate produced by the appellant therein on the ground that the appellant had not examined the Medical Officer and that the certificate was issued for the purpose of securing scholarship. The High Court held that the injury sustained by the appellant was not disputed nor was disputed the permanent disability and, therefore, held that the Tribunal ought not to have insisted on proof of such fact.

17] In the present case, the respondents in written statement have disputed the permanent disability. Accordingly, the Counsels for respondents argued that treating doctor ought to have been examined. As such it may not be necessary to examine the doctor in each case. For example, where the injured involved in painting business has suffered hand amputation in an accident, he would be entitled for 100% functional disability only on production of disability certificate. However if he suffers disability in leg, his functional disability may not affect his business. In such a case if he desires to get compensation he will have to prove as to how and to what extent the disability in his leg will affect his business and thus earnings. This can only be done by examining the doctor.

18] The applicant herein claims that he is involved in the business of funfair and mini bazar. He states that he suffered shortening in the leg, how much is not known. How and to what extent it would affect his business is not known. In the circumstances, the doctor would have been the best person to enlighten on this point. The appellant chose not to examine him. In fact, by not examining him the appellant failed to prove nexus between the accidental injuries and permanent disability. As stated earlier, the appellant was examined by the Medical Board after about 3 years and 8 months of the accident. What had happened in between is not known. The appellant has not examined the treating doctor as also the doctor issuing handicapped certificate to connect injuries with the permanent disability and, therefore, the benefit of the said certificate cannot be extended.

19] The Tribunal has compressed the entire discussion made above to one line by saying that the certificate has been issued for different purpose and, therefore, cannot be relied upon. The absence of detailed justification will not make the finding unsustainable. The Tribunal has considered the purpose of issuance of handicapped certificate, which is for employment and, thus, did not rely upon the said certificate. This approach cannot be faulted with. Accordingly, point no.1 is answered in the negative.

As to point no. 2

20] This point relates to proof of medical expenses. The appellant has produced

bills (Exhs. 54 to 67) but the same are found to be deposits and, therefore, the Tribunal has rightly held that these documents cannot be said to be bills.

21] The learned Counsel for the appellant, however, has invited my attention to Exhs. 66 and 67, which have been also discarded by the Tribunal on the ground that the author of the said documents is not examined. Exh. 66 is a certificate issued by Lifeline Hospital, Nashik certifying that the appellant was admitted in the hospital and has paid medicine bills to the tune of Rs.72,314/-. Exh. 67 is medical bill issued by NM Hospital showing Rs.1,34,885/- towards charges for ICU, CT Scan, Pathology etc. These two documents, coupled with discharge summary (Exh. 49), will clearly establish that the appellant was admitted to Lifeline Hospital for the period from 5/11/1997 to 13/1/1998 and has incurred an amount of Rs.72,314/- towards medicine bills and Rs.1,34,885/- towards other charges. Thus, there is sufficient evidence that the appellant has incurred expenses to the tune of Rs.2,07,199/-. The Tribunal has ignored this evidence and referred to Second Schedule under Section 163A of the Motor Vehicles Act to award Rs.15,000/- towards medical expenses. The Tribunal has clearly erred in appreciating the evidence. The strict rules of evidence are not applicable in claim petitions. The Tribunal ought to have considered these two documents as proof of medical expenses.

22] The appellant had also claimed compensation under other heads like mental pain, loss of enjoyment of life, etc. The Tribunal, however, ignored the same without assigning acceptable reasons.

23] In this regard, the discharge summary indicates that the appellant was unconscious, when admitted. He had suffered multiple injuries, including fracture on right temporal bone as also dislocation of hip. The hip dislocation could not be taken care of immediately as the patient was under some other complications. He was given traction for dislocation with external pin fixation and was to be taken for definitive surgery on the hip. He was diagnosed with erosive gastritis and has received 32 bottles of blood on two different occasions. The surgery of his hip was postponed. After treatment, his general condition was improved and it was opined, at the time of discharge, that the hip will require THR. Whether the appellant has undergone hip surgery or not is not clear as there is no evidence on that point. Whether hip injury has healed or not is also not known. However, the fact remains that he was hospitalized for more than two months and continued treatment thereafter. He has therefore definitely suffered mental pain and, therefore, considering the fact that the accident has occurred in the year 2004, he would be entitled for Rs.15,000/- towards the said head.

24] So far as loss of enjoyment of life is concerned, though the appellant has claimed that he could not marry, there is no evidence of such sufferance because of accidental injuries. The permanent disability having been not proved, the consequential benefits on this count cannot be extended to the appellant.

25] Put all together, the appellant will be entitled to a sum of Rs.2,07,199/- +

Rs.15,000/- totalling to Rs.2,22,199/-towards medical expenses and mental pain. Point no.2 is answered accordingly.

As to point no.3

26] Having answered point nos. 1 and 2 in the above manner, the judgment and award passed by the Tribunal will have to be modified. Hence following order.

ORDER

i] The appeal is partly allowed.

ii] Respondent nos. 2 and 3 shall jointly and severally pay an amount of Rs.2,22,199/-, including no fault liability, to the appellant along with interest @ 9% per annum.

iii] Respondent nos. 2 and 3 shall equally bear the claim of compensation.

iv] The respondents shall deposit the amount within eight weeks from today. Rest of the award shall remain intact.

v] The award be drawn after payment of deficit Court fee, if any.