
(2012) 07 AHC CK 0071

In the Allahabad High Court

Case No : First Appeal From Order No. 2612 of 2012

Reliance General Insurance Co. Ltd.

APPELLANT

Vs

Km. Kanak Katiyar and Another

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 1 ACC 279 : (2012) 9 ADJ 163 : (2012) 6 AWC 6281

Hon'ble Judges : Rajes Kumar, J;Anil Kumar Sharma, J

Bench : Division Bench

Advocate : Rahul Sahai, for the Appellant;

Final Decision : Dismissed

Judgement

1. The insurer of Maruti Car UP 26D-7002 owned by respondent No. 2 has challenged the award dated 16.2.2012 passed by MACT/Additional District Judge, Court No. 9, Bareilly whereby compensation of Rs. 9,05,546.00 have been awarded to respondent No. 1 on account of grievous injuries sustained by her in motor accident. It appears that claimant 26-years" old Km. Kanak Katiyar, a student of BDS 3rd year was returning home alongwith her grand mother on her Scooty UP 26H-7855 and at about 12.30 p.m. the driver of aforesaid Maruti car dashed with vehicle from behind injuring both of them. The claimant suffered serious injuries on her head and all over the body. She was taken to Sri Ganga Charan Hospital,. Bareilly for treatment where she was treated as indoor patient up to 7.2.2009 and thereafter referred to higher centre. She went in comma and thereafter admitted in Fortis Hospital, Noida where she underwent head surgery and admitted till 23.3.2009. It was alleged that the claimant was doing job with a private doctor alongwith her studies and she was earning Rs. 8000/- per month. She filed claim petition for an award of Rs. 49.50 lacs. The owner of the vehicle contested the claim petition inter alia stating that the claimant is responsible for the accident and false report has been lodged and with undue pressure charge sheet has been filed by the police. He claimed that the Maruti

car was insured with Reliance General Insurance Co. Ltd., Bareilly. The appellant filed written statement denying all the allegations of the claimant and stated that the petition has been filed in collusion with the owner of the Maruti car. The learned Tribunal after recording evidence led by the parties, allowed the claim petition in part as stated above. Aggrieved, the insurer has come up in appeal.

2. We have heard the Learned Counsel for the appellant at length and perused the impugned award.

3. Learned Counsel for the appellant has submitted that the involvement of Maruti car is highly doubtful and at best it is a case of contributory negligence. The accident has not been disputed on behalf of the owner of the Maruti car. As regards the manner of accident the claimant has herself appeared in the witness box and has also examined Vinod Kumar Gangwar PW 2 as eye witness of the accident. The consistent case of the claimant is that the Maruti car hit her Scooty from behind, however, at one place the claimant has stated in her cross-examination that the side of the car dashed with her Scooty but again she has reiterated that the car hit her Scooty from behind. In our opinion, it does not make any difference. The statement of a witness is to be read a whole and not in piece meal. Even a truthful witness sometimes get confused during cross-examination before any Court or Tribunal, when he or she is subjected to twisty and mind boggling questions at the hands of skilled counsel for the other side. In such a situation it is duty of the Court to separate chaff from the grain and find out the truth. It is important to note that in this case the opposite parties did not lead any evidence to rebut the contention of the claimant about the manner of accident. The claimant has also stated that she was going on left side of the road with moderate speed carefully and the learned Tribunal has observed that there was no occasion for the claimant to avoid the accident, so there was no possibility of the claimant having contributed in the accident.

4. Now as regards the nature of injuries sustained by the claimant and amount of compensation awarded to her, the claimant has examined Udai Shanker Jha PW 3, a Technician of Fortis Hospital, Noida who has proved admission of the claimant as indoor patient in the hospital from 8.2.2009 to 21.2.2009 for treatment of her injuries. He has also proved the documents pertaining to medical treatment of the claimant as also surgery. The claimant has remained under treatment of Dr. Satish Kumar PW 4 in Ganga Charan Hospital, Bareilly. According to him the claimant was admitted in their hospital in injured and unconscious condition having brain injury on 31.1.2009 and was discharged on 7.2.2009. Her C.T. Scan revealed swelling and blood clotting in her brain. She had undergone neurosurgery. The evidence further show that the claimant remained under comma till she was admitted in Fortis Hospital, Noida and at the time of discharge from the hospital her vision was not correct. She has stated that on account of injuries she could not study for one year and has lost concentration and sharpness. In these circumstances, the learned Tribunal has awarded compensation to claimant under following heads :

5. While awarding compensation to the claimant under above heads the learned Tribunal has rightly placed reliance on the cases of R.D. Hattangadi v. M/s Pest Control ((India) Pvt. Ltd., AIR 1955 SC 755 and Nagappa Vs. Gurudayal Singh and Others, . These cases are being followed by the Tribunals and High Courts of the country for awarding compensation to the claimant pertaining to the road accidents in which they have suffered grievous injuries. In the case of Raj Kumar Vs. Ajay Kumar and Another, , again the Apex Court has highlighted the general principles relating to compensation in injury cases. In paras-4 and 5 the Hon''ble Court has observed as under:

4. The provision of the Motor Vehicles Act, 1988 ("Act" for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The Court or Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, 1970 ACJ 110 (SC); R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, and Baker v. Willoughby, 1970 ACT 259 (H.L. England).

5. The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which he injured would have made had he not been injured, comprising :

(a) Loss of earnings during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earning on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses--item (iii)--depends upon specific medical evidence regarding need for future treatment and cost thereof. Assessment of non-pecuniary damages--items (iv), (v) and (vi)--involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability--item (ii)(a)...

6. In the case of Sri Laxman @ Laxman Mourya Vs. Divisional Manager, Oritl. Ins. Company Ltd. and Another, , in para-8, the Hon"ble Court has observed :

8. The personal sufferings of the survivors of the road accidents and those who are disabled in such accidents are manifold. Sometime they can be measured in terms of money but most of the times it is not possible to do so. If an individual is permanently disabled in an accident, the cost of his medical treatment and care is likely to be very high. In cases involving total or partial disablement, the term "compensation" used in Section 166 of the Motor Vehicles Act, 1988 would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident. A very large number of people involved in motor accidents are pedestrians, children, women, and illiterate persons. Majority of them cannot, due to sheer ignorance, poverty and other disabilities, engage competent lawyers for proving negligence of the wrongdoer in adequate measure. The insurance companies with whom the vehicles involved in the accident are insured usually have battery of lawyers on their panel. They contest the petitioners by raising all possible technical objections for ensuring that their clients are either completely absolved or their liabilities minimized. This results in prolonging the proceedings before the Tribunal. Sometimes the delay and litigation expenses make the award passed by the Tribunal and even by the High Court (in appeal) meaningless. It is, therefore, imperative that the officers, who preside over Motor Accidents Claims Tribunal adopt a proactive approach and ensure that the claims filed u/s 166 of the Act are disposed off with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure. The amount of compensation in such cases should invariably include pecuniary and non-pecuniary damages.

7. Similar observations were made by the Apex Court in the case of Ibrahim Vs. Raju and Others, .

8. Keeping the above legal position in mind, we find that in the instant case the claimant at the time of accident was pursuing her BDS course in 3rd year and as a result of grievous injuries sustained by her in the accident she has lost one academic year. She had been in comma for quite some time and was treated in different hospitals. Even at the time of discharge from Fortis Hospital, Noida, she was not absolutely normal. She is bachelor and may find difficulty in her marital life. In these circumstances, we find that the learned Tribunal has awarded just and reasonable compensation to the respondent No. 1. In view of the above, we do not find any factual or legal error in the impugned award. The appeal has no merits and is accordingly dismissed. The dismissal of the appeal would not prejudice the rights of any other party of the case.

The office is directed to remit the statutory amount deposited by the appellant in the appeal to the concerned Tribunal within four weeks.