

(2023) 07 BOM CK 0048

In the Bombay High Court

Case No : First Appeal 2761 Of 2023, ?Civil Appliction No.8267 Of 2023

Reliance General Insurance Company Ltd

APPELLANT

Vs

Ajay Sukdeo Patil And Others

RESPONDENT

Date of Decision : 17-07-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 129, 166

Citation : (2023) 07 BOM CK 0048

Hon'ble Judges : S.G. Chapalgaonkar, J

Bench : Single Bench

Advocate : Swapnil Patil, R.H. Dahat,P. C. Mayure

Final Decision : Dismissed

Judgement

S.G. Chapalgaonkar, J

1. The present appeal is filed by the original respondent no.3/ insurance company feeling aggrieved by the judgment and award dated 6.5.2022 passed in MACP no.55 of 2017 by the Motor Accident Claims Tribunal, Shahada, District Nandurbar.

2. Original claimant/respondent no. 1 herein had approached the Tribunal under section 166 of the motor vehicles act raising claim for compensation of rupees One Core from the respondents towards accidental injuries and consequential losses suffered by him. The contention of the claimant is that on 8.10.2016 while he was proceeding on motorcycle from Shahada towards Shirpur, the truck bearing No.GJ-03-AT-3689 driven by respondent no.1, owned by respondent no.2 and insured with respondent no.3 had dashed to his motorcycle. Consequently, he suffered multiple injuries. He was initially admitted to Seva hospital at Dhule. Then, he was referred to Jupiter hospital at Thane. He was under Medical supervision for four months and spent Rs.25,00,000/- towards medical treatment. During period of hospitalization, he has undergone multiple surgeries. Implants are inserted in the thigh, right wrist and skin grafting was required to

be done. In spite of long-drawn medical treatment, the claimant is not in a position to walk properly or sit with folded limbs. He lost his earning capacity as well as marriage prospects. He was aged 21 years at the time of accident. He was holding driving license for the car as well as tractor and used to assist his family in agricultural operation. He had diploma in agriculture and was pursuing his degree course with object to achieve better employment.

3. The claim was contested by the appellant/insurance company by filing written statement. Original respondent nos.1 and 2 failed to appear before the Tribunal. It appears from the pleadings in the written statement filed on behalf of the insurance company that various statutory defenses were raised, apart from the plea of contributory negligence of the claimant. The pleading regarding loss of earning capacity and medical expenses were denied.

4. The Tribunal had framed the issues. The claimant recorded his evidence at exhibit 14. In support of his contentions regarding the medical treatment, he relied upon the evidence of Dr. Ashish Fadnis exhibit 57, a doctor from Jupiter hospital, Dr. Mehul Shah, Dr. Mangal Parihar from Mangl Anand Hospital at Chembur, Mayuri Shelar, a Pharmacist and Dr. Rajkumr Suryawanshi (exh.63) Member of the Medical Board from Civil Hospital Dhule. The claimant has also relied upon the copies of FIR, spot panchnam, etc. Hospital bills re tendered at exhibit 32.

5. Tribunal, after taking survey of the evidence on record, recorded findings that the claimant has suffered permanent disablement and consequential loss of earning to the extent of 25%. Looking to the long-drawn hospitalization and multiple surgeries undergone by the claimant, the compensation under various non-pecuniary heads is granted apart from loss of earning capacity. Medical expenses of Rs.30 lakhs are accepted and total award for Rs.44 lac (inclusive of NFL) came to be passed.

6. Mr. Swapnil appellant/insurer in his that, the claimant was headgear (helmet). He Patil, learned advocate appearing for the endeavor to attack impugned award submits riding on his motorcycle without wearing suffered head injury which complicated the medical treatment. In view of section 129 of the Motor Vehicles Act, it was mandatory for the claimant to wear helmet/protective headgear. The statutory infraction on the part of the claimant is cause head injury that could have been avoided. He would further submit that, the claimant himself was contributor in the cause of the accident. He submits that Tribunal has recorded erroneous findings on the issue of negligence ignoring the aforesaid aspects.

7. Mr. Patil, would further submit that, although, no income proof of the claimant is placed on record, the Tribunal has considered notional income of Rs.10,000/- p.m., without foundational evidence. He would submit that, medical evidence on record is insufficient to establish loss of earning capacity still Tribunal has considered 25% future loss of earning and assessed the loss, ignoring sound principles of law. Mr. Patil, would criticize compensation granted on various heads

like future medical expenses, loss of comfort amenities, pain and sufferings to contend that the excessive and exorbitant award has been passed.

8. Mr. Mayure, learned counsel appearing for respondent no.1 would support the award. He would submit that the claimant was possessing driving license for Tractor and LMV. He was upgrading his education and pursuing his studied in final year B.A. He was already holding a Diploma in agriculture and assisting his family in cultivation of the land. Mr. Mayure invites attention of this court to medical evidence regarding the various injuries suffered by the claimant and consequential disability to contend that claimant has lost his working capacity. He contends that it would be difficult for the claimant to participate in agricultural operations so also drive the tractor. He would submit that the Tribunal has, in fact, assumed the lesser income and loss of future earnings. He would submit that even the compensation granted by the Tribunal on non-pecuniary heads is insufficient. Mr. Mayure would support the findings of the tribunal on the point of negligence.

9. Apparently, the dispute in this appeal is regarding assessment of the compensation and to certain extent the findings recorded on issue of negligence. The Tribunal recorded the finding on the point of negligence in paragraph nos.12 to 14. The police papers on record in the form of spot panchnama exhibit-20 shows that the accident occurred on 20 feet wide road. The motorcycle of the claimant was found lying on left side of the road. There is nothing to support the contention of the appellant that the claimant was contributor in the cause of the accident. Pertinently, the respondent no.1 driver of the truck did not step into witness box. No attempt is made on behalf of the respondent-appellant insurance company to dislodge contents of the police papers. The evidence on record is sufficient to attribute sole negligence against the truck driver.

10. The second contention of the appellant that the claimant was not wearing headgear / helmet and invited head injuries do not hold water. Considering the nature of multiple injuries suffered by the claimant, it cannot be said that non-wearing of headgear has any resemblance with the nature of permanent disablement and injuries suffered by the claimant. Even otherwise, once it is established that claimant suffered injury owing to negligence of offending vehicle driver, the defense that claimant was not wearing head guard would be insignificant. In that view of the matter, this Court do not find any substance in the challenge put forth by the appellant on the point of issue of negligence.

11. The claimant has deposed on the point of his education, nature of the injuries suffered by him and consequential losses. It can be observed that the although claimant contends that he was holding diploma in agriculture, no documentary evidence to that effect is placed on record. The claimant further contends that he was pursuing his education in B.A. First Year. But, nothing is placed to support such contention. However, the fact remains that the claimant was a young man, aged about 21 years at the time of the accident. Even, it is considered that he was agriculturist, Driver or skilled labour, his income cannot be assumed less

than Rs.10,000/- p.m. No fault can be found with tribunal in estimation of notional income of claimant to the tune of Rs.10,000/- per month.

12. The Tribunal, on analysis of the material placed on record accepted claim regarding expenditure of Rs.30 Lakhs towards medical expenses. Medical evidence of CW 2 to CW 6 supports the contention of the claimant regarding medical treatment and expenditure. The evidence of Dr. Rajkumar CW 7, who is the Member of Medical Board, at Civil Hospital, Dhule, clearly supports the case of claimant that there is restriction in flexion of right knee with joint deformity with 10% restriction in the movement of right hip joint. The total permanent disability is assessed to 60%. However, Tribunal, has, estimated 25% loss of the earnings to the claimant. The Tribunal considered addition of 50% of income by way of future prospects. Although, in cases where the assessment of income is made on notional basis, 40% amount is required to be added for future prospects, However, in facts of this case it would be difficult for this Court to interfere in the 50% addition made by the Tribunal, as loss of earning is considered @ 25% of income only as against permanent disability of 60%.

13. The compensation assessed by the Tribunal on non-pecuniary heads like, loss of comfort & amenities in life, pains and sufferings as well as future medical expenses, loss of income during medical treatment cannot be interfered. On overall survey of the material on record, no case is made out to interfere with impugned award. The appeal sans merit and is liable to be dismissed with costs. Hence following order.

ORDER

- i. The first appeal is dismissed with costs.
- ii. Pending civil application, if any, also stands disposed.