

(2012) 05 AHC CK 0039

In the Allahabad High Court

Case No : First Appeal From Order No. 2025 of 2012

Reliance General Insurance Company Ltd.

APPELLANT

Vs

Rajveer Singh

RESPONDENT

Date of Decision : 21-05-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2012) 6 ADJ 421

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

Bench : Division Bench

Advocate : S.K. Mehrotra, for the Appellant; Namit Kumar Sharma, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Sri S.K. Mehrotra, learned counsel for the appellant and Sri Namit Kumar Sharma, learned counsel appearing on behalf of claimant-respondent. This is an appeal by the Insurance Company. The appellant is an insurer of Car No. D.L.7 C.D. 3598. While Rajveer Singh was standing near a Triangular crossing on 3.10.2010 at about 2-30 p.m. the said vehicle hit Rajveer Singh, which caused grievous injuries. As a result of the accident, his right leg below thigh and above knee has been amputated. The Medical Board consisting of one of the Orthopedic Dr. J.K. Mehrotra has approved the disability to the extent of 73% and issued a certificate of disability in this regard. The said certificate has also been certified by the Board Incharge Dr. P.K. Gupta. Dr. J.K. Mehrotra was examined. He certified the disability to the extent of 73%. The Tribunal has taken the age of the injured at 42 years. The Tribunal has taken the average income of Rs. 1,44,000/- per annum on the basis of the income tax returns filed for the assessment years 2008-09, 2009-10 and 2010-11 which appears to have been filed on 19.1.2010 much before the date of the accident. The income has been shown for the assessment year 2008-09 at Rs. 1,08,000/-, for the assessment year 2009-10 at Rs. 1,56,000/- and for the assessment year 2010-11 at Rs.

1,68,000/-. The Tribunal has taken the average income of the aforesaid three years at Rs. 1,44,000/-. The Tribunal has accepted the permanent disability to the extent of 70% and after applying multiple of 12 times, estimated the compensation at Rs. 12,09,600/-. Apart from the aforesaid amount, the Tribunal has awarded the amount spent in the treatment. The Tribunal accordingly awarded the total compensation at Rs. 12,58,422/-.

2. Learned counsel for the appellant submitted that Part II Schedule I of the Workmen's Compensation Act provides the percentage of loss of earning capacity in the case of injury. It should be adopted for the purposes of determination of the income loss u/s 163A of the Motor Vehicles Act. He submitted that the case of the appellant is covered by serial No. 19 and not by serial No. 18. Serial No. 18 provides amputation below hip with stump not exceeding [12.70 Cms.] in length measured from tip of great trochanter but not beyond middle thigh to the extent of 70%. Serial No. 19 provides amputation below middle thigh to [8.89 Cms.] below knee 60%. The disability certificate reveals that the amputation is beyond middle thigh and, therefore, 70% loss of earning capacity cannot be taken and it should be 60%.

3. Sri Namit Kumar Sharma, learned counsel appearing on behalf of claimant-respondent agrees with the submissions of the learned counsel for the appellant, but he submitted that as the age of the appellant has been taken at 42 years and as per the decision of the Apex Court in the case of Smt. Sarla Verma and others v. Delhi Transport Corporation and another, 2009 (2) TAC 677, the multiplier of 14 should be adopted while in the present case multiplier of 12 times has been adopted. He submitted that if the multiplier is taken at 14 times and disability is taken as 60%, the same amount of compensation at Rs. 12,09,600/- may come and, therefore, no interference is called for in the present case.

4. Learned counsel for the appellant further submitted that there was a contributory negligence as the person was standing on the road at the Triangular crossing.

5. We have considered the submissions.

6. Section 163A of the Motor Vehicles Act provides that notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. The Explanation provides for the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923. The present is the case of permanent disability. Therefore, for the percentage of loss of earning capacity Part II Schedule I of the Workmen's Compensation Act has to be looked into. Serial Nos. 18 and 19 are the descriptions of the injuries reads as follows:

Serial No. 18. Amputation below hip with stump exceeding [12.70 Cms.] in length measured from tip of great trochanter but not beyond middle thigh.

Serial No. 19. Amputation below middle thigh to [8.89 Cms.] below knee.

7. After going through the pleading, the injuries mentioned at Serial Nos. 18 and 19, we are of the view that in the present case the injuries mentioned at Serial No. 19 will apply and not the injuries mentioned at Serial No. 18 as the amputation of right leg is below the middle thigh. The percentage of loss of earning capacity for injury of Serial No. 18 is 60%. Therefore, the Tribunal has erred in taking the disability to the extent of 70%. In the case of Smt. Sarla Verma and others v. Delhi Transport Corporation and another (Supra), the Apex Court has held that the multiplier to be used as mentioned in column No. 4 of the table referred above in paragraph-19 of the judgment. For the age of a person between 41 to 45 years, 14 multiplier is provided. Therefore, we are of the view that in view of the decision of the Apex Court in the case of Smt Sarla Verma and others v. Delhi Transport Corporation and another (Supra), multiplier of 14 should be adopted in stead of 12. If we take the permanent disability to the extent of 60% and apply the multiplier of 14 then the amount of compensation comes to Rs. 12,09,600/- which has been assessed by the Tribunal. In the circumstances, we are of the view that there is no illegality in awarding the compensation at Rs. 12,58,422/- which includes a sum of Rs. 12,09,600/- towards the loss of income suffered on account of permanent disability. So far as the submission of the learned counsel for the appellant about the contributory negligence, we do not find any substance. The person who suffered injuries was standing on the left side of the road at the Triangular crossing. The Car has hit the said person. It is the case of the owner of the Car that in order to save the cyclest car hit the injured person therefore no fault can be imputed on the injured person. It is not a case of contributory negligence at all.

8. In view of the above, we do not find any error in the impugned order which requires interference by this Court. The appeal fails and is dismissed. However, the dismissal of the present appeal will not affect the rights of the other parties. The Registry is directed to remit the statutory amount to the concerned Tribunal within four weeks.