
(1994) 02 BOM CK 0038
In the Bombay High Court
Case No : F.A. No. 503 of 1986

Sham Harbhagvandas Peshori	Vs	APPELLANT
Albright Morarji and Pandit Ltd.		RESPONDENT

Date of Decision : 03-02-1994

Acts Referred:

Citation : (1996) ACJ 1101

Hon'ble Judges : M.F. Saldanha, J;H.H. Kantharia, J

Bench : Division Bench

Advocate : R.M. Agrawal, for the Appellant; S.E. Darandale, for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—This is an appeal preferred by the original claimant who was involved in an accident on the Kalyan-Badlapur Road on 21.11.1980. Essentially, the appellant assails the correctness of the order of the learned Member, Motor Accidents Claims Tribunal, Thane, who had quantified his total claim at Rs. 30,000/-. The subsidiary grievance made is that the interest at 6 per cent that was awarded by the Tribunal ought to have been stepped up to 12 per cent per annum from the date of the application.

2. A few facts that are relevant are set out below:

The appellant was, on the day in question, riding a scooter No. 9014 and was proceeding from Ulhasnagar to Ambernath along the Kalyan-Badlapur Road which, in the present instance, can be correctly categorized as the main road. He was approaching a junction where a by-road branches from the main road to the factory where the appellant was employed. It is alleged that a car No. MTY 3004 driven by respondent No. 2 suddenly emerged out of the by-road and turned into the main road. The appellant alleges that for no fault of his the car dashed against the scooter and the appellant was thrown off and sustained a relatively serious injury to his right leg as a result of this incident. He was admitted to Laxmi Clinic at Dombivali for about a month and was thereafter shifted to

Orthopaedic Poly-clinic run by Dr. Vora at Bombay. The appellant preferred a claim before the Tribunal wherein he had asked for a total compensation of Rs. 1,64,400/- under various heads as are set out in that application. The main issue canvassed by him was that at the relevant time he was about 47 years old, that as a result of the injury sustained by him he was unable to attend to his work for as long as 11/2 year, that he had spent a total of about Rs. 35,000/- on the medical expenses and that he is permanently disabled in so far as his right leg is shortened by 2 1/2" resulting in several consequential problems. In sum and substance, therefore, the appellant contended that the respondents were liable to collectively compensate him to the extent as set out by him in his application. The learned Member of the Tribunal, after hearing the parties, disallowed several of the heads of claim and granted compensation to the extent of Rs. 30,000/-. The present appeal assails the correctness of that order.

3. We have heard learned Counsel appearing on both sides and we have also perused the record before us in the course of the arguments. Mr. Agrawal, learned Counsel appearing on behalf of the appellant, has, in the first instance, drawn our attention to certain incorrect findings in the judgment of the Tribunal. To start with, Mr. Agrawal has pointed out to us that the injury was one of some seriousness and that the appellant had undergone as many as seven surgical operations in the course of his treatment. Mr. Agrawal pointed out, and perhaps with justification, that the aspect of pain and trauma apart, the suffering undergone by the appellant during this long period of 18 months has got to be viewed as in the light of his age at the relevant time. Admittedly, the appellant was about 47 years old at the time. Having regard to his age and the gravity of the injury, even though he is able to move about, there is a considerable degree of permanent handicap with which he is afflicted. The record indicates that this handicap is of some consequence in so far as the right leg has been shortened by as much as 2 1/2", thus resulting not only to the aspect of disfigurement but, more importantly, loss of mobility, capacity to work and the consequent problems that would only get aggravated as time passes. It is in these circumstances that Mr. Agrawal has pointed out to us that the approach of the learned Member of the Tribunal in having lightly brushed aside the nature of the injury is erroneous. We are in agreement with this submission in so far as the loss of earning apart, the injury will have to be compensated for in terms of money on the basis of a reasonable approximation having regard to the income of the appellant at the relevant time and the fact that his earning capacity has thereafter been considerably impaired.

4. The second submission canvassed by Mr. Agrawal is with regard to the error committed by the learned Member of the Tribunal, as regards the quantification of the expenditure under the head medical expenses, the learned Member of the Tribunal has wrongly proceeded on the assumption that the amount was reimbursable to the appellant and that, consequently, the same has been paid for by the company and, therefore, requires to be scaled down. It is true that in the course of his deposition, the appellant did state that he is reimbursed as far as

the amounts spent on sickness are concerned. This admission has unfortunately been read out of context by the trial court because the appellant had very clearly pointed out that as far as the substantial amounts which had to be spent by him in the present incident were concerned they were not reimbursed to him but that the company as a gesture of goodwill had only advanced the amounts to him for which he is accountable. In other words, this amount is required to be either repaid by the appellant or adjusted against the amounts payable to him. To this extent, therefore, the amounts spent by the appellant against the head of medical expenses were wrongly disallowed.

5. Mr. Agrawal has then dealt with the main contention raised before the Tribunal on behalf of the respondents, namely, that the appellant is alleged to have been responsible for the incident in question. It was contended on behalf of the respondents that there was no fault whatsoever on the part of the driver of the car, but that the appellant was rash and negligent and it was he who was unable to control the vehicle that he was riding and that, consequently, it was wrong to hold that the respondents were liable in any manner whatsoever. After a careful consideration of the oral deposition as also the documents on record, such as the panchnama of the scene of the accident, etc., the Tribunal held that the appellant was guilty of contributory negligence and to that extent considerably scaled down the compensation that he would otherwise have been entitled to. Mr. Agrawal has drawn our attention to the oral evidence and he pointed out that even though it is word against word, the facts of this case speak for themselves. The point of impact, the nature and the type of vehicles that were involved and, above all, the rules of road traffic that were required to be observed are guiding factors on the basis of which it would be possible for this court to clearly and correctly conclude as to whether there was any negligence or, for that matter, contributory negligence on the part of the present appellant. Undoubtedly, the appellant has denied that any of these factors was present, because he has deposed on oath that he was driving his scooter at a normal speed on the left side of the road and that he had lowered down the speed for purposes of turning to the road leading to his factory and that the car had virtually shot out on him and hit him, leaving him with no chance whatsoever. We do find from an examination of the panchnama and from the other data that is on record that the incident had taken place on the main road, from the point of impact and the type of damage that has been caused, there is no doubt whatsoever that taking advantage of the fact that there was no other traffic on the road the driver straightaway came out from the side-road without stopping. This last aspect of the matter is of crucial importance because there existed a legal duty on the part of the driver of the car to have stopped when he approached the main road and to have thereafter given the right of way to the scooterist. In not having done so and in having collided with the scooterist, there is no doubt whatsoever in our mind that the negligence in the present case lay entirely on the part of the driver of the car and that the Tribunal was unjustified in holding that there was contributory negligence on the part of the present appellant.

6. Mr. S.E. Darandale, learned Counsel appearing on behalf of respondent No. 3, has seriously disputed each and every head of the claim. We have heard the learned Counsel and we find that the objections canvassed are either technical or inconsequential. With regard to the head of claim under the medical expenses involved, there is no dispute whatsoever that these amounts were, in fact, incurred. As regards the contention that a major part of this sum was reimbursable by the company, we have already held that this position is factually incorrect. With regard to the nature of the injury, Mr. Darandale has contended that the appellant was not immobilized and that at the very highest he would be entitled to the loss of earnings. Next, as far as this head is concerned, he seriously disputed the fact that the appellant has, in fact, lost money under this head because he states that the car belonged to the sister concern of the company where the appellant was working and that having regard to the fact that he was a senior employee he was shown sympathetic treatment. We, however, do not find anything that emerges from the present record to justify learned Counsel's claim that the appellant, in fact, received his salary for the 18 months that he did not work. Even as far as the nature of injury is concerned, we are unable to accept the contention advanced by Mr. Darandale that the injury was not one of considerable seriousness, that the appellant has fully recovered, that he is able to move about and do his normal duties and that he was, therefore, eligible only for a token compensation. As far as the last head, namely, the aspect of alleged negligence or contributory negligence on the part of the appellant is concerned, Mr. Darandale has not been successful in demonstrating to us that either of these principles would apply in the case of the appellant on the state of the present record.

7. That brings us to the question of quantification. Mr. Agrawal has relied on three decisions in support of his contention that the present appellant ought to be awarded the full claim as made out by him before the Tribunal. The first of these decisions is in the case of Gursharan Singh Sandhu v. State of Haryana 1985 ACJ 641 , wherein the court had awarded total compensation to a 20 years old applicant in the sum of Rs. 1,25,000. That was a case of multiple fracture of the right leg, but the distinguishing factor was that the applicant therein had been in hospital for something like 510 days and was only 20 years old. The second decision relied on by Mr. R.M. Agrawal is a Division Bench judgment of this court in the case of Chhaganlal Nathubhai Patel Vs. Bhagirath Kheraji and Others, , wherein the claimant, who suffered 20 per cent permanent disability, was awarded a total compensation of Rs. 1,25,000/-. Lastly, Mr. Agrawal relied on an unreported decision of this court in Satyanarayan S. Mantri v. Anjivenlu Devanna, First Appeal No. 379 of 1986, wherein, in more or less similar circumstances to the present case, the Division Bench of this court quantified the total claim at Rs. 70,000/-. We need, however, to record that in that particular case the court held that there was no contributory negligence on the part of the applicant.

8. Before formally dealing with the aspect of quantification which we propose to

simplify in the broad heads, we propose to specifically deal with one particular aspect of the matter that is of some importance to this and other similar accident cases. Mr. Agrawal pointed out to us in the course of his arguments that admittedly as a result of the gravity of the injury suffered by the present appellant that he was hospitalized for a long period of time and during this period of treatment it was necessary for his wife and other close family members to have to make long trips all the way to the respective hospitals invariably on a day to day basis in order to arrange for the medicines and other necessary help to the appellant. The learned Tribunal has totally discarded this aspect of the evidence because the appellant has sought to contend that the expenditure incurred under this head aggregated to Rs. 10,000/-. Undoubtedly, it would be impossible to produce any documentary evidence in support of this particular claim which would be in the form of expenditure incurred on transport, the time involved, etc. and, therefore, it has been straightaway discarded. It was the contention of learned Counsel that this is not the only case in which a court has refused to entertain this head of claim and it was submitted before us that where, as of necessity, the injured person is dependent on a relation or a family member who has to incur expenditure recurrently for providing auxiliary reliefs that the amount is necessarily reimbursable. We do feel that this is not an insignificant or irrelevant argument because the appellant in this case required such assistance for close to 1 1/2 year and the aggregate amount of Rs. 10,000/- that is claimed had obviously been incurred and there is no justification, therefore, for the same not to have been awarded. We are conscious of the fact that while assessing various heads, the courts invariably look to the traditional aspects such as medical expenses, loss of earnings, the result of injury or incapacity of the earning potentiality in future, etc., but we are of the view that this particular head does require some serious consideration in cases such as the present one where it is demonstrated that a sizeable amount of expenditure has been incurred for this purpose. The court needs to take cognizance of the fact that even if an injured person is admitted to a medical institution there are several aspects which the institution expects patients to take care of on their own for which purpose expenditure under this head becomes very necessary, It is, therefore, almost an auxiliary or a supplementary head to the main amount of expenditure incurred for the medical relief. Under these circumstances, in our considered view, the finding recorded by the Tribunal that the amount of Rs. 10,000 had to be disallowed is incorrect and requires to be set aside.

9. We propose to quantify the amounts awardable to the appellant under certain broad heads. The controversy with regard to the expenditure incurred under the first head of claim, namely, the medical expenditure, is completely resolved and the appellant would be eligible to claim a sum of Rs. 35,000/- under this head. As far as the loss of earnings is concerned, even though there was some ambiguity in the evidence with regard to whether the company had, in fact, paid the appellant for the period when he was hospitalized, on a careful scrutiny of

the material before us, we have resolved the matter and we hold that the appellant would be entitled to a sum of Rs. 35,000/- as and by way of compensation for the loss of earnings. We have already held that in addition to these two amounts, he is entitled to an amount of Rs. 10,000/- under the head "incidental expenditure" incurred by his wife and family members during his period of hospitalization.

10. The last head that requires quantification is in relation to the injury that had been suffered by the appellant for which his right leg stands shortened by 2 1/2". We are not impressed by the submission canvassed on behalf of the insurance company that this has not in any way impaired the working capacity of the appellant or, for that matter, his future prospects. Having regard to the age of the appellant, the job that was being done by him, the fact that as a result of the injury his career prospects have, in fact, been diminished and all other relevant considerations, we quantify the compensation payable to the appellant under this head of claim at Rs. 45,000/-. In the aggregate, therefore, the appellant would be entitled to a total compensation claim that works out to Rs. 1,25,000/-. We need to clarify here that the amount of Rs. 45,000/- which forms a part of this amount, essentially consists of two broad heads; Rs. 15,000/- being the amount of compensation for the pain and suffering undergone by the appellant as a result of the injury suffered by him and Rs. 30,000 being the damages caused thereafter by way of future loss of earning, etc.

11. In the result, the appeal is allowed. The award of the Tribunal stands modified to the extent that respondents-opponents to the main application are held jointly and severally liable to pay compensation to the present appellant in the sum of Rs. 1,25,000. The rate of interest awarded by the Tribunal at 6 per cent per annum is incorrect. The appellant shall be entitled to interest at the rate of 12 per cent per annum on the amount awarded on and from the date of the application. We maintain the order passed by the Tribunal with regard to the payment of proportionate costs. The respondents shall deposit the balance amount with the Tribunal within a period of four weeks from today. The Tribunal shall thereafter permit the present appellant to withdraw the said amount. The appeal is allowed accordingly with no order as to costs. Supply of certified copy be expedited.