

(1993) 09 BOM CK 0009
In the Bombay High Court
Case No : F.A. No. 173 of 1986

Shekhar Shantaram Dighe

APPELLANT

Vs

Roshan Lal Uday Bhan and Others

RESPONDENT

Date of Decision : 27-09-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1994) 1 ACC 355 : (1994) ACJ 1115

Hon'ble Judges : M.K. Mukherjee, C.J.;A.P. Shah, J

Bench : Division Bench

Advocate : A.A. Kudrolli, for the Appellant; S.M. Vidyarthi, for the Respondent

Final Decision : Allowed

Judgement

M.K. Mukherjee, C.J.—For personal injuries sustained in an accident, while travelling in a luxury bus, on July 3, 1981, whereby he lost his left arm, the appellant filed an application u/s 110-A of the Motor Vehicles Act, 1939, before the Motor Accidents Claims Tribunal, Dhule, claiming a compensation of Rs. 5,00,000/-from the owners and insurers of the bus, who are the respondents herein. The learned Tribunal disposed of the application by directing the respondents to pay a sum of Rs. 69,140/-, with interest at the rate of 5 per cent per annum and proportionate costs to the appellant as compensation. Aggrieved by the inadequacy of the compensation, the appellant has filed the instant appeal.

2. Though before the Tribunal various defences were raised on behalf of the respondents to resist the claim which, needless to say, were negatived, the respondents have not filed any cross-objections or cross-appeal. Consequently, the only question that falls for our determination is as to whether the amount of compensation awarded to the appellant is just and fair.

3. Admittedly, the appellant is a diploma-holder in civil engineering and at the material time was aged 30 and was working as Resident Engineer in a company named and styled as "Recondo" and the evidence of the appellant proves that he

was getting a monthly salary of Rs. 1,400/-.

4. In quantifying his claim for compensation at Rs. 5,00,000/- the appellant averred that he was expected to go to Middle East in connection with the construction job his employer was entrusted with and to get a salary of Rs. 15,000/- per month but owing to the accident, his expectations were belied and dreams shattered. In support of his contention he examined some of his colleagues as witnesses on his behalf. Having gone through their evidence, we are unable to hold that the appellant was assured of a foreign job and for that matter an expected income of Rs. 15,000/- per month. They were not competent to speak about such assurance and one of them (AW 2) admitted that no agreement had been executed between the appellant and the company about such job. Neither the appellant's employer nor anybody on his behalf, who could have only offered such job or given assurance, came to support the appellant's claim.

5. However, the appellant's failure to prove the above point does not defeat his claim altogether as it cannot be gainsaid that the appellant, who was at the threshold of his career, has been deprived of his prospects in life owing to the accident in which he has lost his left arm. In the context of this uncontroverted and uncontrovertible fact, we have to ascertain whether the amount awarded to the appellant as compensation is adequate or not.

6. The first claim which the appellant legitimately raised and against which he has been awarded a sum of Rs. 9,140/- is for the expenses caused by the injuries he has sustained. Since this finding of the learned Tribunal is based on proper appreciation of the evidence, it must be upheld. The next head of claim, which we might have to consider, related to the loss of the appellant's earnings from the date of the accident till the date of the trial as the learned Tribunal rejected such a claim on the ground that his salary and allowances were not affected on account of injury suffered by him. As admittedly the evidence on record supports the finding of the learned Tribunal, the appellant cannot legitimately claim any amount on this score.

7. Therefore, the next pecuniary loss we have to consider is in the context of the permanent disability the appellant suffered due to the accident. The learned Tribunal has assessed the loss at Rs. 75,000/- which, in our opinion, is inadequate having regard to the fact that the appellant was a qualified engineer, was at the threshold of his career and was earning Rs. 1,400/- per month. Considering all these aspects, we feel that he should be paid Rs. 1,50,000/- for his prospective pecuniary loss.

8. Coming now to the non-pecuniary loss, we have to consider the amounts to be awarded to him for his pain and sufferings and for the loss of amenities of his life. Considering the fact that the appellant totally lost his left arm we feel that a sum of Rs. 10,000/- for the first item and a sum of Rs. 2,00,000/- for the latter should be awarded to him and we order accordingly. Therefore, the total sum to

which the appellant will be entitled for the accident will be Rs. 3,69,140/-. Since Rs. 69,140/- has been paid to the appellant in terms of the impugned award, respondents are directed to pay a further sum of Rs. 3,00,000/- to the appellant with interest calculated at the rate of 12 per cent per annum from the date of the application filed by the appellant till realisation of the same. We hasten to add that in assessing the compensation we have taken into consideration the fact that the appellant will be getting the awarded sum in lump sum and certain deductions are permissible therefrom.

9. The appeal is thus allowed. There will, however, be no order as to costs.