

(2000) 03 BOM CK 0066
In the Bombay High Court
Case No : First Appeal No. 138 of 2000

Shri Jayawant Yeshwant Walawalkar	APPELLANT
Vs	
Shri V.P. Shanmugam and Another	RESPONDENT

Date of Decision : 23-03-2000

Acts Referred:

Evidence Act, 1872 — Section 61
Motor Vehicles Act, 1988 — Section 166

Citation : (2002) ACJ 1419 : (2000) 4 ALLMR 500 : (2000) 4 BomCR 654

Hon'ble Judges : J.A. Patil, J; A.P. Shah, J

Bench : Division Bench

Advocate : R.S. Apte, for the Appellant; M.G. Barve, for the Respondent

Judgement

A.P. Shah, J.—The appellant had filed an application u/s 166 of the Motor Vehicles Act, 1988 and claimed a total compensation of Rs. 15,00,000/- (Rs. Fifteen lacs only) on account of injuries suffered by him in a motor accident which took place on 17-2-1992. The learned member of the Motor Accidents Claims Tribunal, Raigad at Alibag by his order dated 11-6- 1996 dismissed the appellant's claim. Hence this appeal.

2. At the relevant time the appellant was working as a security officer in private company at Patalganga Dist. Raigad. On the day of occurrence i.e. on 17-2-1992 at about 12.30 a.m. he along with two officers of the factory was proceeding towards factory at Patalganga in a jeep bearing No. RLL 5525. The appellant was himself driving the jeep. When the jeep came on the bridge of Kalundra river, a truck bearing No. MYD 9502 belonging to respondent No. 1 and insured with respondent No. 2 was seen coming from the opposite side with front lights switched on fully. According to the appellant the said truck was being driven in a high speed and in a rash and negligent manner. The result was that the truck gave a dash to the jeep driven by the appellant, causing serious injuries to him as well as to other two inmates, namely Chandrakant Shankar Jadhav and Bhagwan Malkar.

3. After the accident, the appellant was taken to Panvel hospital and from there he was transferred to Sion hospital, Mumbai. Thereafter, he was admitted in Hinduja Hospital, Mumbai where he was an indoor patient for 30 days. Due to the accident the appellant sustained fracture of his neck femur (R) with fracture shaft (R) femur. His right arm was therefore, required to be amputated. The appellant thus sustained permanent partial disability, amounting to 80%. The appellant, therefore, filed Accident Claim Case No. 236/ 1992, claiming Rs. 15 lakhs towards compensation.

4. No written statement was filed on behalf of respondent No. 1. However, respondent No. 2, which is an Insurance Company and with whom the offending truck was insured, filed its written statement and denied that the accident in question had taken place in the manner alleged by the appellant. It was contended that the appellant himself, who was driving the jeep, was guilty of negligence and rashness. In short respondent No. 2 repudiated its liability to pay any compensation to the appellant for the accident in question.

5. In support of his claim, the appellant examined himself and one Yashwantrao Shirke, who is manager of the company. In addition, he also produced the relevant documentary evidence. The learned member of the M.A.C. Tribunal upon consideration of the evidence, did not accept the appellant's case that the accident had taken place on account of rash and negligent driving on the part of the truck driver. On the contrary he held that it was the appellant who was responsible for causing the said accident. Consequently, the learned member of M.A.C. Tribunal held that the appellant was not entitled to any compensation. The learned member, however, worked out the amount of total compensation of Rs. 5,54,610/- in case the appellant was held to be entitled to get the same. In that view of the matter the learned member proceeded to dismiss the application. It is this order, which is the subject matter of this appeal.

6. We have heard Shri R.S. Apte, the learned Advocate for the appellant and Shri M.G. Barve, the learned Advocate for respondent No. 2. We have also gone through the evidence on record. It is not in dispute that the accident in question took place on a bridge of Kalundra river on Mumbai - Pune highway on 17-2-1992 at about 12.30 a.m. It is also not in dispute before us that in the said accident, the appellant sustained severe injuries, as a result of which his right arm required to be amputated. The material question which is required to be considered is whether the appellant has succeeded in proving that the accident in question took place on account of rash and negligent driving of the truck driver. As already indicated, the learned member of the M.A.C. Tribunal has held that the accident occurred because of the rashness and negligence on the part of the appellant himself.

7. The panchanama of the place of accidents, which was admitted before the M.A.C. Tribunal, shows that at the relevant place the road is of East-West direction on Kalundra river. Although the panchanama does not mention the length of the bridge, still it is seen that the width of the road on the said bridge is

18 feet. The truck was found standing on the bridge facing towards the western side and it was at a distance of one and half feet from the railing of the bridge. The jeep was already removed from the bridge and parked on the eastern side in order to prevent obstruction to the traffic. It was found that front portions of both the vehicles were considerably damaged.

8. In his evidence the appellant stated that when he came near the Kalundra bridge at about 12.30 a.m. he noticed 4 focus lights from the opposite direction. According to him he switched on lights and sounded horn to signal the truck driver to stop. The appellant stated that he had crossed a distance of about 8 feet on the bridge. At that time the offending truck, while overtaking the another truck on the bridge came up and gave a dash to the jeep. The appellant also stated that he was driving the jeep very slowly. It may be noted that the appellant's version in the examination-in-chief about the manner in which the accident in question has practically gone unchallenged since there was no effective cross-examination about the facts stated by him. The learned member of the M.A.C. Tribunal has, however, failed to consider this aspect and proceeded to remark that the appellant had failed to observe the rules of traffic. The learned member observe that it was expected of the appellant to stop his jeep and allow the truck to cross the bridge. It is for this reason that the learned member of the M.A.C. Tribunal has held the appellant responsible for causing the accident in question.

9. We are, however, unable to accept the view taken by the learned member. It is true that the appellant on seeing the truck coming from the opposite side should have stopped at the entry point of the bridge and first allowed the truck which was already on the bridge, to cross the same. To that extent, the appellant must be held guilty of contributory negligence. The evidence on record further clearly shows that the truck driver was more rash and negligent. In the first instance, he did not dim the focus lights of the truck even though he saw the appellant's jeep coming from the opposite side. Secondly, he tried to overtake another truck on the bridge itself when the appellant's jeep had already come on the bridge. The width of the bridge which is 18 feet was sufficient to allow both the truck and jeep to cross each other on the bridge. However, the driver of the truck acted in a rash and negligent manner while driving his truck and in the process he gave dash to the jeep driven by the appellant. Considering this fact, we hold that the accident occurred on_ account of rashness and negligence of both the truck driver as well as the appellant. In our opinion, the rashness and negligence of the truck driver as well as the appellant can be apportioned as 65% and 35% respectively.

10. Shri Barve, the learned Advocate drew my attention to the Police statement of the appellant, which was recorded on 18-2-1992 and on the basis of that statement he tried to point out that the appellant had tried to change his version. We, however, did not find any merit in this submission for the simple reason that the appellant was never confronted with the said police statement and no

particular admission therein was put up to him. Therefore, it is futile for Shri Barve to rely upon the said statement.

11. It is not in dispute that due to the accident the appellant sustained serious injuries . The appellant produced before the Tribunal a medical certificate which shows that he had sustained fracture neck femur (R) with fracture shaft (R) femur with traumatic amputation (R) arm. He was admitted in the Hinduja hospital on 17-2-1992 and was discharged on 17-3-1992. The certificate mentions : "DEBRIDEMENT OF (RT) ARM was done on 17th February, 1992. Stump fashioning done on 24-02-1992. DRIF for Fracture Neck + Shaft (R) was done on 28th February, 1992". The medical officer has opined in the said certificate that the permanent partial disability of the appellant is 80%. Admittedly, the offending truck was insured with respondent No. 2 at the relevant time and the insurance policy was in force. Therefore, there can be no doubt that respondent No. 2 will be liable to pay to the appellant a compensation in proportion to the negligence on the part of the truck driver.

12. What remains to be considered is the quantum of compensation which should be paid to the appellant. It may be noted that the appellant is an ex-army man and was 38 years" old at the relevant time. He was working as security officer with a private company and drawing a monthly salary of Rs. 2,535/- per month. Although the appellant had to lose his right arm in the accident, his company continued his service on compassionate ground. Thus there was no loss of service to the appellant on account of accident. The learned member of the M.A.C. Tribunal has calculated an amount of Rs. 1,00,000/- towards injuries, pain and sufferings sustained by the appellant. Having regard to the nature of the injuries and the consequent result thereof i.e. amputation of the right arm we think that the appellant deserves to be granted Rs. 1,00,000/- on account of loss of amenities, pain and sufferings for past, present and future. The learned member has further granted a sum of Rs. 15,210/- on account of loss of salary by the appellant for 6 months. There is no dispute of the fact that because of the accident and subsequent treatment the appellant could not attend his duty and therefore, he had to lose his salary for a period of six months. Therefore, an amount of Rs. 15,210/-- granted on this count deserves to be allowed. The learned member has further awarded a sum of Rs. 45,00/- to the appellant towards the expenses of special diet which he was required to take. In our opinion, this amount is quite reasonable and deserves to be granted.

13. The learned member has further granted the sum of Rs. 4,32,000/- on account of the loss of prospective income. In doing so he has applied a multiplier of 18. The learned member has, however, ignored the fact that the appellant, despite his physical disability was continued in service by the company. The appellant has admitted in his evidence that he was getting a monthly salary of Rs. 5,700/-. It cannot, however, he ignored that because of the physical disability, the future prospects of the appellant of being promoted to higher poster to get any other better suitable job have been marred. He is simply

continued in service because of the compassionate attitude of the company in which he is serving. Although there is no loss of service, in our opinion, the appellant would be entitled to get some compensation on account of loss of future prospects.

14. Shri. Barve, the learned Advocate for the respondent relied upon the decision in State of Uttar Pradesh Vs. Vinod Kumar Bhatnagar and Others, , wherein the facts were that in an accident which took place in 1962, the respondent sustained severe injuries which resulted in amputation of his right arm. The respondent was a boy of 20 years and he was not employed. The Tribunal granted him a compensation of Rs. 62,000/ In our opinion, this decision will not help Shri Barve for the simple reason that the appellant before us is an employed person. Moreover it is material to note that the compensation of Rs. 62,000/- awarded in the said case was in respect of the accidents which took place in 1962, whereas in the present case we are dealing with the case of the accidents which took place in 1992. Since then there is much devaluation of the rupee.

15. Shri. Barve also relied upon the decision in National Insurance Co. Ltd. Vs. Bhag Devi and Others, , wherein compensation of Rs. 1,08,000/- was awarded to the respondent for amputation to his left arm above elbow. On the other hand Shri Apte pointed out the decision in Gaurish Transport and Another Vs. Pedro Salvador and Others, , in which a Division Bench of this Court awarded a compensation of Rs. 3,65,000/ - to the respondent for. amputation of his right arm due to the injuries sustained by him in an accident. It will thus be seen that the question about the quantum of compensation depends upon the individual facts of each case. In the said case, the High Court had taken into consideration the loss of prospective income by applying a multiplier of 11.

16. Having regard to the peculiar facts of the present case, we think that the appellant deserves to be granted a consolidated sum of Rs. 1,00,000/-towards loss of future income and prospects. Thus the total amount payable to the appellant would be Rs. 2,19,710/- i.e. Rs. 1,00,000 + 15,210 + 4,500 + 1,00,000 = 2,19,710. Out of this total amount of Rs. 2,19,710 /-. 35% are liable to be deducted on account of the contributory negligence on the part of the appellant. Thus the net amount of compensation payable to the appellant come to Rs. 1,42,812/- in addition respondent No. 2 will be liable to pay interest on this amount at the rate of Rs. 12% per month from the date of the application dated 7-2-1992 till realisation.

17. In the result the appeal is partly allowed.

18. Respondent No. 2 is directed to pay to the appellant compensation of Rs. 1,42,812 /- together with future interest at the rate of Rs. 12% per month from the date of the application i.e. 7-2-92 till realisation. Amount to be paid within 8 weeks from the date of the order. Parties to act on an ordinary copy of this order duly authenticated by the Sheristadar of this Court.

19. Appeal partly allowed.