

(2014) 11 DEL CK 0352
In the Delhi High Court
Case No : MAC. App. No. 1082 of 2014

Shriram General Insurance Co. Ltd.

APPELLANT

Vs

Kamlesh and Others

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Citation : (2015) 1 ACC 413

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Sameer Nandwani, Advocates for the Appellant

Judgement

Jayant Nath, J.—The present appeal has been filed seeking to impugn the award dated 24.9.2014. The background facts are that on 11.9.2012, respondent No. 1 was going on a motorcycle as a pillion rider. When he reached the flyover near Nand Nagri Depot, the motorcycle was hit from the side by a Gramin Sewa vehicle. As a result, respondent No. 1 fell down. In the mean time one tempo ran over her leg. The appellant is the insurer of the tempo. The Tribunal noted that the respondent No. 1 was a student and was 19 years of age. She was taking coaching in computer course but due to the injury sustained by her she could not work and her training in computer course had to be completely suspended. The Tribunal also noted that as per the discharge certificate Ex. PW2/1 (Colly) issued by GTB Hospital, respondent No. 1 suffered disability of 90% in relation to the right lower limb. The Tribunal held that she has become unfit for number of jobs and assessed the functional disability in relation to the whole body as 45%. For the purpose of assessing her income, the Tribunal relied upon the judgment of this High Court in the case of Meenu Tognatta & Anr. v. National Insurance Co. Ltd. & Ors., MAC. App. No. 238/2012. The potential income was taken as the minimum wages of a matriculate. The minimum wages for matriculate workman was Rs. 8,530 per month (approx). 50% of salary was added towards future prospects. The total loss in future earning on account of disability was assessed at Rs. 12,43,674. The total amount of compensation awarded is as follows:

2. The Tribunal directed the appellant and the insurer of the Gramin Sewa vehicle, i.e. respondent Nos. 2 and 4 to pay the compensation in equal proportion.

3. Learned Counsel appearing for the appellant submits that compensation awarded is on the higher side. He firstly submits that entire fault is of the Gramin Sewa vehicle i.e. respondent No. 3 inasmuch as it was on account of the accident with the Gramin Sewa vehicle that respondent No. 1 fell down and there was no time for the respondent No. 2 to react or to control its speed and hence no negligence can be attributed to the driver of the tempo. Hence Counsel for the appellant submits, that liability of 50% on the appellant is incorrect.

4. Learned Counsel further submits that the Tribunal has wrongly assessed the functional disability at 45%. He further submits that the Tribunal has also wrongly computed the income as respondent No. 1 was not earning any amount whatsoever and has further wrongly awarded future prospects on the same. He also submits that non-pecuniary amount have also been given on the higher side which are not in commensuration with injury suffered.

5. A perusal of the award shows that the Tribunal noted that the motorcycle was hit by the Gramin Sewa vehicle and respondent No. 1 fell down. The Tempo came from behind and ran over her leg.

6. The Tribunal further relied upon the evidence of the respondent No. 1/PW2 to hold that both Gramin Sewa vehicle and tempo were equally negligent. The Tribunal concluded that as per the evidence of PW2, the tempo was being driven rashly and negligently and the driver of the tempo namely respondent No. 2 made no effort to avoid the accident. The tempo was being driven at a high speed otherwise its driver could have controlled/stopped the said vehicle before hitting respondent No. 1. The Tribunal has also relied upon FIR, site plan, mechanical inspection report and concluded that both the respondent Nos. 2 and 3 are liable and have proportionate negligence of 50%.

7. In my opinion, there is no reason to interfere in the finding recorded by the Tribunal. At best it would be a case of composite negligence where in any case respondent Nos. 2 and 3 would be jointly and severally liable. There is no merit in the contention of the appellant in this context.

8. Coming to the assessment of salary the Tribunal noted the evidence of PW2 that she was 18 years of age and was taking coaching in computer and doing a course but due to the injury she could not work and her training of computer had been completely suspended. She says that she was not in a position to walk independently and always needed an attendant for doing her day to day needs.

9. In these circumstances to assess future wages of the appellant based on minimum wages for a matriculate is in order. A reference may be made to the judgment of the Supreme Court in V. Mekala Vs. M. Malathi and Another, . The facts in that case are that the appellant was 16 years of age and studying in 11th

class. The Supreme Court assessed the notional income at Rs. 10,000 based on the fact that the injured was a good student in school.

10. As far as the addition of future prospect to the income is concerned, a reference has again be made to V. Mekala v. M. Malathi and Anr. (supra), where a similar addition was made. No fault can be found with the addition of future prospects by the Tribunal. There is no merit in the said contention.

11. On the issue of non-pecuniary damages, it may be noted that PW1 Mr. Sanjeev Kumar, Statistical Assistant, GTB Hospital, Delhi has brought on record the treatment details of respondent No. 1. She was brought for treatment in the hospital for the period 11.9.2012 to 10.10.2012, 5.4.2013 to 22.4.2013 and 20.9.2013 to 24.9.2013.

12. In evidence PW2 has pointed out that she had to visit the hospital at least 20-25 times. It is recorded in the discharge summary that PW2 has suffered fracture of SOF(R), with fracture lateral condyle femur (Rt.) with fracture Third medial malleolus (Rt.). In the light of the above injuries the Tribunal has rightly compensated the appellant for pain of sufferings at Rs. 1,50,000, loss of amenities and enjoyment at Rs. 1,50,000, compensation for disfigurement at Rs. 1,50,000 and loss of marriage prospects at Rs. 1,50,000. Reference may be had to the judgment of the Supreme Court in the case of Rekha Jain Vs. National Insurance Company Ltd. and Others, . I find no reason to interfere with the findings of the Tribunal.

13. The appellant may comply with the order of the Tribunal within four weeks.

14. Statutory amount deposited by the appellant at the time of filing the appeal be refunded to the appellant. The appeal stands disposed of.