

(2008) 06 CAL CK 0050

In the Calcutta High Court

Case No : F.M.A. No. 625 of 2004 with C.A.N. 2697 of 2008

Sukdev Singh

APPELLANT

Vs

The Regional Manager, New India Assurance Co. Ltd. and
Another

RESPONDENT

Date of Decision : 26-06-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 166, 170

Citation : (2008) 4 CHN 939

Hon'ble Judges : Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Santosh Kumar Das and Sucharita Paul, for the Appellant; R.P. Banerjee and Soumendra Nath Ganguly, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—This appeal is at the instance of the claimant u/s 166 of the Motor Vehicles Act and is directed against the award dated 22nd July, 2003 passed by the learned Additional District Judge, third Court, Alipore and the Motor Accident Claims Tribunal, District ? South 24-Parganas, in Motor Accident Claim Case No. 23 of 2001 thereby disposing of the said application filed by the appellant by awarding the compensation of Rs. 1,00,000/- for the permanent disability of the appellant to the extent of 40 percent due to an accident. According to the appellant, he was a driver of a private bus and while he was about to board into the driver's cabin, another bus bearing No. WB- 04A/8939 of Route No. 12 knocked down three pedestrians including the appellant. The other two died on the spot and the appellant received severe injuries on his person for which he was removed to a nursing home. He was aged 39 years at the time of accident and he was earning Rs. 6,000/- a month as a driver.

2. According to the appellant, he spent Rs. 60,000/- for his treatment and due to the disability arising out of the accident, he is unable to drive any vehicle, although, "driving" is his occupation. He, therefore, claimed a total amount of Rs.

11,60,000/- as compensation.

3. The owner of the offending vehicle did not contest the proceedings but its insurer did thereby denying the material allegations made in the application. It appears that no permission u/s 170 of the Motor Vehicles Act had been sought for by the Insurance Company but witnesses for the appellant were cross-examined on its behalf.

4. The learned Tribunal below, on consideration of the materials on record, arrived at the conclusion that the appellant was in the age group of 40-45 years and, therefore, the appropriate multiplier should be 15. The learned Tribunal further held that after taking into consideration the evidence on record including the evidence given by the Doctor it appeared that the permanent disability of the appellant reached to the extent of 40 percent.

5. However, as regards the income of the appellant, the learned Tribunal was of the view that there was no sufficient material to indicate the actual income of the appellant and, thus, the Tribunal below relied upon the notional income of Rs. 15,000/- as the annual income of the appellant. Ultimately, the Tribunal below held that the amount should be the 40% of Rs. 15,000/- x 15 which comes to Rs. 90,000/- in addition to the amount of Rs. 5,000/- for mental pain and suffering and further Rs. 5,000/- for medical expenses. The Tribunal below, therefore, assessed the compensation at Rs. 1,00,000/-.

6. Being dissatisfied, the claimant has come up with the present appeal. After hearing Mr Das, the learned advocate appearing on behalf of the appellant, and Mr Banerjee, the learned advocate appearing on behalf of the Insurance Company, we find that according to the Identity Card issued by the Election Commission, the appellant was shown to be aged 39 years on 1st January, 2000 whereas the accident occurred in the later part of the same year. The finding of the learned Tribunal that the appellant was within the age group of 40-45 was therefore quite reasonable and we do not find any reason to interfere with such finding.

7. Similarly, Mr Das also did not dispute the finding of the Tribunal as regards extent of permanent disability, which was found to be 40 percent by accepting the report of the Doctor.

8. The grievance of Mr Das was that the owner of the bus having given evidence admitting that he used to pay Rs. 300/- a day to his client and that his client used to get work for at least 20 days a month, there was no reason to rely upon the notional income fixed by the Second Schedule of the Motor Vehicles Act. He, therefore, prays for enhancing the amount by relying upon the evidence adduced by his client as regards the monthly income of Rs. 6,000/-. Mr Das further submits that the learned Tribunal below ought to have granted interest on the awarded amount from the date of filing of the application until the actual payment.

9. Mr Banerjee, the learned advocate appearing on behalf of the Insurance Company although fairly conceded that his client had not preferred any appeal against the awarded amount, yet, submitted that there is no just reason for enhancing the amount of compensation. According to Mr Banerjee, the evidence given by the owner of the vehicle as regards the income of the appellant was rightly disbelieved by the learned Tribunal below. He, therefore, prays for dismissal of the appeal.

10. After hearing the learned Counsel for the parties and after going through the materials on record, we find that the Insurance Company in this case did not take any leave u/s 170 of the Act and as such, apart from the grounds mentioned in Section 149(2) of the Act it has no right to agitate any other point affecting quantum of compensation. Even in this appeal, the Insurance Company as a respondent cannot oppose the contention of the Mr Das that the Tribunal below should not have relied upon notional income.

11. After going through the materials on record, we find that the fact that the appellant was the driver of the private bus has been well established and his driving licence indicates that he is a professional driver. The fact that the Insurance Company has not preferred any appeal and accepted the award establishes beyond doubt that the appellant was involved in the accident. We cannot subscribe to the view taken by the Tribunal that in this case the evidence given by the owner of the vehicle should be disbelieved. It is true that the Register maintained by the owner of the vehicle has not been produced but no suggestion was given to the said owner disputing the claim of the appellant. The amount of Rs. 6,000/- a month for a professional driver of a bus cannot be said to be unreasonable so as to disbelieve the evidence of the owner of the vehicle in the absence of any other evidence to the contrary. The legislature in the year 1994 having introduced the concept of notional income of Rs. 15,000/- a year even in case of a person having admittedly no income, there was no just reason for adopting the same presumption in case of an admitted professional driver who used to drive the private bus in a recognised route fixed by the Motor Vehicles Authority.

12. We, thus, find that it has been well established that the appellant had a monthly income of Rs. 6,000/-. After taking into consideration the aforesaid amount to be the monthly income of the appellant, the total amount comes to the figure of 40% of Rs. 72,000/- $\times 15 =$ Rs. 4,32,000/-. The learned advocate for the Insurance Company at this stage contended that at least one-third of such amount should be deducted and in support of such contention, he relies upon a decision of the Supreme Court in the case of New India Assurance Co. Ltd. Vs. Charlie and Another, .

13. The said decision of the Supreme Court arose out of an appeal involving a case of 100% disability and in support of the appeal, the learned Counsel for the appellant/Insurance Company submitted that the age of the injured was about 37 years and a multiplier of 16 was adopted on the ground that there was

permanent disability and, therefore, deprivation of contribution was on the higher side. Strong reliance was placed on the decisions of the Supreme Court in the cases of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, to contend that the multiplier was on the higher side. It was also submitted that whatever was the earning, a portion of it was spent for personal expenditure and normally one-third deduction was made therefrom. However, in the said case, after taking into account the fact that the income of the injured was Rs. 18,000/- per annum, the multiplier of 16 had been applied without making any deduction. In response, the learned Counsel for the respondent submitted that the injured was totally crippled and been almost rendered immobile by the 100% disability. Even at the time of discharge, he was not in a conscious condition. Taking into account such factor, the quantum as awarded could not be said to be on the higher side.

14. In such a case, a Division Bench of two Judges of the Apex Court held that what would be the percentage of deduction for personal expenditure could not be governed by any rigid rule or formula of universal application. It would depend upon circumstances of each case. In the said case, the claimant was nearly 37 years of age and was married and according to the Division Bench, it was rightly contended by the learned Counsel for the appellant that one-third deduction had to be made for personal expenditure.

15. Mr Das vehemently contended before us that the said decision could not be cited as a precedent, as according to him, the said Division Bench totally overlooked the fact that the theory of the deduction of one-third is applicable only in case of death as provided in the Second Schedule of the Act because the victim being dead, no amount is required to be spent for him. According to Mr Das, if the victim is alive with disability, he is required to spend huge amount for himself and for that reason, the legislature in its wisdom has not permitted deduction of any amount in case of non-fatal accidents. Mr Das, in this connection, places the following decisions in support of his contention that no deduction should be made in case of permanent disability as the victim is alive and is required to spend for himself:

1. R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others,
2. Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak and Ors. reported in 3 (2002) ACC 66 ;
3. I (2006) ACC 123 (SC) ;
4. Ashwani Kumar Mishra v. P. Muniam Babu and Ors. reported in 1999 W.B.L.R. 316;
5. A.P.S.R.T.C. Rep. By its Chief Law Officer v. M. Pentaiah Chary reported in 2007 S.A.R. (Civil) 778;
6. Ponnumany alias Krishnan and Anr. v. V.A. Mohanan and Ors. reported in

2008(2) T.A.C. 390 (S.C.).

16. After hearing the learned Counsel for the parties and after going through the decisions cited by the learned Counsel for the parties, we are of the view that in the case of *New India Assurance Co. Ltd. v. Charlie and Anr.* (supra), as a proposition of law, it has not been held that even in case of nonfatal accident, one-third should be deducted although such provision is made only in case of fatal accident. In that case, it has been rather held that there is no hard and fast rule regarding deduction from the income. However, in the facts of the said case, the Supreme Court decided to deduct one-third of the income of the victim. It is now a settled law that what is decided, as a proposition of law, is the precedent and what can be logically deduced from a decision cannot be a precedent. Therefore, the said decision cannot be treated as a precedent for the proposition of law that even in every case of a non-fatal accident, deduction of one-third income while applying multiplier is compulsory. We find from the decisions referred to above by Mr Das, that the Apex Court in those cases involving non-fatal accidents, while applying multiplier did not deduct any amount from the annual income of the victim. The approach of the Co-ordinate Benches of the Apex Court in those decisions are not in conformity with the one taken in the case of *Charlie and Anr.* (supra). On that ground also, the said decision cannot be treated as a precedent. We, thus, find no substance in the aforesaid contention of Mr Banerjee.

17. The appellant is also entitled to get interest at the rate of 8 percent per annum from the date of filing of the application until the actual payment. The appeal is, thus, allowed and the award impugned is set aside and the compensation is enhanced to the aforesaid sum of Rs. 4, 32,000/- + Rs. 10,000/- (towards mental pain and medical expenditure awarded by the Tribunal) = Rs. 4,42,000/- with interest at the rate of 8 percent as indicated above. It is needless to mention that the running of interest on the awarded amount would be stopped from the date of deposit of the amount by the Insurance Company. The enhanced amount be deposited within a month from today before the learned Tribunal below. In the facts and circumstances, there will be, however, no order as to costs.

Rudrendra Nath Banerjee, J.

18. I agree.