
(2013) 12 BOM CK 0020
In the Bombay High Court
Case No : First Appeal No. 752 of 2008

The National Insurance Co. Ltd.

APPELLANT

Vs

Mr. Razique Ahmed, Mr. Asharafkha, Mr. Rajesh Singh
Rambaroj Singh Thakur

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2013) 12 BOM CK 0020

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : A.R. Godbole, for the Appellant; M.S. Sambre, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—This appeal is preferred against the Judgment and Award dt. 27.3.2008 passed by the learned Additional Member, Motor Accident Claims Tribunal, Akola in M.A.C.P. No. 203 of 2003. The facts, briefly stated, are as under:

That the claimant (respondent) had claimed a sum of Rs. 4,00,000/- on account of 20 % permanent disability occurred to him as a result of motor vehicle accident dt. 10.10.2002. According to the claimant, while he was proceeding towards Yeoda in an auto rickshaw bearing registration no. MH-30 E 809, the offending motor vehicle i.e. truck bearing registration no. MP-07 G-3056 coming from the direction of Daryapur in a zig-zag manner, driven rashly and negligently turned turtle and gave severe dash to the auto rickshaw, which turned turtle. The passengers proceedings by the auto rickshaw suffered severe injuries and the claimant suffered severe fracture injuries to both shaft femurs. The claimant also contended that the driver of the truck was prosecuted for the offence punishable under Sections 279 and 337 of the Indian Penal Code which was registered as crime no. 173 of 2002 by the local Police Station. At the time of accident, the claimant was aged about 19 years and in a very good health. He was driving auto rickshaw and earning a sum of Rs. 5,000/- p.m. It is further

case of the claimant that he had spent a sum of Rs. 40,000/- towards medical treatment, which is still continuing as he is unable to walk properly and also unable to do usual work. The learned Tribunal held that the claimant had received fracture injuries as a result of motor vehicle accident which occurred on 10.10.2002 because of rash and negligent driving of Truck No. MH-07 G-3056. The Tribunal also found that the claimant has suffered permanent disability of 20 %. Thus, the Tribunal, considering the income of the claimant as an auto rickshaw driver, nature and extent of permanent disability as also non-pecuniary damages and expenses of medical treatment including expenses for medicines, granted compensation as follows:

The earning of claimant was considered as Rs. 5,000/- p.m. and his age was considered as 19 years at the time of the accident. Thus, compensation was calculated by applying guidelines u/s. 163A of the Motor Vehicles Act, 1988 on the basis of daily earning by a labour class person in the area as Rs. 80/- to Rs. 100/- per day. It was considered that the claimant would be earning a sum of Rs. 2,400/- to Rs. 3,000/- p.m. and his income per year came be assessed as Rs. 30,000/- minimum per year. Thus, the Tribunal applied at multiplier of 16 to arrive at total compensation in the sum of Rs. 4,80,000/-. However, the same compensation was divided by 20 % disability and thus, the compensation in the sum of Rs. 96,000/- was held payable for permanent disability of 20 % to the claimant.

2. The learned Counsel for the appellant has no grievance in respect of above calculation. But his main grievance is that, according to the claimant, he has spent a sum of Rs. 14,000/- for operation. But, the Orthopedic Surgeon gave a random figure that he had charged a sum of Rs. 20,000/- to Rs. 22,000/- for operation underwent by the claimant. The learned Counsel for the appellant has grievance that there was no any documentary evidence was produced on record to support this claim of Rs. 20,000/- incurred by the claimant for operation. Therefore, he submitted that compensation in the sum of Rs. 20,000/- was wrongly granted. He has no grievance, however, regarding bills for medicines in the sum of Rs. 9,350/- plus medicines purchased for Rs. 120/- - total expenses calculated in the sum of Rs. 29,470/-. The learned Counsel for the appellant submitted that such compensation on medical ground without documentary evidence cannot be granted merely for asking; but there must be some evidence in support of the contention that the medical expenses were incurred as claimed.

3. In the present case, it does appear from the record that though the claimant had claimed a sum of Rs. 40,000/- for treatment of both the legs because of fracture of shaft femurs and also the fact that iron rods had to be inserted in both his legs, one cannot ignore the fact that treating doctor was examined on behalf of the claimant and Dr. Rahemankhan Kalekhan, Orthopedic Surgeon deposed before the Tribunal that he had charged a sum of Rs. 20,000/- to Rs. 22,000/- for such operation. The doctor described the injury to the claimant as lateral comminuted sharp fracture, sharp femurs. The doctor also deposed that

the patient was operated for the same. The operation was described as intra medulary inter locking nailing and the patient was advised strict bed rest for four months as he had suffered fracture of thigh bones of both the legs. Again, according to the doctor, after the patient was discharged on 3.11.2007, he was admitted again for removal of implants and at that time, he had charged a sum of Rs. 9,350/-. The doctor was also cross-examined at length in respect of medical treatment given to the patient and the doctor deposed that he had issued Disability Certificate on the basis of fact that the patient was having 1) Quadriceps muscles (shrinking of muscles), 2) bilateral painful hip, 3) restricted movements of knee and 4) shortening of bone. He advised to the patient for removal of implants after complete reunion of joints or after two years. Looking to the evidence of doctor, therefore, the claim of the patient for operation in the sum of Rs. 20,000/- for undergoing operation as described by the doctor cannot be considered as exorbitant or excessive claim, particularly when the Discharge Card also mentions the nature of diagnosis as bilateral fracture shaft with advice of implant removal. The learned Counsel for the appellant made reference to the ruling in the case of Kapil Kumar Vs. Kudrat Ali and Others, , wherein the victim had suffered fracture of three bones of right hand. In the result, right hand had become irregular in shape and its movements became restricted. It was assessed as 20 % permanent disability. It caused the student loss of his studies as well as loss of prospects of earning and considering the age of the victim as minor aged about nine years, compensation in the sum of Rs. 50,000/- with interest @ 12 % p.a. was granted in that case. The learned Counsel wants me to apply this ruling in the facts and circumstances of the present case and contends that when multiplier is used for arriving at compensation, non-pecuniary damages for various reasons such as pains, sufferings and loss of enjoyment in life, use of conveyance, attendant, special diet ought not to be awarded. It would not be possible to accept this submission as calculation of compensation is on the basis of monthly/yearly earnings which is divided by extent of permanent disability and the figure is multiplied in order to assess what was loss of earning in expected span of life. But it cannot be considered as total loss of earning because when the victim is injured in the motor vehicle accident and suffers permanent disability, he not only suffers loss of earnings during expected span of his life, but also suffers mental and physical pains and sufferings. He also has to bear continuing medical expenses to get over the personal difficulties. He suffers loss of enjoyment in life which could have been possible because of marriage with a suitable person and enjoyment of marital life. But, for the permanent disability suffered as a result of accident, the injured claimant who suffers permanent disability also will have to use conveyance, as also engage an attendant and consume special diet for remaining physically fit in rest of his life. That being so, the compensation awarded by the Tribunal in the sum of Rs. 80,000/- only cannot be blamed as it is inclusive of mental and physical pains and sufferings for the victim, prospective medical expenses, loss of enjoyment in his life as well as requirement of conveyance, attendant and special diet. In the facts and circumstances, therefore, it is not possible to apply ruling in Kapil Kumar's case

(cited supra) to the facts and circumstances in present case because compensation has to be just, reasonable and fair. Bearing in mind the facts and circumstances of the case, the sum of Rs. 2,05,470/- inclusive of no fault liability, compensation for expected span of life, medical treatment -which includes two operations performed upon the injured - one for planting iron rods in both the legs of the victim while the another for removal of implants and sum of Rs. 80,000/- for non-pecuniary damages was rightly awarded by the Tribunal. Thus, the compensation awarded by the Tribunal may be listed as under:

1. A sum of Rs. 96,000/- for loss of earning during expected span of life.
2. A sum of Rs. 29,470/- for two operations which the victim underwent for inserting iron rods as a result of fracture in both legs and removal of implants, which is inclusive of medicines and,
3. Non-pecuniary damage for a sum of Rs. 80,000/- for loss of enjoyment, pains and sufferings, conveyance, attendant and special diet.

The compensation so granted by the Tribunal cannot be described as unjust, exorbitant or unreasonable. Hence, no interference is warranted in the impugned Judgment and Award. The appeal is dismissed.