
(2010) 06 BOM CK 0134
In the Bombay High Court
Case No : First Appeal No. 330 of 2007

The National Insurance Company Ltd.	APPELLANT
Vs	
Dr. Ashok Raikar, Mr. Umesh Ranganath Shirodkar and Shri Manguesh Vasant Bagkar	RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) ACJ 255

Hon'ble Judges : F.M. Reis, J;A.S. Oka, J

Bench : Division Bench

Advocate : M.S. Joshi, for the Appellant; S.D. Lotlikar and H. Kankonkar, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Oka, J.—The appellant who is the insurer of the vehicle involved in the accident, has taken except to the Judgment and Award dated 7.8.2007, passed by the learned Member of the Motor Accident Claims Tribunal, at Panaji, in a claim petition filed by the first respondent u/s 166 of the Motor Vehicles Act, 1988 (for short, hereinafter, referred to as "the said Act"). The first respondent filed the claim petition on account of injuries sustained by him in the motor accident. The first respondent, who is a Medical Practitioner by profession, suffered an accident on 22nd October, 2001. The first respondent is a dermatologist. On 22nd October, 2001, at about 3.30 pm., he was proceeding from his residence at Caranzalem towards Mapusa in his Santro car. He was proceeding to attend his clinic. When the first respondent reached near Nova Cidade at Porvorim, suddenly a truck loaded with sand which was coming from opposite direction, came on its wrong side of the road and gave a dash to the Santro car of the first respondent. The case of the first respondent is that as a result of the impact, he sustained grievous injuries. According to him, he sustained compound fracture of the right humerus, blunt chest trauma, tissue

injury on the right thigh and the right shoulders, head injury and blunt abdominal trauma, thereby leading to permanent disablement. The first respondent gave all details regarding medical treatment undergone by him. The claim is on account of permanent disability, loss of income, reimbursement of medical expenses, expenses of hospital stay and transport charges.

2. The second respondent is the driver of the offending truck and the third respondent is the owner of the offending truck. The second and the third respondents filed written statement, denying various averments made in the claim petition. The appellant also filed written statement. Though validity of the insurance was admitted, a contention was raised that it was the first respondent who was negligently driving his own car, which resulted into the accident. After parties adduced the evidence, by impugned Judgment and Award, the Tribunal awarded compensation of Rs. 12,05,000/-, together with interest thereon.

3. The challenge by the appellant is on the ground of quantum. The learned Counsel appearing for the appellant invited our attention to the material part of the impugned Judgment. He pointed out that the documents produced by the first respondent show income only for a period of 3 years. He submitted that the income taken by the learned Tribunal at the rate of Rs. 30,000/- per month is excessive. He pointed out that the documents produced by the first respondent show that even from the year commencing from 1st April, 2001 and ending with 31st March, 2002, professional income of the first respondent was of a sum of Rs. 4,72,250/-. He submitted that the Tribunal has committed an error by granting a sum of Rs. 3,30,000/- for actual loss of income for 11 months. He submitted that the income tax documents produced by the first respondent show that he has earned substantial income even after the accident and in the absence of any evidence to show that the first respondent did not earn any income from profession from 22nd October, 2001 till the end of September, 2002, there was no justification for grant of compensation on account of loss of income for the period of 11 months. He submitted that after considering permanent disability quantified at 17 %, the future loss of income by the first respondent has been quantified at Rs. 6,73,200/- and, therefore, there was no occasion for the Tribunal to again grant compensation of Rs. 3,30,000/- on account of loss of income for a period of 11 months from 22nd October, 2001. He, therefore, submits that the compensation granted by the Tribunal is excessive. The learned Senior Counsel appearing for respondent No. 1 supported the impugned Judgment and Award.

4. We have given careful consideration to the submissions. The first respondent examined himself by filing an affidavit-in-lieu of examination-in-chief. He has produced various documents relating to the medical treatment undergone by him. He has also produced medical certificates and various bills. He has produced copies of Income Tax returns along with the Profit and Loss Account. Apart from the first respondent, Dr. Zelio D'Mello has been examined to prove the disability certificate. The first respondent also examined one Dr. Ajoy Estibreiro who was

attached to Dr. Estibeirol's Clinic where the witness treated the first respondent for depression, following the accident. The first respondent also examined one Chandan Shetye whose taxi was hired by the first respondent for visiting hospitals and clinics.

5. As far as the injuries sustained by the first respondents are concerned, apart from oral testimony of the first respondent, reliance has been placed on Medico-legal Certificate issued by the Goa Medical College which is at Exhibit 38. The said certificate shows that the first respondent was admitted to the hospital on 22.10.2001 and was treated by Orthopaedic Surgery Department on 24.10.01. Dr. Zelio D'Mello, the second witness examined by the first respondent was the Associate Professor of the Department of Orthopaedic Surgery in Goa Medical College. In his evidence, Certificate of Disability at Exhibit- 62 has been proved, which records that the percentage of permanent disability according to ALIMCO scale is 17 % due to limitation on elbow joint movement. The finding recorded by the learned Member of the Tribunal, on the basis of the Certificates at Exhibit 38, 39 and 62, is that the first respondent sustained injuries set out in paragraph 11 of the claim petition. The relevant portion of paragraph 11 reads thus:

As a result of the accident, the claimant suffered grievous injuries with compound fracture of the right humerus, with blunt chest trauma, with tissue injury on the right thigh and the right shoulder, apart from head injury and blunt abdominal trauma, thereby leading to permanent disablement. The claimant also suffered several lacerations, on the face which required sutures, and other bleeding cuts and bruises.

The first respondent's hospitalization in the Goa Medical College was from 22.10.01 to 31.10.01. He underwent surgery for fitting of a dynamic compression plate on his right arm. He has further stated that he was advised to take complete rest. In paragraph 11 of his affidavit, he has stated that due to constant and unbearable pain at the point of fracture and swelling of the right thigh, coupled with abdominal pain, it made very difficult for him to even change position while sleeping, leading to irritation and restlessness. He stated that he consulted Dr. Ajoy Estibeirol and started treatment for reactive depression. The said Medical Practitioner has been examined as a witness in support of the case of the first respondent. Dr. Ajoy Estibeirol stated that he had treated the first respondent for depression following the accident. In his affidavit-in-lieu of examination-in-chief, the first respondent stated that he continued to suffer even thereafter. He has stated that there was painful swelling on the right upper arm, and, therefore, he had to seek medical advice. He had to undergo various tests such as ultrasound, and X-rays . He consulted Dr. R.P. Usgaonkar who is a Plastic Surgeon. On 7.2.2002, he was admitted in Netravalkar Nursing Home, Caranzalem and exploratory surgery was done. In fact he has stated that excised biopsy tissue was sent to the Pathology Department of Goa Medical College. He has stated that the tenderness at the fracture site and painful swelling of the right thigh continued. Ultimately, on 30th April, 2002, a special scotch-cast was

put on the right arm. He stated that when scotch cast was removed on 30th April, 2002, it was noticed that there was an increase in size of foreign body granuloma and continuous discharge from the wound persisted. Therefore, he had to undergo further treatment. He has given details of the further treatment. He stated that in June, 2002, Doppler study was required to be done and as a result of finding in the Doppler study, he was required to consult a Neurosurgeon, who, in turn, advised him to undergo M.R.I. and was referred to Jaslok Hospital, Mumbai. From 8.7.2002, the first respondent was admitted to Jaslok Hospital, where he underwent plastic surgery procedure for his recurrent painful swelling. He was ultimately discharged from Jaslok Hospital on 13.7.02 and then he was advised to take up follow up treatment from Dr. Usgaonkar at Goa. The treatment continued and on 28.8.02, he was readmitted for further treatment at Jaslok Hospital. On 30.8.02, he underwent a revision plating with bone grafting. He has stated that following the bone graft operation, he continued to suffer and there was restriction on movements at the right arm. He has specifically stated in the evidence that from 22.10.2002 he could not attend his clinic at three places. In paragraph 39 of his affidavit, he has stated thus:

On account of the number of operations which I had to undergo at short succession, coupled with the steep medical expenses and attendant financial strain, I had to undergo and continue to undergo severe mental strain. I say that I have not been able to attend my clinic since 22/10/2001 till the month of September, 2002, on account of the injuries suffered by me, the period spent in recuperation and pre-occupation with medical procedures and successive operations, in Goa and Mumbai. This has caused a pecuniary loss of earning of about eleven months to me. I have also lost my patients and thereby suffered further loss of Rs. 1,00,000/-.

6. The first respondent was cross examined. His cross examination is very brief. Though a suggestion was given that whatever stated in paragraphs 12 to 34 of the affidavit was incorrect, there is no challenge to what is set out in the affidavit-in-lieu of examination-in-chief from paragraphs 35 onwards and more particularly paragraph 39 thereof. All the documents were exhibited during the course of examination-in-chief of the first respondent, including the documents showing income of the first respondent. There is hardly any challenge to any of the documents referred in the course of examination-in-chief. What is accepted by the Tribunal, on the basis of the oral and the documentary evidence, is that from 22.10.01 till the end of September, 2002, the first respondent was continuously under medical treatment and could not attend to his medical practice. There is nothing on record to disturb the said finding recorded by the Tribunal.

7. On the basis of the documents produced at Exhibit 54, the Tribunal found that the income of the first respondent for the financial year 1999-2000 was Rs. 4,10,550/-. For the immediately, next financial year ending i.e. 31.3.2001, the income was Rs. 6,03,200/-. For immediately next financial year ending i.e. 31.3.2002, the income was shown as Rs. 4,72,250/-. The Tribunal has taken the

average income of the three years, which comes to Rs. 41,277/- per month. In fact, income for a period of 3 years shows steady increase. Nevertheless, average monthly income was arrived at Rs. 41,277/-. For the purpose of computing the compensation, the income has been taken only at Rs. 30,000/- per month. There is hardly any scope for finding fault with the approach of the Tribunal. As the age of the first respondent was 50 years at the time of the accident, multiplier of 11 has been correctly applied. As a permanent disability to the extent of 17 % due to limitation of elbow joint movements was established, the damages have been quantified at Rs. 6,73,200/-, by taking income at Rs. 30,000/- per month. Multiplier of 11 was applied and 17 % of the total amount has been awarded as damages on account of disability. The said damages are on account of permanent disability suffered by the first respondent.

8. As pointed out earlier, the evidence on record establishes the fact that from 22.10.01 till end of September, 2002, the first respondent was continuously under treatment of various medical practitioners and hospitals. Taking monthly income of Rs. 30,000/-, total loss of income for the period of 11 months has been calculated at Rs. 3,30,000/-. Grant of compensation on account permanent disability will not disentitle the first respondent to claim compensation for complete loss of earnings for the period of 11 months. Therefore, there is no error in the view taken by the learned Member of the Tribunal when he granted the sum of Rs. 3,30,000/- as loss of income for a period of 11 months. On the basis of the bills on record, a sum of Rs. 1,00,000/- has been granted towards medical expenses. Transport charges of Rs. 75,481/- have been awarded after considering the evidence of the first respondent and of the witness examined by him whose taxi was frequently hired by the first respondent. The said amount has been granted on the basis of the actual documentary evidence. Apart from the first respondent himself, members of his family were required to undertake travelling whenever the first respondent was admitted to the hospitals. At least on two occasions, the first respondent was hospitalized in Jaslok Hospital at Mumbai. A sum of Rs. 1230/- has been awarded on account of the expenses for accommodation of the family members of the first respondent. Only a sum of Rs. 25,000/- has been granted by the learned Member of the Tribunal on account of shock, mental pain and suffering. That is how the total compensation found payable to the first respondent is Rs. 12,04,911/-, which has been rounded off to Rs. 12,05,000/-. Considering the fact that the expenditure was incurred in the year 2001, and considering the prevailing rates of interest of the Banks at the relevant time, reasonable interest of 9 % per annum has been granted. The compensation of Rs. 12,05,000/- granted by the Tribunal is inclusive of the amount granted under No Fault Liability.

9. We are of the opinion that the compensation granted is just and reasonable and is supported by oral and documentary evidence on record. No interference is called for with the impugned Judgment and Award. The appeal is dismissed with no order as to costs.