(2014) 12 TP CK 0023

In the Tripura High Court

Case No : MAC APP. 120 of 2008 and CO(FA) 05 of 2009

The National Insurance Company Ltd. VsUttam Debnath
Uttam Debnath VsThe National Insurance Company Ltd.

Date of Decision : 03-12-2014

Acts Referred:

Citation : (2014) 12 TP CK 0023

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : P. Gautam and P.K. Pal, Advocate for the Appellant; P.K. Pal and P. Gautam, Advocate for the Respondent

Judgement

Deepak Gupta, C.J.—Both the appeal and the cross objection are being disposed of by a common judgment since they arise out of the same claim petition and a common award dated 16-06-2008 passed by the learned Motor Accident Claims Tribunal, Sonamura, West Tripura in case No. T.S.(MAC) 02 of 2008 whereby Rs. 5,88,725/- was awarded in favour of the claimant.

2. The claimant Uttam Debnath filed a claim petition alleging that he was engaged in transportation business and earning Rs. 10,000/- per month. According to him, on 17-01-2007 he was travelling in jeep bearing registration No. TR-01-B-2483. This jeep met with an accident and the claimant received injuries in his spinal cord, especially in the 3rd and 4th vertebrae. The petitioner accordingly claimed Rs. 25,40,000/- as compensation.

3. The claim petition was contested and after contest, the learned Motor Accident Claims Tribunal held that the claimant was earning Rs. 5,000/- per month. Thereafter, the learned Tribunal relying upon the disability certificate assessed the loss of income at 50% and assessed the compensation accordingly. The Insurance Company by means of the appeal has claimed that the amount of compensation awarded is highly excessive and the claimant has filed cross-objection claiming enhancement of the amount.

4. The admitted facts are that the claimant was the owner of a full-bodied TATA

truck. The claimant has relied upon a certificate issued by the SDM in which it is stated that the deceased was earning Rs. 7,500/- approximately per month, but there is nothing to show on what basis such a certificate was issued. Having held so, this Court can take judicial notice of the fact that the owner of a truck after paying of the driver and meeting the expenses of running the truck etc. would earn at least Rs. 200/- per day or Rs. 6,000/- per month which is assessed as the income of the claimant.

5. The claimant himself was not driving the truck and he had engaged a driver to drive the truck. Therefore, I fail to understand how the disability which he has suffered will affect his earning capacity. Time and again, this Court has been observing that the Tribunals blindly assess the loss of earning capacity on the basis of loss of disability. This method is highly improper. In Raj Kumar Vs. Ajay Kumar and Another, , the Apex Court clearly held that doctors should normally be examined in those cases where the claimant claims high compensation on account of loss of income due to injuries. In the present case, the claimant has not examined any doctor and has only relied upon the disability certificate which has been exhibited. No doubt, this disability certificate states that the claimant is suffering from 50% disability. However, this certificate does not clearly state whether this disability is in respect of the entire body or in respect of a particular limb. Moreover, this certificate which was issued on 12-09-2007 was only valid for 5(five) years and the word "permanent" has been scored off. Therefore, this assessment was only temporary in nature. Even otherwise, the claimant is the owner of a truck and was not himself driving the truck. He could continue to earn by running the truck. Therefore, I fail to understand how the loss of income has been assessed in the manner in which it has been assessed by the learned Tribunal.

6. As far as the evidence is concerned, it shows that immediately after the accident on 17-01-2007 the claimant was taken to the Kathalia Hospital. He was thereafter referred to the G.B. Hospital from where he was discharged on 26-02-2007. As such, he remained in hospital for 1 month 11 days. Thereafter, he attended hospital on 10/12 occasions for 3/4 months, i.e. up to May, 2007. According to the petitioner, he then went to a private practitioner Dr. S.B. Nath for treatment and on 12-09-2007 the disability certificate was issued.

7. It is well settled law that in a case of injuries compensation is awarded under two heads; pecuniary damages and non-pecuniary damages. Under the head of pecuniary damages, the expenses of treatment, attendants, special diet, transportation, hospitalization will be covered. Under the head of pecuniary losses, the claimant will also be entitled to the amount of income which he has actually lost due to his being unable to attend his work and in case, the injury has caused a permanent disability, then the future loss of income shall also have to be considered. Under the head of non-pecuniary damages, normally damages will be awarded under the head of pain and suffering and in cases of permanent disability also for loss of amenities of life and future discomfort in life. In cases

where the claimant is a young unmarried person and the injuries affect his marital prospects, damages for loss of marital prospects can also be awarded.

8. Applying the principles I now assess the compensation. The claimant remained in hospital for about 41 days. He would have required two attendants around the clock. Even if the cost of one attendant in the year 2007 is taken at Rs. 250/- per day, the cost of two attendants works out to Rs. 500/- per day or Rs. 20,500/- for the period which the claimant remained in hospital. Attendants may have been required even after his discharge for some period and, therefore, Rs. 25,000/- is awarded for cost of attendants.

9. The claimant attended the OPD after his discharge from hospital on six occasions and the learned Tribunal has awarded him Rs. 1,200/- as expenses which is reasonable. He has also been awarded Rs. 800/- for his treatment by Dr. S.B. Nath and that is also proper. Therefore, for private treatment, he is awarded total of Rs. 2,000/-.

10. In addition thereto, the claimant has produced receipts of Rs. 10,125/- for purchase of medicines, undergoing tests etc. Keeping in view the nature of injuries and the treatment which has been carried out, he is awarded Rs. 20,000/- for medical expenses in the past.

11. The claimant also has to be awarded expenses for medication in the future. The claimant has suffered an injury to his spine. He will require medicines in future also. Even the disability certificate was valid up to 2012 and keeping all these factors into consideration, he is awarded Rs. 10,000/- for future medical expenses.

12. The claimant is also entitled to transportation expenses and keeping in view the nature of injuries and the treatment undergone, he is awarded Rs. 5,000/- for transportation expenses.

13. The learned Tribunal has awarded Rs. 40,000/- to the petitioner for loss of income by assuming that he could not work for 8(eight) months. I am afraid that this is not proper. The claimant after the period of rest could have worked even if not very effective and, therefore, taking his income to be Rs. 6,000/- per month and keeping the total loss of income for about 4(four) months, the loss of income is assessed at Rs. 24,000/-.

14. Coming to the future loss of income. As stated above, the learned Tribunal has assessed the loss only by taking 50% as loss of income. This, in my opinion, is totally incorrect. The claimant was not doing any manual labour. He was managing a truck which was being run by his employee, the driver. Such truck could be operated even after he had suffered injuries. However, this Court cannot lose sight of the fact that the truck operator has to be physically active to follow his truck and, therefore, there would be some loss of income. In my view, the loss of income cannot be 50% and at best, it would be 25% which would mean that the loss of income is Rs. 1,500/- per month or Rs. 18,000/- per year and

applying a multiplier of 17, the loss works out to Rs. 3,06,000/-.

15. As far as pain and suffering is concerned, the claimant has only been awarded Rs. 5,000/- which is very low. He is accordingly awarded Rs. 25,000/- for pain and suffering.

16. The claimant has been awarded only Rs. 10,000/- towards mental shock and agony. This, in my opinion, is also very low. The claimant has suffered a spinal injury. True it is that the disability certificate is not permanent but this Court can take judicial notice of the fact that spinal injuries continue for a long time and are seldom fully cured. Therefore, the claimant is awarded Rs. 50,000/- for discomfort, loss of amenities in life and loss of mental agony.

Therefore, the total compensation works out to Rs. (25,000 + 2,000 + 20,000 + 10,000 + 5,000 + 24,000 + 3,06,000 + 25,000 + 50,000) = Rs. 4,67,000/- (rupees four lakh sixty seven thousand).

17. Accordingly, the appeal is partly allowed. The award of the learned Tribunal is modified and the compensation is reduced from Rs. 5,88,725/- to Rs. 4,67,000/-, i.e. by Rs. 1,21,725/-. On the amount of compensation so awarded, the claimant shall also be entitled to interest @ 9% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount.

18. In view of the above discussion, there can be no enhancement of the compensation and the cross objection is accordingly dismissed.

19. Send down the lower court records forthwith.