(2016) 02 AHC CK 0197

In the Allahabad High Court

Case No : First Appeal From Order No. 368 of 2016

The New India Assurance Co. Ltd. — APPELLANT

Vs

Amzad Khan and Others — RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Evidence Act, 1872 — Section 77
Motor Vehicles Act, 1988 — Section 140, Section 167, Section 173
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2(i)

Citation : (2016) AAC 1187 : (2016) 3 ACC 80 : (2017) ACJ 610 : (2016) 4 ADJ 312 : (2016) 116 ALR 154 : (2016) 2 TAC 881

Hon'ble Judges : Krishna Murari and Raghvendra Kumar, JJ.

Bench : Division Bench

Advocate : Rajeev Chaddha, for the Appellant; Hanuman Prasad Dube, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri Rajeev Chaddha, learned counsel for the appellant and Sri H.P. Dube, learned counsel for the claimants-respondents.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed by the Insurance Company challenging the Judgment and award dated 9.12.2015 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No. 5, Jhansi awarding a sum of Rs. 16,85,000/- towards compensation along with 7% interest from the date of filing of the claim petition till actual payment.

3. Factual matrix of the case in brief giving rise to the dispute are as under:--

"An application under Section 167 read with Section 140 of the Motor Vehicles Act was preferred by claimant-respondent No. 1 through his father natural guardian seeking a compensation to the tune of Rs. 76.00 lakh along with 12% interest on the allegation that on 15.4.2015 when the claimant was waiting on the side of Jhansi-Kanpur national highway for a conveyance to visit Chirgaon, the offending truck bearing registration No. U.P.-93-T-9497 coming from Chirgaon side, hit him and the wheel of the offending vehicle ran over the left thigh of the claimant, on account of which the same was crushed and both his testicles were also severed. It was also pleaded that the truck which was supposed to move on the other lane besides the divider on the road was being driven on the wrong side rashly and negligently. It was also pleaded that on account of the injuries sustained in the accident the complete left leg of the claimant was amputated and because of the testicles being severed, he cannot live a normal married life. He was admitted in Jhansi Medical College but on account of serious condition, referred to Gwalior where he was admitted from 15.4.2015 to 26.4.2015, during which period, the amputation of his left leg was carried out. On account of costly medical expenses, the claimant could not continue treatment at Gwalior and was brought back to Jhansi and admitted in Sanmati Hospital, Jhansi till 15.5.2015. It was also pleaded that the claimant is still undergoing treatment and about Rs. 4.00 lakh has been incurred till that time in treatment and conveyance and there is likelihood of further expenses in treatment."

4. The proceedings were contested by the Insurance Company as well as the owner and driver of the offending truck denying the allegations by filing written statement. The owner and the driver pleaded that no accident as alleged took place and a false story has been cooked up in order to claim compensation and in any view of the matter since the truck was duly insured with the appellant-insurance company and driver was having a valid driving license, the liability was on the Insurance Company. It was pleaded on behalf of the Insurance Company that the claim has been filed on false and concocted story and the driver of the offending truck was not having license and permit and as such the claim petition was liable to be dismissed.

5. On the basis of the pleadings of the parties, the Tribunal framed the following four issues:--

"1. Whether on 15.4.2015 at about 1.30 P.M. when the claimant was waiting for a conveyance by the side of the road to go to Chirgaon, was hit by offending truck No. U.P.-93-T-9497 being driven rashly and negligently resulting in serious injuries?

2. Whether at the time of accident, the driver of the offending truck was having a valid driving license?

3. Whether on the date and time of accident, the offending truck was insured with the New India Assurance Company Ltd.?

4. Whether the claimant was entitled to any compensation and if yes then to what extent?"

6. To support the allegation made in the claim petition, the claimant himself appeared in the witness box as PW.1 and also produced Anwar Khan and Majeed

Khan as PW.2 and PW.3. The claimant also filed first information report, injury report, registration certificate of the offending truck, insurance policy, charge sheet submitted by the Police, site plan and also various prescriptions and medical papers of his treatment and the disability certificate in documentary evidence. The owner and the driver of the offending truck filed registration certificate of the vehicle, insurance policy, driving license and fitness certificate.

7. PW.1, the claimant in his examination-in-chief supported the allegations made in the claim petition in respect of the accident. He categorically stated that offending truck was being driven on the wrong side of the road and ran over his left leg and the truck driver after leaving the vehicle absconded. He also stated that there is a divider and the offending vehicle instead of being driven towards the other side of the divider, was coming in the wrong lane and hit him. He was cross examined by the owner and the Insurance Company. The Tribunal has recorded a finding that his testimony was unshakable and no such fact has emerged from the cross examination to doubt his testimony. PW.2 Anwar Khan also corroborated the factum of accident caused by the offending truck. He stated that truck was being driven on the wrong side of the road and crushed the left leg of the claimant and both his testicles were severed. He categorically stated that he was present at the site of the accident and a large number of vehicles were moving and all the four lanes were operational. First information report of the incident was lodged by the father of the claimant on 4.5.2015 against the offending truck and the Police after investigation submitted a charge sheet.

8. Relying upon the oral testimony of the injured himself, eyewitnesses and the documentary evidence and also upon the site plan, the Tribunal returned a finding that the offending truck coming from Jhansi was not being driven in its lane but on the opposite side of the lane for going from Jhansi to Kanpur and hit the claimant. The Tribunal did not accept the contention of the owner of the offending vehicle and Insurance Company that delay in lodging the first information report, cast a shadow of doubt on the genuineness of the accident.

9. In so far as issue Nos. 2 and 3 are concerned, the Tribunal on the basis of documentary evidence held that the driver of the offending truck having a valid driving license and the truck was duly insured with the Insurance Company.

10. While deciding issue No. 4 relating to quantum of compensation, the Tribunal on the basis of the school certificate of the claimant found his age to be 15 years and treated his notional income to be Rs. 5,000/- per month. Tribunal further finding that his complete left leg has been amputated and both his testicles has been severed, thus, he has suffered disability to the extent of 90%. Applying multiplier of 18 in accordance with the age of the claimant the Tribunal determined a sum of Rs. 10,80,000/- as compensation. As against the claim of Rs. 3.00 lakh towards medical expenses, the Tribunal awarded only a sum of Rs. 2,25,000/- under the said head on the basis of bills and vouchers which were found to be duly certified but proved.

11. The Tribunal also awarded a sum of Rs. 3.00 lakh towards future prospects and for loss of married life, Rs. 50,000/- towards physical and mental pain, Rs. 20,000/- towards special diet and Rs. 10,000/- towards conveyance. In this manner, the Tribunal determined a total sum of Rs. 16,85,000/- as compensation.

12. The first submission advanced by learned counsel for the appellant is that finding of the Tribunal that the claimant was aged 15 years is against the pleadings in the claim petition where the age is shown to be 13 years and the multiplier of 18 has wrongly been applied and according to the schedule, a multiplier of 15 ought to have been applied.

13. In so far as determination of the age of the claimant is concerned, the Tribunal found that in the claim petition, the age was described as 13 years whereas in the bedhead ticket and the disability certificate he was shown to be 14 years and in the mark sheet his date of birth was entered as 20th May 2001, the Tribunal appears to have taken out mean and determined age of the claimant to be 15 years. We do not find any illegality in the same.

14. The next submission of the learned counsel for the appellant in respect of the multiplier of 15 to be applied in accordance with the schedule is also not liable to be accepted inasmuch as in the case of Sarla Verma and others v. Delhi Transport Corporation and others, , 2009 (2) TAC 677 (S.C.), Hon''ble Apex Court after considering the multiplier scale in the case of General Manager, Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.), , 1994 (2) SCC 176, U.P. State Road Transport Corporation and others v. Trilok Chandra and others, , 1996 (4) SCC, 362 and New India Assurance Company Ltd. v. Charlie and others, , 2005 (10) SCC 720, as also the multiplier specified in second column in the table in second Schedule to the Motor Vehicles Act, set out a chart in Paragraph 19 of the report prescribing multiplier to be applied in different age groups. The Apex Court further in paragraph 21 of the report observed as under:--

"We, therefore, hold that the multiplier to be used should be as mentioned in Column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, i.e. M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

15. According to chart set out in the case of Sarla Verma and others, multiplier to be applied between 15 to 20 years as contained in Column (4) is 18 and thus the Tribunal has committed no error in applying the said multiplier.

16. The next submission advanced by learned counsel for the appellant is since the disability certificate was not proved by producing the Doctor hence, it was not admissible in evidence and the Tribunal committed illegality in placing

reliance in a document which was not in admissible.

17. Admittedly, the disability certificate was issued by the office of the Chief Medical Officer, Jhansi duly certified by the Medical Board constituted to examine the claimant. The certificate states that the claimant is a case of hip articulation (4) and the disability was of a permanent nature to the extent of 90%.

18. Second limb of the same argument is that even though the disability certificate only certified 90% disability, the Tribunal has wrongly proceeded to determine the compensation treating it to be 100% disability.

19. The document is a public document and the contents of the same were not required to be proved in view of Section 77 of the Evidence Act. It may also be relevant to quote the observation of the Hon''ble Apex Court in the case of Pt. Parmanand Katara v. Union of India and others, , 1989 (III) SLVR-137, describing the necessity of calling the Doctor only when it is necessary by making following observation:--

"We also hope and trust that our law courts will not summon a medical professional to give evidence unless the evidence is necessary and even men in this profession are not made to wait and waste time unnecessarily and it is known that our law courts always have respect for the men in the medical profession and they are called to give evidence when necessary and attempts are made so that they may not have to wait for long. We have no hesitation in saying that it is expected of the members of the legal profession which is the other honourable profession to honour the persons in the medical profession and see that they are not called to give evidence so long as it is not necessary."

20. In view of the provisions of Section 77 of the Evidence Act providing that the contents of public documents need not be proved by calling witness and the observations of the Apex Court there was no necessity to prove the disability certificate by calling the Doctor, the document was admissible and the Tribunal committed no illegality in placing reliance upon the same.

21. Though the disability certificate only was to the extent of 90% disability, but we must not forget that not only the claimant lost his left leg completely but also both of his testicles were severed and thus he would not be able to live a normal marital life, having children and a family. No amount of monetary compensation can be said to be sufficient to compensate for this loss. This would be a case of exceptional circumstance to treat the disability to be 100% as held by the Supreme Court in the case of R.D. Hattangadi v. M/s. Pest Control of India Pvt. Ltd., , 1995 Vol.1 AWC 39 (S.C.).

22. In view of above, we do not find any illegality in the award of the Tribunal treating the disability to be 100%. We also do not find any illegality in the notional income of the deceased to be Rs. 5,000/- and the same does not appear to be excessive and high as submitted by learned counsel for the appellant.

23. The Hon''ble Apex Court in the case of V. Mekala v. M. Malathi and another, ,

2014 (3) TAC-5 (S.C.), which was also a case of disability of a student caused by an accident found that notional income of Rs. 6,000/- determined by the Tribunal for purpose of awarding compensation is too meagre. Relying upon the facts and circumstances and the law laid down in the case of Reshma Kumari v. Madan Mohan, , 2013, Vol.1 TAC-369, held Rs. 10,000/- monthly notional income for computation of just and reasonable compensation under the head of loss of income.

24. In such view of the matter, we do not find any illegality in the Tribunal proceeding to fix the notional income of the claimant as Rs. 5,000/- per month.

25. It may be relevant to refer to the observations of the Hon''ble Apex Court in the case of Arvind Kumar Mishra v. New India Assurance Company Ltd. and another, , 2010 (10) SCC-254, at this stage. While considering the plea for enhancement of compensation by students of final year engineering who suffered 70% disability in the motor accident, it was observed as under:--

"We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered."

26. Again in this connection in the case of Raj Kumar v. Ajay Kumar and another, , 2011 (1) SCC-343, Hon''ble Supreme Court held as under:--

"8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person''s inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person''s inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (''the Disabilities Act'' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities

Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%."

27. The aforesaid observation made by Hon''ble Apex Court in the case of Raj Kumar (supra), was reiterated in the case of Govind Yadav v. New India Insurance Company Ltd., , 2012 (1) TAC-1 (S.C.), by observing as under:--

"14. The provision of the Motor Vehicles Act, 1988 ("the Act", for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

15. In our view, the principles of law laid down in Arvind Kumar Mishra V. New India Assurance Company Ltd. (supra) and Raj Kumar V. Ajay Kumar (supra) must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

28. It cannot be disputed that because of the accident the claimant-respondent who was an active boy of 15 years has not only lost complete left leg but will be also unable to live marital life and have a family. It is really difficult in this background to assess the amount of compensation for the pain and agony suffered by him for having become a life long handicapped. No amount of compensation can restore a physical frame of the claimant. The claimant-respondent because of the accident also stands deprived of the enjoyment of life, having children and a family as well as the marital prospects as already observed. No amount of compensation can be said to be sufficient for such a loss but still a methodology is required to be applied for determination of compensation in such cases and there cannot be any rigid test which should be applied in all situation.

29. This being the position, in the facts and circumstances discussed above, we do not find any illegality either in the methodology adopted by the Tribunal for determining the compensation nor there is only procedural error committed during the process. However, the question of enhancement of the compensation awarded by the Tribunal, if any, raised by the claimant shall be open and considered in case any appeal is filed by the claimant-respondent, but in so for as the present appeal of the Insurance Company is concerned, the challenge to the award on the grounds raised, in our considered opinion, is liable to fail.

30. The appeal is devoid of merits and thus accordingly stands dismissed in limine.

