
(2015) 09 BOM CK 0267
In the Bombay High Court
Case No : First Appeal No. 853 of 2010

The New India Assurance Company Ltd.	APPELLANT
Vs	
Gajanan and Others	RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2015) 09 BOM CK 0267

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : M.B. Joshi, Advocate, for the Appellant; C.A. Joshi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J.—The present appeal, under Section 173 of the Motor Vehicles Act, 1988, has been filed by the Insurance Company, which is aggrieved by the quantum of compensation awarded by the Claims Tribunal.

2. The respondent No. 1, who claims to be working as a "Agent" in the Agriculture Produce Market Committee met with an accident on 2.5.2008, as a result of which he suffered various injuries. The accident was caused on account of dash given by a truck which was insured with the appellant. According to the respondent No. 1, he was aged about 40 years and his monthly income was Rs. 6,000/- per month. According to him, he was permanently disabled on account of said accident and was not in a position to do his work. He, therefore, filed application under Section 166 of the said Act claiming compensation of Rs. 10,00,000/-.

3. The claim was opposed by the owner and the driver of the offending vehicle. Similarly, the appellant filed its written statement vide Exh.-20 and took a stand that though the vehicle in question was duly insured, the claim as made by exaggerated. It was further stated that the accident occurred on account of

negligence of the respondent No. 1.

4. Before the Claims Tribunal the respondent No. 1 examined himself, two doctors as well as his principal in support of claim for compensation. These witnesses were cross-examined by the appellant. Learned Member of the Claims Tribunal after considering the evidence on record found that the monthly income of the respondent No. 1 was about Rs. 5,000/- per month. Considering his age it was found that loss of future income was Rs. 9,27,000/-. After considering various other heads for grant of compensation total amount of Rs. 10,00,000/- was awarded. Hence, the present appeal by the Insurance Company.

5. Shri M.B. Joshi, learned counsel for the appellant submitted that the amount of compensation awarded by the Claims Tribunal was on a higher side without there being any legal basis for the same. It was submitted that the respondent No. 1 was working as a labourer in the A.P.M.C. and, therefore, his claim of earning Rs. 200/- to Rs. 225/- per day was without any basis. It was submitted that there was no evidence on record to indicate the actual amount earned by the respondent No. 1. It was then submitted that learned Member of the Claims Tribunal by improperly calculating the amount of compensation had awarded total sum of Rs. 10,00,000/-, which was much more than the amount to which the respondent No. 1 was entitled. According to the learned counsel, at the most the respondent No. 1 could be earning Rs. 3,000/- per month and by taking the multiplier of 16 he would be entitled only for a amount of Rs. 5,76,000/-. Learned counsel for the appellant relied upon the judgment of Supreme Court in the case of Laxmi Devi and Others Vs. Mohammad Tabbar and Another, and submitted that notional income of Rs. 3,000/- per month ought to be taken. It was, therefore, submitted that the Tribunal was not justified in granting compensation of Rs. 10,00,000/-.

6. Per contra, Shri C.A. Joshi, learned counsel for the respondent No. 1 support the impugned order. He submitted that the Claims Tribunal was justified in awarding compensation of Rs. 10,00,000/-. According to him, income of respondent No. 1 was proved on the basis of salary certificate at Exh.-67. He further submitted that disability of respondent No. 1 though shown to be 70%, he was not in a position to do any activities on his own. He submitted that though specific calculations may not have been made by him by the learned Member of the Claims Tribunal, considering the evidence on record, the respondent No. 1 was in fact entitled for higher amount of compensation. He submitted that the aspect of future loss of income and future medical expenses were also required to be taken into consideration. In that regard, he placed reliance on the judgment of the Supreme Court in the case of Laxman alias Laxman Mourya vs. Divisional Manager, Oriental Insurance Company Limited and another, reported in (2011) 10 SCC 756 and Asha Verman and Others Vs. Maharaj Singh and Others . It was, therefore, submitted that the appeal deserves to be dismissed.

7. With the assistance of learned counsel for the parties, I have perused the

record of the case and I have also gone through the documents filed on record.

8. Following point arises for consideration :

Whether the judgment of the Claims Tribunal deserves to be modified ?

9. The respondent No. 1 examined himself vide Exh.-31 and stated that on account of said accident he was permanently disabled to the extent of 70%. There were in all 7 family members in his family. He was earning Rs. 200/- to Rs. 250/- per day. He has thereafter referred to medical expenses borne by him. In the cross-examination it was suggested to him that the amount of income as claimed to be earned was not correct. The disability of the respondent No. 1 was proved on the basis of depositions of witness Nos. 2 and 3 who were doctors. The disability certificate at Exh.-64 refers to 70% disability with injuries to the spine. The respondent No. 1 thereafter examined his principal, who had issued income certificate at Exh.-67. In his cross-examination said witness stated that no register was maintained to show payment of daily-wages.

10. Learned Member of the Claims Tribunal after considering the aforesaid evidence found that the income of respondent No. 1 could be taken at Rs. 200/- per day being Rs. 6,000/- per month. Thereafter, by calculating monthly income at Rs. 5,000/- per month along with loss of future income it was found that total entitlement would be Rs. 12,00,000/-. However, as the claim was restricted an amount of Rs. 10,00,000/- was awarded as compensation.

11. The salary certificate at Exh.-67 records that the amount of Rs. 200/- per day was being paid to the respondent No. 1. Besides this salary certificate there is no other evidence on record to disbelieve the contents of said certificate. The suggestions given in the cross-examination and the answers thereto would not have the effect of enabling the Court to disbelieve said certificate. The same has been rightly taken into consideration by the Claims Tribunal for adjudicating the claim. Though it was urged that the respondent No. 1 was working as a labourer, there is no evidence on record to that effect. Merely because the register showing the details of the labourers working was not filed on record, same would not affect the case of the respondent No. 1. Hence, Exh.-67 can be taken into consideration for determining the amount of compensation.

12. As regards nature of injuries it is seen that same are proved on the basis of certificate at Exh.-64. The record indicates that the claimant was examined on commission on account of his disability to appear before the Claims Tribunal. The depositions of the doctors at Exh.-60 and 63 indicate his disability. It is, therefore, clear that on account of said accident the respondent No. 1 had lost all future prospects of doing any work or even the work that he was doing prior to the accident.

13. In *Laxmi Devi and others* (supra) the Supreme Court held that in absence of any proof regarding income a notional income of Rs. 3,000/- per month would be taken into consideration. In the present case in view of Exh.-67 it is seen that the

income of respondent No. 1 has been duly proved. Though it is true that specific heads on the basis of which the amount of compensation has not been worked out in detail, it is clear that by taking income of respondent No. 1 at Rs. 5,000/- per month and considering his age to be 40 years by which multiplier of 16 would apply, the amount of compensation as awarded does not appear to be exorbitant to warrant any deduction in the same. The amount of Rs. 35,000/- has been granted for mental pain and agony, Rs. 18,000/- as loss of income during the pendency of hospitalization and Rs. 10,000/- towards transportation charges. Considering the nature of injuries suffered by the respondent No. 1 and in view of income certificate at Exh.-67, the total amount of compensation as awarded appears to be just and reasonable, not deserving any reduction. The decision in the cases of Laxman and Asha Verman (supra) support the stand of respondent No. 1 with regard total amount of compensation to which he is entitled.

14. In view of the aforesaid discussion, there is no case made out to reduce the amount of compensation as granted. The point as framed is answered accordingly.

15. The judgment of the Claims Tribunal dated 19.6.2010 awarding compensation of Rs. 10,00,000/- with 8% interest p.a. stands confirmed. First Appeal is accordingly dismissed with no order as to costs.

16. It is open for the respondent No. 1 to withdraw the amount of compensation deposited by the appellant. Insofar as remaining 50% of the decretal amount awarded by the Claims Tribunal, same shall be paid to the respondent No. 1 within a period of three months from today. The appellant shall pay aforesaid amount of compensation by drawing cheque in the name of respondent No. 1.