
(2011) 01 CHH CK 0059
In the Chhattisgarh High Court
Case No : M.A. (C) No. 663 of 2006

United India Insurance Co. Ltd.

APPELLANT

Vs

Bharat Kumar Lohar and Other

RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 142, 143, 163A, 170

Citation : (2011) 1 CGBCLJ 134

Hon'ble Judges : Prashant Kumar Mishra, J; I.M. Quddusi, J

Bench : Full Bench

Advocate : Sanjay K. Agrawal, for the Appellant; Amrito Das, counsel for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—This appeal has been filed by the insurer, United India Insurance Company Limited against the impugned award dated 15.09.2006 passed by the XI Additional Motor Accident Claims Tribunal (F.T.C.), Durg (Chhattisgarh) in Claim Case No. 76/06 awarding Rs. 4,22,173/- as compensation to the claimant who was injured and disabled permanently. The brief facts of the case are that on 24.03.03 applicant Harikesh Singh was going from Bhilai to Khursipar in his bicycle. When he reached near Dabrapara Canal, Khursipar, he was dashed by Truck bearing registration no. W.B. 23/4558 which was driven rashly and negligently by non-applicant no. 1, Bharat Kumar Lohar, due to which the applicant sustained injuries on his head and bone of right hand near wrist was also fractured. He was submitted in Sector-9 Hospital, Bhilai for treatment. He was working in Jyoti Poultry Farm and was earning Rs. 1800/- per month. In the afternoon he used to bring vegetables from the village and give to her wife for selling, by this he used to earn Rs. 2000/- per month. The claimants have claimed total compensation of Rs. 11,60,300/-.

2. Learned counsel for the appellant has submitted that since there is no permission u/s 170 of the Motor Vehicles Act, the appellant is not entitled to

question the quantum, but his contention is that since the Medical Board certifying the permanent disability of the claimant to the extent 50%, the Tribunal committed error in not reducing 50% from the annual income of the claimant, hence this appeal has been filed only on law point.

3. Before proceeding further, it is necessary to describe the particulars of the claimant regarding his disability given in the certificate and also the statement of the Medical Officer recorded by the Tribunal.

4. In the Medical Certificate for physically handicapped persons certifying the permanent disability a note has been indicated which is as under:-

DISTRICT MEDICAL BOARD CERTIFICATE

No.

Accident on 24.3.2003 operations for Craniotomy at Section 9 Hospital Bhilai on 24.3.2003 Tracheotomy on 26.3.2003 pt has developed Para paresis and speech defect after head injury as per records verified.

MEDICAL CERTIFICATE FOR PHYSICALLY HANDICAPPED PERSON

We the member of the Durg C.G. District Medical Board for Physically Handicapped Person do hereby certify that we have carefully Shri Harkesh Singh Son of Dharmdeo Singh Resident of Khursipar Bhilai on (Date) 11.2.2004 He is suffering from Mal United # colles (r) with deformity with LTD Pronation Supination with # frontal bone with Para Paresis due to head injury. His disability is at....(not clear) % as per the definition given vide Government of India Ministry of Social Welfare Gazette Notification No. D2/88-HM, III Dated 6.8.1986. Dominac hand 10% Fifty percent.... (not clear) partial....(not clear) Head injury 90%.

He comes under the category of Mild Moderate/Serve/Profound (Total) disability and that He is a physically handicapped person.

This certificate is valid a three years from the date of issue identification of Marks (1) Scar forehead....(not clear).

Sd/- Member District Medical Board Distt. Durg

Sd/- Member District Medical Board Ditt. Durg

Sd/- Sign. and seal

Dr. A.D. Urgaonkar Orthopedic Surgeon District Hospital, DURG Regd. No. 2776

Sd/- Member District Medical Board Distt. Durg

Sd/- Member District Medical Board Distt. Durg

Sd/- Member District Medical Board Distt. Durg

5. On perusal of the above note it cannot be doubted that the claimant was

having brain/head injury, speech defect etc. Besides that it was also mentioned that his permanent disability is 10% in respect of dominal hand.

6. In the statement of Dr. A.D. Urgaonkar, Orthopedic Surgeon Applicant's Witness No. 4 it has come that his brain was operated upon and his respiratory cord was also choke and its tracheotomy operation after making hole in the neck was done. Due to injury his right hand and foot was also affected by paresis (paralysis). His right hands wrist was also fractured for which its straight turning was not possible. His frontal bone was also fractured and thus the total permanent disability was 50%.

7. Permanent disability has not been defined except in Section 142 which is as under:-

142. Permanent disablement.- For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving:-

(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint;

or

(b) destruction or permanent imparting of the powers of any member or joint; or

(c) permanent disfiguration of the head or fact.

8. Section 143 provides that regarding applicability of that chapter of Motor Vehicles Act to certain claims under Workmen Compensation Act, 1923.

9. Explanation to sub Section (1) of Section 163A of the Motor Vehicle Act express that for the purpose of that sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen Compensation Act, 1923. In II Schedule at clause 5 the description of disability in non-fatal accidents has been given and after sub clause B it has been mentioned that "injuries deemed to result in permanent total disability and percentage of loss of earning capacity shall be as per schedule 1 under Workman Compensation Act, 1923.

10. In the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, four judges of Hon''ble Apex Court comprising Hon''ble A.N. Ray, C.J. and Hon''ble H.M. Beg, Hon''ble R.S. Sarkaria and Hon''ble P.N. Shinghal, JJ. in paragraph 5 has held thus as under:-

5. The expression "total disablement" has been defined in Section 2(1)(1) of the Act as follows:-

(1) "total disablement" means such disablement" whether of a temporary or permanent nature, as incapacitates workmen for all work which he was capable of performing at the time of the accident resulting in such disablement." It has not been disputed before us that the injury was of such a nature as to cause

permanent disablement to the respondent and the question for consideration is whether the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:-

The injured workman in this case is carpenter by profession..... By loss of the left hand above the elbow, he has evidently been rendered unfit for the work carpenter as the work of carpentry cannot be done by one hand only." This is obviously a reasonable and correct finding. Counsel for the appellant has not been able to assail it on any ground and it does not require to be corrected in this appeal. There is also no justification for the other argument which has been advanced with reference to Item 3 of Part II of Schedule I, because it was not the appellant's case before the Commissioner that amputation of the arm was from 8" from tip of acromion to less than 4" below the tip of olecranon. A new case cannot therefore be allowed to be set up on facts which have not been admitted, or established.

11. In the case of National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, the Hon"ble Apex Court has held in para 8 as under:-

Loss of earning capacity is, therefore, not a substitute for percentage of the physical disablement. It is one of the factors taken into account. In the instant case the doctor who examined the claimant also noted about the functional disablement. In other words, the doctor had taken note of the relevant factors relating to loss of earning capacity. Without indicating any reason or basis the High Court held that there was 100% loss of earning capacity. Since no basis was indicated in support of the conclusion, same cannot be maintained. Therefore, we set aside that part of the High Court's order and restore that of the Commissioner, in view of the fact situation. Coming to the question of liability to pay interest, Section 4-A(3) deals with that question. The provision has been quoted above.

12. In the case of Oriental Insurance Co. Ltd. Vs. Mohd. Nasir & Anr. reported in 2009 AIR SCW 3717, the Hon"ble Supreme Court has held thus in paragraphs 8, 10, 11, 12, 13, 14 & 16 as under:-

8. Both the 1923 Act and 1988 Act are beneficent legislation insofar as they provide for payment of compensation to the workmen employed by the employers and/or by use of motor vehicle by the owner thereof and/or the insurer to the claimants suffering permanent disability.

10. Both the Acts aim at providing for expeditious relief to the victims of accident. In these cases, the accidents took place by reason of use of motor vehicles.

Both the statutes are beneficial ones for the workmen as also the third parties. The benefits thereof are available only to the persons specified under the Act besides under the Contract or Insurance.

The statutes, therefore, deserves liberal construction. The legislative intent contained therein is required to be interpreted with a view to give effect thereto.

11. With the aforementioned backdrop, we may analyse the contentions raised before us by the learned counsel for the parties.

Both the statutes provide for the mode and manner in which the percentage of loss of earning capacity is required to be calculated. They provide that the amount of compensation in cases of this nature would be directly relatable to the percentage of physical disability suffered by the injured vis-à-vis the injuries specified in the First Schedule of the 1923 Act. Indisputably where injuries are specified in the First Schedule, the mode and manner provide for the purpose of calculating the amount of compensation would be applicable.

12. Statutes provide for determination of the extent of physical disability suffered by a qualified medical practitioner so as to enable him to assess the loss of earning capacity. Explanation 1 appended to clause (c) of sub-section (1) of Section 4 provides that where there are more injuries than one, the aggregate amount of compensation has to be taken but the same should not exceed the amount which would have been payable in case of permanent total disablement.

It is also beyond any doubt or dispute that while determining the amount of loss of earning capacity, the Tribunal or the High Court must record reasons for arriving at their conclusion.

The 1923 Act which would also be the claims applications arising out of use of motor vehicles in terms of the provisions of 1988 Act would for the purpose of determination of the amount of compensation where the victim of the accident suffers from disability in the cases coming within the purview thereof. The Note appended to the Second Schedule of the 1988 Act raises a legal fiction, stating that "injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under the Workman's Compensation Act, 1923". Permanent disability, therefore, for certain purposes have been correlated with functional disability.

13. As to what, therefore, in our opinion, would be relevant is to find out the nature of injuries and as to whether the same falls within the purview of Part I or Part II thereof. We have noticed hereinbefore that whereas part I specifies the injuries which would be deemed to result in permanent total disablement, Part II specifies injuries which would be deemed to result in permanent partial disablement. The distinction between the "permanent total disablement" and "permanent partial disablement" is that whereas in the former it is only the disablement to the extent specified in the Schedule.

14. Similar terms have been used in clauses (a) and (b) of paragraph 5 of the Second Schedule of the Motor Vehicle Act. It by, reference, incorporates the provisions of the First Schedule of the 1923 Act. Indisputably, therefore, the Note

appended thereto would not only be applicable to the cases falling under the 1923 Act but apply to the cases which fall under the 1988 Act as well.

16. In determining the amount of compensation, several factors are required to be taken into consideration having regard to the Note. Functional disability, thus, has a direct relationship with the loss of limb.

Mohd. Nasir was a driver. A driver of a vehicle must be able to make use of both his feet. It was the case of the claimant that he would not be in a position to drive the vehicle and furthermore would not be in a position to do any other work. He was incapable of taking load on his body. It, however, appears that in his cross-examination, he categorically stated that only Chief Medical Officer had checked him in his office. No disability certificate had been granted. He admitted that he had not suffered any permanent disability. He, even according to the Chief Medical Officer who had not been examined, suffered only 15% disability. The Tribunal has arrived at the following findings:

On page 16 original of disability certificate the prescription of medicine X-Ray report of Sarvodaya and of Mohan X-Rays have been produced which reveals the fracture of right leg. CMO certificate O/M9/ 2003 dated 21.3.2005 has also been produced which is alleged to be false by insurance Co. I have perused them carefully which bears signature of Deputy CMO officer of Disability board, Moradabad had it shown that the applicant had appeared before them for medical check up and whose examination was done by senior orthopedics surgeon Dr. R.K. Singh on the basis of recommendation of Dr. Bansal operation was done 2.10.2004 the applicant walk with the help of the support and is not competent to drive the heavy motor vehicle the said certificate was issued with recommendation that after six months his conditions is to be reviewed.

That document was filed on 29.3.2005. Insurance company has stated the doctor who has issued disability certificate has not been produced in the court. But looking into the aftermath situation the plea of insurance company that the said certificate is forged and the same has not been issued by the MBBS doctor, carries no force.

13. Therefore, permanent disability has a direct link with the functional capacity of the injured. In the instant case though the Medical Board has certified permanent disability to the extent of 50% but due to head injury, paralysis and right hand functional disability with defect in speech as the claimant had undergone major operation of brain respiratory cord etc., as already discussed above the job which he was doing i.e. bringing supply of goods and maintaining accounts would not be possible for him due to complete incapability to do the job due to head injuries and defect in speech. He would also not be able to get any other job even as a Watchman, therefore he has become totally incapable to do any job and hence we are of the opinion that due to 100% incapacity to work the Tribunal has taken into consideration his monthly salary i.e. Rs. 1800/- per

month and rightly did not reduce it.

14. However, at that rate calculating his annual income from salary i.e. Rs. 21,600/- a multiplier of 17 has been applied. The injured claimant was 22 years old and according to Sarla Verma Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, case a multiplier of 18 was liable to be applied. We are not inclined to interfere in respect of the quantum fixed by the Tribunal. Since cross objection has been filed, therefore we apply a multiplier of 18 towards Rs. 21,000/- therefore we allow cross objection to the extent that instead of applying multiplier of 17 the multiplier of 18 is applied and instead of financial loss of Rs. 3,67,200/- assessed by the Tribunal the same is enhanced to Rs. 3,88,800/-. Therefore, instead of total amount of compensation fixed by the Tribunal as Rs. 4,22,173/- the same is enhanced to Rs. 4,43,773/-.

15. With regard to the interest part no interference is required. In the result, the appeal is dismissed. The cross objection is allowed in part only to the above extent.