
(2001) 08 MP CK 0022
In the Madhya Pradesh High Court

United India Insurance Company Limited	APPELLANT
Vs	
Ramesh Chandra and Others	RESPONDENT

Date of Decision : 29-08-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 170, 2

Citation : (2002) 1 ACC 281 : (2001) 3 MPLJ 493

Hon'ble Judges : S.P. Srivastava, J; R.B. Dixit, J

Bench : Division Bench

Judgement

Feeling-aggrieved by the award of the Motor Accident Claims Tribunal, Shivpuri casting a liability on the present insurer-appellant for the payment of an amount of Rs. 62,000/- towards compensation found payable along with interest @ 12% per annum from the date of the filing of the application u/s 166 of the Motor Vehicles Act till payment it has come up in appeal seeking redress praying for setting aside of the impugned award.

The insurer-appellant, in this appeal has not only challenged the finding returned by the Tribunal on the question relating to the rash and negligent driving of the offending motor vehicle but also on the question relating to the quantum of compensation. The insurer has further asserted that in view of the violation of the terms and conditions subject to which the insurance policy had been issued it was liable to be exonerated altogether from the liability.

The injured-claimant who had filed the application u/s 166 of the Motor Vehicles Act claiming the award of compensation has filed a cross objection on 29.8.1996 praying for the enhancement of the quantum of compensation from Rs. 62,000/- to Rs. 4,00,000/-.

We have heard the learned Counsel for the appellant as well as learned Counsel representing the claimant/respondent and have carefully perused the record.

The facts in brief, shorn of details, and necessary for the disposal of this case lie in a narrow compass: Ramesh Chandra, the respondent No. 1, had filed an

application u/s 166 of the Motor Vehicles Act, 1988 on 6.11.1992 asserting that on 28.7.1992 in an accident involving the offending Motor Vehicle, a Matador, bearing registration No, MKH-4780, he suffered grievous injuries resulting in the breaking of, his right femur bone and pelvic bone rendering him permanently disabled. His femur bone had been broken into -two pieces and was joined putting in a steel rod. He claimed to be an agriculturist and a labourer and asserted that he had an income of Rs. 2,000/- per month, By the time of the filing of the application it was claimed that an amount of Rs. 10,000/- towards medicine, etc. had already been spent and in continuing the treatment further expenses were likely to be incurred in that connection. It was claimed that besides Rs. 10,000/- towards medicine, etc. an amount of Rs. 5,000/- had been spent in transport. Another sum of Rs. 25,000/- as compensation on the count of pain and suffering and an amount of Rs. 1,00,000/- was claimed for the permanent disability. A further amount of Rs. 7,20,000/- was claimed for the loss of prospective income on account of the permanent disability. The claimant disclosed his age to be 32 years. The dependent family members of the claimant were disclosed to be seven which included the wife and the minor children whose age ranged between 1 and 14 years.

The aforesaid claim was contested by the owners and driver who filed a separate joint written statement and also by the insurer by filing a separate written statement.

During the pendency of the case before the Tribunal an application was filed by the insurer seeking permission/leave contemplated u/s 170 of the Motor Vehicles Act to contest the claim on all the grounds available to the owners of the offending vehicle also. The permission was granted by the Tribunal vide its order dated 8.11.1995.

The Tribunal came to the conclusion that the evidence led by the claimant on the question, relating to the rash and negligent driving of the offending vehicle and the manner in which the accident had taken place had not been rebutted. The Tribunal came to the further conclusion that the offending motor vehicle was being driven rashly and negligently by the driver and had hit the claimant which had caused grievous injuries.

So far as the question of the income of the claimant was concerned, the Tribunal after taking into consideration the evidence and the materials brought on record came to the conclusion that the claim in regard to the income from agricultural holding was baseless. It was also found that the claimant was a labourer and worked on daily wage basis during the period when the market was open. His income was determined to be Rs. 1,000/- per month. Taking into consideration the extent and the nature of the disability, the Tribunal found that a compensation of a lumpsum amount of Rs. 25,000/- would be sufficient.

In addition to the aforesaid amount, the Tribunal found it justified to grant a sum of Rs. 10,000/- towards physical and mental pain, Rs. 10,000/- for the

permanent disability. Rs. 2,000/- for meeting the expenses in regard to the transportation, etc., Rs. 10,000/- for meeting the expenses on medicines, etc., and Rs. 5,000/- for fooding. A total of Rs. 62,000/- was thus adjudged to be payable towards the compensation which amount was to carry an interest at the rate of 12% per annum.

So far as the insurer/appellant was concerned, the plea urged in regard to the offending motor vehicle being driven by a person who was having the driving licence for a light motor vehicle" was negatived by the Tribunal coming to the conclusion that the offending motor vehicle Matador which had been utilised for carrying the goods, taking into account its total unladen weight, could not be taken to fall within the category of a heavy motor vehicle.

The insurer had set up the aforesaid plea only in regard to the violation of the conditions subject to which the insurance policy had been issued. This plea was rejected by the Tribunal as indicated hereinabove.

In the present case, the claimant examined Dr. Pramod Kumar Pathak as P.W. 1. He had stated that there was a reduction of 30% in the movement of the claimant's right knee and there was a discharging sinus in his right thigh.

However, in paragraph 4 of his deposition, the P.W. 1 had stated that he had examined the claimant on 6.7.1993 and found that the broken bone in the right thigh had joined but there was a 30% reduction in the movement of the right knee that is to say in the movement of the leg towards the backside. This disability in the movement towards the back side could however be reduced by 10%. He, however, admitted that the claimant at that stage could walk by using crutches but could not run. He had also stated that the discharge from the sinus caused in the thigh was still continuing.

Ramesh Chandra, the claimant examined himself as P.W. 2. He had stated that while he was carrying his thela, he was hit by the offending motor vehicle from behind which had resulted in the grievous injuries. He maintained that he could not walk without support. So far as the income was concerned, he claimed that he used to work as a labourer and get an income of Rs. 100/- per day. He also stated that he had no other source of income.

Khyali Ram, the brother of the claimant was examined as P.W. 3. He claimed to have spent Rs. 25,000/- towards meeting the expenses and treatment given to his brother, Ramesh Chandra, the claimant. In paragraph 4 of his deposition, he had stated that the income of the claimant was Rs. 50/- or Rs. 60/- per day. He had further stated that his brother used to live separately from him.

Raj Pal was examined as P.W. 4. He had also stated that the claimant was a labourer. His statement was recorded on 15.9.1995. It was stated by him that even on that date, the treatment of the claimant was being continued. He was an eyewitness to the accident. On the question of income, he had stated that the claimant used to earn Rs. 60/- or Rs. 70/- per day.

Dr. M.P. Jain was examined as P.W. 5. He had proved the medical report. In paragraph 4 of his deposition, he however stated that in case proper treatment was given to the claimant, his thigh could be set right.

The owner of the offending motor vehicle examined Jagadish as D.W. 1. He had also stated that the Matador, the offending motor vehicle was being utilised for carrying the goods of the public.

The insurer examined Satish Chandra Bansal as D.W. 2 in support of its defence. He admitted that the insurance policy had been duly issued but the liability under the insurance policy could not arise in case there was any violation of the terms and conditions subject to which the insurance policy had been issued. He had also stated that the licence issued in favour of Mahendra, the driver of the offending motor vehicle, was for driving the light private motor vehicle.

From the evidence on the record, it is apparent that there has been an inconsistent version in regard to the income of the injured, claimant. His own brother who claimed to have spent Rs. 25,000/- towards the meeting of the expenses relating to the treatment, etc., had stated that the income of the claimant was Rs. 50/- to Rs. 60/- per day. It was stated that the claimant's occupation was that of a labourer on daily wage basis.

The evidence on the record further indicates that a labourer of the category of the claimant could get the work only on the date when the market remained open. It is also apparent from the record that apart from the income as a labourer on daily wage basis, the claimant had no other source of income.

The Tribunal has found that the claimant remained admitted in the hospital for a period of about 5 months and even upto January, 1995, the sinus formed in his thigh was discharging the pus. The fact that the claimant could walk only with the help of crutches was also amply established. For the pain and sufferings the award of Rs 10,000/- was found appropriate. However, for the disability of the permanent nature, another amount of Rs. 10,000/- was found payable.

It was further established on the record that there was reduction of the movement in the right knee towards the back side to the extent of 30%. Although the Doctor had stated that the disability could be reduced upto the extent of 10% but no evidence was led by the insurer or the owner of the offending motor vehicle which could indicate that such a reduction had become possible in the case of the claimant.

The Tribunal has further found that the claimant could produce the evidence to show that he spent Rs. 5,961/- towards the medicines, etc. However, since the treatment was being continued, an award for an amount of Rs. 10,000/- on this count was found appropriate.

The Tribunal has recorded a finding that the claimant must be earning Rs. 40/- per day as labour charges.

It is true that there were divergent versions on the question relating to the income of the deceased but even if the minimum income as indicated by Ramesh Chandra, P.W. 2 is taken into account in the absence of any evidence in rebuttal, the income of the injured could be safely held to be Rs. 50/-per day.

The Tribunal has found that the work must have been available to the claimant for 25 days in a month. Taking the income of the claimant to be Rs. 50/-per day, it would come to Rs. 1,250/- per month. The disability in the movement had been found to be 30%. For the loss of income in future on account of the permanent disability, the Tribunal had awarded a lumpsum of Rs. 25,000/-.

We are of the view that so far as the finding returned by the Tribunal on-the question in regard to the offending motor vehicle being driven in a rash and negligent manner is concerned, in the absence of any evidence in rebuttal, the eyewitness account which clinchingly proved the rash and negligent driving was rightly accepted by the Tribunal. The finding in this regard is not liable to be disturbed.

The finding of the Tribunal that the offending vehicle fell within the category of "light motor vehicle" is not liable to be disturbed. This finding has been reached by the Tribunal taking into account the definition of the "light motor vehicle" as contained in Section 2(21) of the Motor Vehicles Act, 1988.

It may be noticed that the "unladen weight" of the vehicle has been made the determining factor to differentiate between the "light motor vehicle" and a medium goods vehicle" and a "heavy goods vehicle".

The licence issued in favour of the driver of the motor vehicle was for a "light motor vehicle" only. The unladen weight of the offending motor vehicle was established to be only 1850 kg. as indicated in the registration book filed as Exhibit D/2C and proved by Satish Chandra Bansal, D.W. 2. The "Sakal Yan Bhar" of the offending motor vehicle was rightly taken as the distinguishing factor by the Tribunal under the impugned award.

So far as the assessment of damages in case of bodily injuries are concerned, the broad and general principle which normally applies is that the Tribunal should award the injured party such a sum of money as will put him in the same position as he would have been if he had not sustained the injuries. But it is manifest that no award of money can possibly compensate a man and renew a shattered frame. Therefore, there has to be an endeavour to assess the damages taking into account the pain and suffering undergone and for the impairment which is revealed from the injuries to arrive at a fair estimate taking into account all the other relevant considerations.

It may further be noticed that bodily injury may result in deprivation. The quantum of damages may vary according to the gravity of the injury, loss of earning or earning capacity, expenses to pay others for what otherwise the injured would do for himself or loss or diminution of full pleasure of living. The

duration of the deprivation and the degree of awareness of the deprivation is also a relevant factor. Though it is impossible to equate money with human suffering or personal deprivation yet the Court has to make an attempt to award damages so far as money can compensate but subject to the considerations referred to hereinabove.

It must not be lost sight of that the loss of bodily integrity gives a right to damages even if there is no damage at all to the earning capacity or even to enjoyment of life. But damages in such cases are awarded commensurate with the extent, gravity and duration of the injury. The test in the case of bodily injury ought to be as to whether the breaking of the physical integrity is of a temporary nature or a permanent one and what impact that is to what extent the physical incapability or temporary or permanent disability will be reflected in the earning capacity of the injured.

Since it is the just compensation which is required to be awarded no method of calculation of compensation would be justified if it does not result in awarding the amount which is not "just" looking to the peculiar facts of each case.

In our considered opinion it would be safe to proceed to assess the compensation by adopting the method of multiplier making a judicious use of the appropriate number of the years of purchase.

It may be noticed that Section 163A(1) of the Motor Vehicles Act, 1988 provides that notwithstanding anything contained in the said Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

The explanation to the aforesaid section provides that for the purpose of Section 163A(1) of the Act, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.

While it is true that the provision contained in Section 163A of the aforesaid Act is for the purpose of the scheme for payment of compensation in case of hit and run motor accidents yet the structured formula basis as set out in the Second Schedule referred to hereinabove can provide a safe guideline to assess the quantum of compensation in the proceedings u/s 166 of the Act.

The choice of multiplier has, however, to be made by the Court using its own experience and having due regard to the peculiar facts of each case because the ultimate goal is not to adhere to any rigid formula while awarding the compensation in the proceedings u/s 166 of the Act but to award a compensation which is "just". .

In the Second Schedule referred to in Section 163A of the Motor Vehicles Act, 1988, the multiplier to be used for the purposes of assessing the quantum of

compensation in case of a person of the age of 32 years has been indicated to be "17".

The aforesaid multiplier can be safely applied to the present case for the assessment of the quantum of compensation.

We are clearly of the opinion that looking to the nature of the injuries and the permanent disability, the period of treatment undergone, operations carried out and the chance of operation in future, the awareness of the disability throughout the life, the discomfort and the gravity of the physical handicap being suffered by the claimant which will have the permanent adverse effect on a future healthy life and further considering the facts and circumstances of the case, the amount of compensation at item No. 6 on the count of loss of income due to permanent disability assessed at a figure of Rs. 25,000/- deserves to be enhanced.

In the circumstances indicated above, taking into consideration the income of the claimant to be Rs. 1,250/- per month, the loss of income to the extent of 30% would come to Rs. 416/- per month. The age of the claimant was 32 years at the time of the accident. Applying the multiplier of 17, the amount of compensation on that count would come to Rs. 78,694/-. Adding the remaining amount as awarded by the Tribunal, the total amount will come to Rs. 1,15,000/-. An award for this amount we are clearly of the view will meet the ends of justice.

In the result the appeal of the insurer/appellant is dismissed.

However, the cross-objection filed by the claimant succeeds in part. The impugned award of the Tribunal is modified to the extent that the figure of Rs. 62,000/- determined as the compensation as indicated in the impugned award shall be substituted by the figure of Rs. 1,15,000/-. The award in other respects shall remain intact.

Ordered accordingly