
(2003) 12 BOM CK 0006
In the Bombay High Court

Vasant Raghunathji Tembhare

APPELLANT

Vs

Jugalkishor Ramlal Pania and Another

RESPONDENT

Date of Decision : 02-12-2003

Acts Referred:

Motor Vehicles Act, 1939 — Section 92C

Citation : (2004) 2 ACC 845 : (2004) 2 ALLMR 411

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Judgement

S.T. Kharche, J.—Heard Mr. Malvi, learned Counsel, for the appellant, Mr. Bhoyar, Advocate for respondent No. 1 and Mr. Khanzode, learned Counsel for the respondent No. 2.

2. The appellant/original claimant being aggrieved by the award dated 9.1.1992 passed by the Motor Accident Claims Tribunal, Amravati, in Claim Petition No. 19 of 1989, has filed this appeal on the ground that the compensation granted is grossly inadequate and neither just nor reasonable.

3. Brief facts are as under:

The accident occurred on 22.4.1989 at about 2.30 p.m. at Gadgenagar Road, near Lahoti College, 2 kms, east from Police Station Shegaon, Naka Chowki. On that day the claimant was riding on his bike and wanted to reach his daughter to the examination hall, but at that time the auto rickshaw bearing No. MTV 7967 had come from the opposite direction and gave violent dash to the motor cycle as a result of which the claimant and his daughter were thrown on the road. They had sustained grievous injuries. They were taken to the hospital. The claimant was unconscious due to the fracture of his leg and he had sustained 80% permanent disability in that accident. It is contended that the auto rickshaw was being driven in a rash and negligent manner by its driver. Respondent No. 1 is the owner of the said auto rickshaw whereas the said auto rickshaw has been duly insured with respondent No. 2. The age of the claimant was 50 years and he

was working as a teacher drawing salary of Rs. 3,000/- per month. Due to the injuries sustained by the claimant, he was unable to attend his duties for the period of 4 to 4 1/2 months and consequently he had sustained loss of his salary. Therefore, he had claimed compensation of Rs. 1,77,000/-.

4. The respondent combated the claim by filing written statements. The Tribunal framed the issues on the aforesaid pleadings. The claimant had examined himself only whereas no oral evidence was adduced on behalf of the respondents. The Tribunal on considering the oral as well as documentary evidence adduced by the claimant had come to the conclusion that the accident occurred due to rash and negligent driving of the auto rickshaw No. MTV 7967 involved in the accident and that the claimant had sustained injuries in the said accident. The Tribunal on appreciation of evidence, awarded the compensation of Rs. 64,885/- to the claimant together with proportionate costs and interest at the rate of 12% per annum from the date of the petition till realisation making both the respondents jointly and severally liable to pay the same. This award is under challenge in this appeal.

5. Mr. Malvi, learned Counsel, for the appellant contended that the age of the claimant was 50 years and he was unable to join his duties for a period of one year and, therefore, the Tribunal ought to have awarded the loss of salary in proportion of the actual loss, i.e., $3000 \times 12 = 36,000 \times 13 = 4,68,000/-$, whereas the claimant has claimed only Rs. 1,04,650/- by application of multiplier of 13. It is contended the claimant had sustained 80% permanent disability and the claimant was unable to walk and stand for a long time due to the injuries sustained by him. He further contended that the Tribunal ought to have considered the future prospects in the employment of the claimant and ought to have awarded the amount on account of loss of salary as well as loss of amenities and, therefore, the impugned award passed by the Tribunal is not sustainable in law and deserves to be set aside.

6. Mr. Khanzode, learned Counsel, for respondent No. 2 Insurance Company does not dispute that the auto rickshaw involved in the accident has been duly insured for the period 7.7.1988 to 7.7.1989 which covers the date of the accident, i.e., 22.4.1989. He also does not dispute that the insurance policy was a comprehensive policy and the insured/owner of the auto rickshaw had paid the premium of Rs. 48/- covering third party risk. He contended that the Tribunal has examined the oral as well as documentary evidence on record and has correctly granted compensation and no interference into the same is warranted.

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7. I have given thoughtful consideration to the contentions canvassed by the learned Counsel for the parties. So far as computation of damages are concerned, it is well settled law that damages are to be awarded on two counts, i.e., (i) pecuniary damages and (ii) non-pecuniary damages. In this context, I may usefully refer the decision of Supreme Court in R.D. Hattangadi Vs. M/s.

Pest Control (India) Pvt. Ltd. and Others, , wherein it is observed that Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts; pecuniary damages may include expenses incurred by the claimant towards: (i) medical attendance; (ii) loss of earning of profit up to the date of trial (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life. When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that the different circumstances have been taken into consideration.

8. In the present case, the Tribunal has computed the pecuniary and non-pecuniary damages as under-

9. What is relevant to note is that it is not in dispute that the age of the claimant was 50 years at the time of the accident and he was working as a teacher in the school and was drawing salary of Rs, 3,000/- per month. He had examined himself as a witness in support of his contentions and he clearly admitted in cross-examination, "Even now I am working in Manibhai Gujarati High School. I had received the increment which were due to me from 22.4.1989 and onwards. It is true to say that except the loss of four months, there was no effect of the accident on service conditions." If this material brought on record is taken into consideration then it would reveal that in fact the claimant did not sustain any monetary loss except the salary for four months and the Tribunal was perfectly justified in awarding Rs. 12,000/- on account of loss of salary for four months. However, the claimant also made it clear that there was no effect of accident on his service conditions and he had also received the increments which were due to him from 22.4.1989 onwards. Therefore, his service conditions and prospects were not at all affected and hence it is difficult to conclude that the claimant has sustained any loss on account of earning capacity. He is still in service, earning the same salary with increments and, therefore, this is a case wherein the Tribunal was justified in not awarding any amount on account of loss of earning capacity.

10. However, it would also reveal that the claimant had sustained grievous injuries, but the doctor who has issued the injury certificate has not been examined. The injury certificate dated 3.7.1989 (Ex. 37) issued by Dr. R.K. Belsare is placed on record. The certificate reads as under:

This is to certify that Mr. V.R. Tembhare sustained comm. fracture femur of right thigh with fracture patella right side following accident on 22.4.1989. Intra-medullar nailing with wiring with patella was done on 24.4.1989. His present disability is 80% of total function of right lower limb.

11. This certificate would clearly indicate that the disability was not permanent and there is no evidence to show that the petitioner had sustained 80% permanent disability within the meaning of Section 92C of the Motor Vehicles Act, 1939. It would have been better if the claimant would have examined the doctor to place on record as to actually what was the permanent disability sustained by him. When the claimant is allowed to join his duties and he is still in service, it cannot be said that he has sustained any kind of monetary loss on account of loss of earning capacity.

12. However, it would reveal that the Tribunal has rightly awarded Rs. 25,000/- on account of disability sustained by the claimant taking into consideration the nature of the injuries sustained by him because the claimant has stated in his deposition that due to the injuries sustained by him he cannot walk and stand for a long time.

13. The evidence would clearly reveal that the medical expenses incurred by the claimant were to the tune of Rs. 20,163/- and there is nothing in the evidence to show that the medical expenses were more than this. Therefore, there is no reason for this Court to interfere into that finding so far as the grant of medical expenses is concerned.

14. At the same time, I am of the considered view that the Tribunal did not take into consideration as to how much pecuniary damages and non-pecuniary damages are to be awarded. The computation of damages depends upon various factors and circumstances and on considering the evidence of the claimant it would clearly reveal that the computation of the damages will have to be made as under:

Thus the total of pecuniary and non-pecuniary damages would work out to Rs. 84,030/-. Therefore, the impugned order is liable to be modified as the Tribunal did not take into consideration all the items on which the damages are to be awarded. Therefore, in my view, award of Rs. 94,030/- would be just, fair and reasonable.

15. That takes me to consider the question in relation to the grant of interest. The Tribunal has awarded interest at the rate of 12% per annum. The Apex Court in the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, observed that "now, we have fix up the rate of interest.

Section 171 of the Motor Vehicles Act empowers the Tribunal to direct that in addition to the amount of compensation, simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf. Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of the Reserve Bank of India, the interest rate has been lowered. The Nationalised Banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinabove shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants.

16. In the present case also, I am of the view that grant of interest at 9% per annum would be just and reasonable and it follows that the amount of no fault liability shall be deducted from the principal amount and as on the date of the principal sum from such date

17. In that view of the matter, the impugned judgment and decree is modified in the aforesaid terms and the claimant is held to be entitled to receive the total amount Rs. 84,030/- with interest at the rate of 9% per annum from the date of the petition till realization subject to the deduction of the amount already paid. The appeal is, therefore, allowed with costs.