

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 279 of 2012

Appellant :- The New India Assurance Co. Ltd. Including The Divisional

Respondent :- Ashok Kumar Singh @ Ashok Pratap Singh And Ors.

Counsel for Appellant :- Jitendra Narain Misra

Counsel for Respondent :- Ashutosh Singh,Raj Kumar,Rajesh Pandey,Ravindra Prakash Ojha

Hon'ble Jaspreet Singh,J.

1. Heard Shri J. N. Mishra, learned counsel for the appellant and Shri Raj Kumar Pandey, learned counsel for the claimant-respondent no.1.
2. The instant appeal has been preferred by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 22.12.2011 passed by the Motor Accident Claims Tribunal/District Judge, Balrampur in Claim Petition No.36 of 2010 whereby in an injury case, a sum of Rs.24,03,723/- alongwith 6% interest per annum has been awarded in favour of the claimant-respondent against the appellant.
3. Learned counsel for the appellant while assailing the award dated 22.12.2011 has attacked the award primarily on two grounds. It is urged that the Tribunal erred in granting such as a high compensation without noticing the functional disability of the claimant-respondent. It was also urged that the Tribunal ought to have recorded a clear finding regarding the negligence and unless and until the issue of functional disability is noticed, the award cannot be made in a mechanical manner.

4. It is also contended that the claimant did not suffer from any permanent disability and in absence of any permanent disability certificate the grant of compensation and the computation of the award is bad in the eyes of law.

5. Shri Pandey learned counsel or the claimant-respondent submitted that the claimant had filed several evidences including the fact that the claimant suffered injuries in his right leg and right shoulder. He was admitted initially in the district hospital at Sultanpur from where he was referred to a higher centre and he was further admitted in hospital where a rod was inserted through surgical intervention and because of the said injuries, the claimant could not continue with his service and he had submitted his resignation. The life and the future of the claimant was seriously affected and it is taking note of the aforesaid that the Tribunal has awarded a sum of Rs.24,03,723/- vide award dated 22.12.2011 which does not suffer from any error, accordingly, the appeal deserves to be dismissed.

6. The Court has considered the rival submissions and also perused the material on record.

7. Before dealing with the aforesaid submissions, it will be necessary to look at the fact giving rise to the instant appeal.

8. It is the case of the claimant-respondent no.1 that on 06.03.2009, the claimant-respondent was riding his motorcycle bearing number UP 47/B-2949 on the left side of the road at a moderate speed. However, as he reached Pratapganj Ram Nagar under Police Station Piprapur,

District Sultanpur at around 5.00 P.M., the offending vehicle TATA 407 bearing number UP 70/H-9368 was being driven rashly and negligently and all of a sudden, it came on the wrong side and hit the motorcycle of the claimant and as such he sustained grievous injuries. The femur bone of the right leg and the right shoulder was fractured. The claimant was taken to the District Hospital Sultanpur from where he was referred to a higher centre at Lucknow. The claimant had first gone to Balrampur Hospital Lucknow but he was referred to King George Medical College, Lucknow where the claimant remain admitted from 07.03.2009 to 18.04.2009 and thereafter he was under the treatment of Dr. S. K. Varshney at Lucknow. During his treatment, he was operated for the right femur bone where a rod was also inserted. Since the bone could not be properly fused and the claimant was unable to walk and was dependent and handicapped, hence he was compelled to leave his job. At the relevant time, the claimant was 49 years of age and was working in the U. P. Gramin Bank at Tulsipur Branch and was earning a sum of Rs.23,000/- per month. In the aforesaid context, the Claim Petition No.36 of 2010 came to be filed.

9. The claim petition was contested by the owner and driver of the offending vehicle and denied the contents of the claim petition. However, it also pleaded that the vehicle in question was duly insured and the driver had a valid and a subsisting driving licence with all necessary documents relating to the vehicle which were valid and as such if any award is passed, the same was liable to be indemnified by

the Insurance Company. The Insurance Company also filed its separate written statement and took the general plea that unless and until it was proved that the offending vehicle was being driven in accordance with the policy condition, the insurer cannot be made liable to service the award.

10. After the exchange of pleading, the Tribunal framed issues and it recorded a finding that the accident was on account of the rash and negligent driving of the offending vehicle. It also noted that the offending vehicle was duly insured and had all the requisite documents. The Tribunal then went on to compute the compensation and noticed that since the claimant at the relevant time was under suspension, hence the basic income was treated to be a sum of Rs.14,731/- which was being received by the claimant as subsistence allowance. The Tribunal noticing the age of the claimant to be 50 years had calculated the compensation amount by multiplying the subsisting allowance by 12 and adopting a multiplier of 13 arrived at a figure of Rs.22,98,036/-. The Tribunal also found that since the claimant suffered 65% disability, accordingly the same was deducted and thereafter added a sum of Rs.4,00,000/- towards the cost of treatment and the other expenses relating to treatment was granted as Rs.90,000/-, Rs.10,000/- was granted for special diet and another Rs.10,000/- was granted towards mental agony and pain and suffering and thus a total sum of Rs.20,03,723/- was awarded which is under challenge in the instant appeal.

11. Having considered the submissions of the learned counsel for the parties, few facts which are not in dispute is the occurrence of the accident and the injury caused to the claimant-respondent.

12. On the perusal of the material on record, it would indicate that the claimant was first referred to the District Hospital, Sultanpur from where he was referred to the higher centre at Lucknow and he remain admitted in medical college at Lucknow from 07.03.2009 to 18.04.2009. The plaintiff also stated that he was admitted under the treatment of Dr. S. K. Varshney and at Sancheti Hospital from 06.08.2009 to 03.09.2009 and then again on 18.04.2011 to 23.04.2011.

13. It is in the aforesaid context, if the material on record is perused, it would be found that a certificate has been filed bearing paper No.Ga.34 (on one page two separate documents have been filed which are both number Ga.34) which is issued by Sancheti Joint Replacement Centre and is dated 11.01.2011. The said document indicates that there is no implant at present. There is another prescription of Dr. Gulati bearing paper No.Ga.34 which is of New Delhi. However, there is no clear evidence given in respect of these documents nor they have been properly connected as to establish the nature of consultation made by the claimant. It has not been indicated as to when and how the claimant was under treatment in New Delhi.

14. The record further indicates that the disability certificate bearing paper No.Ga.31 which has been issued from the officer of the Chief Medical Officer dated 03.03.2011 states that the claimant has a physical disability of 65% but it does not indicate that the disability is permanent or to what extent the condition is progressive. The claimant has filed several receipts regarding his medical treatment towards purchase of medicines etc.

15. However, there is nothing on record which could establish that a rod was inserted. For any surgical intervention for inserting a rod there ought to have been some radiological examination such as an x-ray. However, no x-ray plate has been filed. Even the prescription of Dr. Varshney bearing paper No.Ga.29, does not indicate that apart from general medication any such prescription has been issued requiring any such surgery. Even otherwise from the perusal of the material on record, it does not bare out from it whether the claimant was under going any physiotherapy treatment. No evidence has been brought on record regarding any treatment required for future and at intervals.

16. The claimant has filed one document bearing paper No.Ga.34 which is a bill issued by Sancheti Joint Replacement Centre dated 23.04.2011 which indicates that the claimant was admitted in the said hospital. However, it does not indicate for what purpose he was admitted in the said hospital; inasmuch as the date of the accident was 06.03.2009, the claim petition had been filed in the year 2010

and the said document is dated April, 2011. The claimant has also filed some document relating to Apollo Hospital, New Delhi. However, the same is also not appropriately connected and there are all vague documents filed including tickets by air as well stay at hotel.

17. The claimant has also not given any clear reason regarding his resignation though he has tried to pin the resignation to the injury but the record indicates that the Bank was giving subsistence allowance to the claimant as he was under suspension. The claimant did not indicate the cause of his suspension and he has also not explained that what was the outcome whether any departmental proceedings were initiated in contemplation whereof the claimant was put under suspension. The date of resignation is 09.09.2009 and the claimant has not brought any record regarding his resignation letter and even the acceptance thereof.

18. Taking an overall view, it is clear that the Tribunal has mechanically taken the statement of the claimant applying the subsistence allowance as the base by multiplying it by the multiplier considering the age and thereafter it went on to add the amount spent by the claimant on his treatment. There is no finding regarding the fact that how the injury affected the claimant in his professional life and especially when the disability certificate does not state that the claimant suffer from any permanent disability.

19. It is in this context, if the decision of the Apex Court in the case of *Parminder Singh Vs. New India Assurance Company Limited and*

others, (2019) 7 SCC page 217 is seen, it would be clear that the Tribunal while computing the compensation first as to ascertain the activities, the claimant could carry on in spite of his disability, his age, the nature of work and whether the claimant was unable to earn any kind of livelihood and how the injury has affected his life including his future endeavour. The relevant portion reads as under:-

"5.4. The appellant was 23 years old at the time when the accident occurred. Applying the multiplier of 18, the loss of future earnings suffered by the appellant would work out to Rs 15,000 × 12 × 18 = Rs 32,40,000.

5.5. The High Court has rightly assessed the functional disability of the appellant as 100%. The appellant is suffering from hemiplegia due to which the left side of his body is barely functioning. On account of the permanent disability suffered, the appellant was deprived of getting married and having a normal family life. His capacity to earn a living has been completely shattered for the rest of his life, and he has become fully dependent person.

5.6. In Govind Yadav v. New India Insurance Co. Ltd. [Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683 : (2012) 3 SCC (Civ) 1082 : (2012) 1 SCC (Cri) 82 : (2012) 1 SCC (L&S) 422] , this Court held that : (SCC p. 693, para 18)

"18. In our view, the principles laid down in Arvind Kumar Mishra v. New India Assurance Co. Ltd. [Arvind Kumar Mishra v. New India Assurance Co. Ltd., (2010) 10 SCC 254 : (2010) 4 SCC (Civ) 153 : (2010) 3 SCC (Cri) 1258] and Raj Kumar v. Ajay Kumar [Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] 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.

(emphasis supplied)

5.7. In K. Suresh v. New India Assurance Co. Ltd. [K. Suresh v. New India Assurance Co. Ltd., (2012) 12 SCC 274 : (2013) 2 SCC (Civ) 279 : (2013) 4 SCC (Cri) 638] , this Court held that : (SCC p. 279, para 10)

"10. It is noteworthy to state that an adjudicating authority, while determining the quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the Tribunal or a court has to be broad-based. Needless to say, it would involve some

guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of "just compensation" should be inhered."

(emphasis supplied)

5.8. In *Raj Kumar v. Ajay Kumar* [*Raj Kumar v. Ajay Kumar*, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] , this Court held that : (SCC pp. 350-51, paras 13-15)

"13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."

(emphasis supplied)"

20. In view of the principle laid down by the Apex Court in *Parminder Singh (supra)*, this Court finds that the method by which the Tribunal has awarded the compensation is not quite justified. It is considering the same, this Court finds that the Tribunal has erred in granting the compensation in a mechanical manner.

21. The respondent has not led proper evidence to explain his treatment in Delhi. The criteria of functional disability has not been ascertained nor any evidence has been led.

22. In the aforesaid circumstances where the respondent has not been filed or brought on record evidence indicating the reason for his resignation, when was it accepted and the reason for being placed under suspension and outcome of the departmental proceedings, if any, hence the matter requires a remand where the respondent and appellants will be at liberty to lead fresh evidence only to the aforesaid extent and in context of what has been noticed hereinabove. All other findings shall remain intact and the Tribunal shall re-assess the compensation in light of the observations made above and noticing the decision of the Apex Court in Parvinder Singh (Supra).

23. The appeal is allowed. The award dated 22.12.2011 passed in Claim Petition No. 36 of 2010 is set aside only in so far as the quantum of amount is concerned. The matter shall stand restored on the board of the Tribunal. Parties shall appear before the Tribunal on 20.12.2023 and the Tribunal shall endeavour to decide the issue of re-

assessment of compensation within a period of three months from the date the parties appear before the Tribunal. Costs are made easy and the records be returned forthwith.

Order Date :- 21.11.2023

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