IN THE HIGH COURT OF JUDICATURE AT BOMBAY

FIRST APPEAL NO. 1753 OF 2004

DEEPAK VASANT DEORE
VERSUS
SHIVAJI VISHNU VITEKAR and others
...
Advocate for Appellant : M H Patil
Advocate for Respondent No.3 : Mr. P. P. Bafna
...

CORAM : S. V. GANGAPURWALA, J.

DATE : 27th August, 2015

PER COURT :

1. The matter is finally heard.

2. The present respondent is the original claimant, who had filed claim petition under section 166 of the Motor Vehicles Act claiming compensation on account of the permanent disability suffered by the appellant. Being not satisfied by the amount of compensation awarded, the claimant has filed the present appeal.

3. Mr. Patil, the learned counsel for the appellant submits that the Court has accepted that the appellant has suffered 50 % permanent disability on the basis of disability certificate and three injury certificates submitted before it. The Court has also accepted that the claimant was earning Rs.3000/- per month. Learned counsel submits that even if no evidence is there of the proof of income, Rs.3000/- per month is required to be considered as income per month. According to the learned counsel, for loss earning, only Rs.15,000/- has been awarded which is too meager.

The multiplier 18 ought to have been considered. The learned counsel relied on the judgment of the Apex Court in a case of **Syed Sadiq and others Vs. Divisional Manager, United India Insurance Co. ltd. reported in 2014 4 MLJ 538**. The learned counsel further submits that for pains and sufferings also meager amount has been awarded as Rs.60,000/-. Under that head, at least Rs.1 lakh ought to have been awarded. For medical expenses also, the amount claimed was Rs.56,000/- and only Rs.50,000/- has been awarded. According to the learned counsel, the appellant had claimed a modest sum of Rs.3,80,000/- as compensation which was reasonable and proper. Even the loss of marriage prospect has not been considered as is laid down by the Apex Court in the case of **Syed Sadiq** referred supra, so also, the loss of future prospect has not been considered. The appellant has suffered multiple fractures and injuries such as fracture to left hand so also injury to the liver, intestine, etc.

4. Mr. Bafna, learned counsel for the insurance company submits that the accident was head on collusion. The court in such case should presume 50% contributory negligence. 50% of the negligence would be of the other vehicle. In this case, it is a case of composite negligence. Learned counsel relies on the judgment of the Apex Court in a case of **Mr. Bijay Kumar Bidyadhar reported in 2006 3 SCC 242**. The learned counsel submits that owner and insurer of the Rickshaw was not made a party, as such, the present insurance company would not be in a position

to claim any amount from the other insurance company and the owner of the rickshaw.

The learned counsel further submits that the passage of time is also required to be considered while awarding compensation amount. The principles laid down by the Apex Court in a case of **Sarla Verma Vs. Delhi Transport Corporation,** reported in **(2009) 6 SCC 121** cannot be applied because of the passage of time. Accident has taken place in 1998. This aspect is required to be considered. The learned counsel relies on the judgment of the Apex Court in the case of **Neela Gupta Vs. State of UP reported in 2010 AIR SCW 5601**.

5. With the assistance of learned counsel, I have gone through the evidence as has been produced so also the pleadings and the judgment.

6. The factum of accident is not disputed. It is a matter of record. The appellant was a passenger in Rickshaw, as such, even if it is assumed that the driver of the Rickshaw was negligent, to some extent, it would be a case of a composite negligence as far appellant is concerned and not contributory negligence. In such case, the appellant can recover the whole amount from any one. The Tribunal has not believed the certificate produced by the appellant regarding the salary and such had not accepted the claim of earning Rs.3000/- per month. However, it would be seen that accident is of the year 1998. The appellant was doing the centering work with the contractor. Even if strict proof is not before the Court with regard

to the income, Rs.3000 per month is normally to be considered. Even if we go through the provisions of Minimum Wages Act, the income Rs.3000/- can be considered as reasonable and proper.

7. The injury certificates were produced on record. The permanent disability certificate was produced on record. From perusal of the judgment, in the evidence, even suggestion was not given that disability certificate is false and also there was no suggestion given about the injury certificate. In absence of serious dispute to the same, the Court has considered the disability certificates.

8. As stated above, the accident is of the year 1998. Some aspects will have have to be considered because of the long passage of time. As per the judgment of the Apex Court in case of **Sarla Verma** referred supra, multiplier is 18. Even considering the the judgment relied on by the learned counsel for the respondent in a case of **Neela Gupta**, referred supra, multiplier 16 can be applied. Considering 50% disability, the loss of income would be Rs.1500/- per month. It would come to Rs.18,000/- per year. Applying the multiplier of 16, it would come to Rs.2,88,000. As far as other heads are concerned, I am not inclined to disturb the said amount being granted.

9. Considering the above,I pass following order:

1. The appellant would be entitled for an amount of Rs,2,88,000/- on account of loss of earning, Rs.60,000/- for grievous injury

and permanent disablement and Rs.50,000/- towards the medical expenses, total Rs. 3,98,000/-

2. The Petitioner claimant has already been paid Rs.1,25,000/-. As such, the petitioner will be entitled to additional compensation of Rs.2,73,000/-. The respondents shall jointly and severally the the additional amount of Rs.2,73,000/-with interest @ Rs.7% per annum from the date of filing of appeal till realization of amount.

3. The appellant shall pay Court fees on the additional amount awarded.

4. First appeal is accordingly disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC