NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 778 OF 2010

Branch Manager, The Oriental Insurance Company Limited, Branch Office-Ambikapur, District Surguja (C.G.)

… Appellant

versus

1. Kripashankar, S/o Mohan Ram, age 43 years, Resident- Kharwat, Thana- Charcha, Tahsil- Baikunthpur, District Korea (C.G.)
2. Santosh Kumar Dubey @ Binku, S/o Mata Prasad Dubey, age- 36 years, Resident- Schoolpara, Ashirwad Complex, Baikunthpur, Thana & Tahsil- Baikunthpur, District Korea (C.G.)

… Respondents

For Appellant	:	Mr. Sudhir Agrawal, Advocate.
For Respondent No.1	:	Mr. R.K. Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21/11/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the Appellant-Insurance Company assailing the award dated 22.3.2010 passed by the Motor Accident Claims Tribunal, Baikunthpur, District Koriya, in Motor Accident Claim Case No. 20/2009.

2. Respondent No.1-Claimant also has filed a cross-objection in the instant case seeking for enhancement of the compensation awarded.

3. Respondent No.1-Claimant in the instant case had initially filed a separate appeal i.e. M.A.(C) No. 879/2010 which was withdrawn with the liberty of the Court for filing a cross-objection in the appeal preferred by the Appellant-Insurance Company.

4. Vide the impugned award, the learned Tribunal, in the present injury case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.13,12,910/- to the Respondent No.1-Claimant, with interest thereon at the rate of 7.5% per annum from the date of presentation of the claim application.

5. Brief facts of the case are that on 9.11.2008 when the Claimant-Kripashankar was moving on his motorcycle (CG16-D-3317) and was returning home after purchasing some articles for the Ekadashi Puja, he was hit by TATA Indigo Car (CG16-B-1555) belonging to Respondent No.2 herein. As a result of the said accident, the Claimant-Kripashankar and one Ramjeet who was a pillion rider on the said motorcycle driven by the Claimant, both sustained grievous injuries. The Claimant-Kripashankar and Pillion Rider-Ramjeet both were admitted to the Government Hospital, Baikunthpur, where during the course of treatment the right leg of the Claimant-Kripashankar had to be amputated above the knee and the Pillion Rider-Ramjeet succumbed to the injuries sustained.

6. The legal representatives of deceased-Ramjeet had filed a separate claim application before the Tribunal and the injured-Kripashankar in the instant case had also filed a separate claim application, under Section 166 of the Motor Vehicles Act, seeking for a compensation against the Respondent No.2 herein and the Appellant-Insurance Company i.e. the insurer of the vehicle belonging to Respondent No.2.

7. The Claimant-Kripashankar in the instant case vide his claim application had claimed for a compensation of Rs.14,15,000/-. However, the learned Tribunal, after the completion of the pleadings and recording of the evidence, vide the impugned award, has awarded a compensation of Rs.13,12,910/- to the Claimant-Kripashankar.

8. It is this award which has been questioned by the Appellant-Insurance Company in the present appeal.

9. Challenge to the impugned award by the Appellant-Insurance Company is primarily on three grounds. Firstly, that the quantum of compensation awarded by the Tribunal is excessive, unreasonable, without any basis and is on the higher side. Secondly, that the Tribunal has not properly appreciated the fact that there was an element of contributory negligence on the part of the deceased for the accident to occur, inasmuch as the accident was a head on collusion. Thirdly, that the actual registered owner of the TATA Indigo car was not made a party during trial and therefore unless the party insured itself is not heard, the Insurance Company without the actual insured being on record could not be directed to indemnify the insured. The quantum of compensation and the rate of interest awarded also has been challenged by the Appellant-Insurance.

10. So far as the quantum of compensation is concerned, Shri Sudhir Agrawal, learned Counsel for the Appellant-Insurance Company, submits that the amount of compensation awarded under the medical expenses head is unreasonable and without any basis. He submits that in all the Claimant had raised the bills of only Rs.89,848/- whereas the Tribunal has awarded a lump sum amount of Rs.1,50,000/-. He further submits that without there being any evidence of the expenses incurred, the Tribunal could not have been awarded beyond Rs.89,848/- for the medical expenses which have been incurred. It was further submitted that the finding of the Tribunal in awarding Rs.5,00,000/- towards the loss of future income is without any calculation nor is there any substantive material or reason for arriving at such a calculation. Likewise, it was also alleged that the amount of compensation awarded towards the loss of salary for a period of 14 months quantifying at Rs.2,17,910/- also is without any sufficient evidence in this regard except for a bald statement made by the Claimant during his deposition.

11. Shri Agrawal, further submits that it is a case where the Claimant is an employee of the South Eastern Coalfields Limited ('SECL', for short) and that he was a regular employee entitled for all the benefits including medical facilities available to the employees of SECL. He submits that the employees of SECL are provided best of the treatment available and it is totally free of cost or is 100percent reimbursed if the treatment is undertaken from a private hospital and therefore there could not have been an occasion for the Claimant to have raised the bills for the medical expenses incurred nor was there any occasion for awarding income under the future treatment as also for the compensation under the medical expenses. He further submits that since the Claimant was an employee of a Public Sector Undertaking and that he has not lost his employment, there would be no loss of earning capacity or loss of income in any manner. He next submits that even otherwise post-retirement benefits including pension would also be given the Claimant and thus there would not be any loss of future income also which has been quantified by the Tribunal at an exorbitantly excessive amount of Rs.5,00,000/-. He thus prayed for the appeal of the Appellant-Insurance Company to be allowed.

12. Per contra, Shri R.K. Gupta, learned Counsel appearing for Respondent No.1-Claimant, submits that the compensation awarded by the Tribunal is on the the other hand on the lower side and which deserves to be enhanced substantially. Shri Gupta, further submits that taking into consideration the nature of employment which the Claimant was enjoying prior to the accident and the plight of the Claimant after the accident by itself would show the amount of permanent loss which has been caused to the Claimant. He next submits that it is a case where a young middle age man of around 43 years of age at the time of accident has lost his right leg above the knee and it is beyond imagination or comprehend the loss which has been caused to him. He also submits that the Claimant has been rendered totally disabled because of the accident and he is by now dependant upon somebody for his movement also. Further, he would be deprived of performing many strenuous physical work which he could do prior to the accident. Shri Gupta further submits that the Claimant because of the amputation of his leg would have to go in for artificial limb and that the artificial limb which is installed also to be periodically replaced at an interval of almost every 2 years and this by itself would become a recurring medical expenses which ought to had been realized and provided by the Tribunal while quantifying the compensation and under which no amount has been awarded by the Tribunal.

13. As regards the contributory negligence is concerned, learned Counsel for Respondent No.1-Claimant has submitted that there is no evidence adduced by any of the parties with which it could be established that there was a negligence on the part of the deceased in the accident to have occurred. On the contrary, the statement of the Claimant himself was that on seeing that the offending vehicle i.e. TATA Indigo Car has crossed the side of the road coming from the opposite direction, the Claimant is said to have halted his motorcycle beside the road and yet the offending vehicle came and dashed the Claimant. Thus, the element of contributory negligence does not have any basis or evidence and the said ground does not have any strength to sustain enough for interfering with the impugned award.

14. So far as the amount of compensation awarded under different heads, again it was the contention of the learned Counsel Respondent No.1-Claimant that the Appellant-Insurance Company has not produced any evidence in rebuttal or in corroboration or in support of the contentions which they have raised particularly in respect of the medical expenses incurred and the loss of income so also the compensation under the future treatment etc. He has submitted that considering the nature of the duty which the Claimant was performing and also the nature of the injury caused to the Claimant, the loss caused to the Claimant can never be quantified and whatever compensation awarded would only be a solace to the misfortune suffered by the Claimant.

15. In the given factual matrix of the case, Shri Gupta, learned counsel for Respondent No.1-Claimant, prays for the amount of compensation awarded to be suitably enhanced so that the Claimant can meet the subsequent and recurring expenses which he would incur.

16. Having heard the contentions put forth on either side and on perusal of record, the undisputed facts in the instant case are:

(a) the date of accident i.e. 9.11.2008;

(b) the two vehicles involved in the accident i.e. motorcycle (CG16-D-3317) and TATA Indigo Car (CG16-B-1555) belonging to Respondent No.2.

(c) the said TATA Indigo Car being duly insured with the Appellant-Insurance Company; and

(d) the Claimant-Kripashankar working as a Grade-III Driller in the SECL.

17. The fact which everybody knows is that the SECL is a Mini Ratna Public Sector Undertaking and it has got various welfare measures provided to its employees. One such benefit is that of providing free medical assistance to its employees and for providing free medical assistance it has hospitals at various levels, that is, dispensaries at Colliery level, hospitals at Area level and larger hospitals at Regional level and for any complicated case the company also provides medical assistance from the better medical institutions in India and one such institution is Apollo Hospital which is situated at Bilaspur. Likewise, the employees of SECL are also entitled for medical facilities including medical leave and such medical leaves are credited in the account of the employees annually which the employees can avail in the event of getting unwell or any such situation that arises. The Claimant in the instant case except for the bald averments in his deposition of not getting salary for 14 months during which the treatment was going on has not produced any documentary proof to establish that he had exhausted all his medical leaves and after the exhaustion of the medical leaves he has been put in leave without pay. In the absence of any such documentary proof which would have been easily available with the Claimant, it has to be presumed that there were sufficient medical leave to his credit and which he must have availed for his treatment. Likewise, it is also beyond comprehension and believe that the Claimant had to meet substantial expenses towards his treatment in spite of the company providing all the medical facilities and in this regard also the Claimant has not given any explanation as to what made him incur so much of medical expenses when the company provides for free medical treatment to all of its employees including treatment on reference being made to the Apollo Hospital.

18. From the evidence of the Claimant it clearly reflects that after his initial treatment at the government hospital he had been taken for better treatment to the regional hospital of the company at Charcha area and further from there he was referred to Apollo hospital at Bilaspur. Since there is no proper explanation given in this regard, the amount of compensation awarded under the head of medical expenses and future treatments all appear to have been wrongly awarded to the Claimant.

19. Further, as regards future loss of income, again since the Claimant was an employee of a Public Sector Undertaking and was having a pensionable job and post retirement also he would be getting his pensions, the finding of the Tribunal in awarding Rs.5,00,000/- towards the loss of future income also seems to be without any basis or material.

20. Thus, in the opinion of this Court, the compensation awarded of Rs.1,50,000/- towards the medical expenses and Rs.5,00,000/- towards the future loss of income and Rs.2,17,910/- towards the loss of salary during the period of treatment, all seem to be a bit on the higher side and without proper basis.

21. As regards the issue of contributory negligence, there is a statement of the Claimant where he has stated that on seeing the offending vehicle coming from the opposite direction and of crossing the side of the road, the Claimant had stopped the vehicle beside the road and yet the offending vehicle from the opposite direction belonging to Respondent No.2 came and dashed the Claimant, resulting in the accident. There is no evidence in rebuttal to this nor is there any evidence by which it could be said that there was an element of negligence on the part of the Claimant herein. The ground of contributory negligence thus stands negated.

22. As regards the owner/registered owner not being made a party to the trial, this Court is of the opinion that the same may not be of much relevance at this juncture when the undisputed fact is that the offending vehicle involved in the accident was the same, the registration number of the offending vehicle all along was the same, which has been insured by the Appellant-Insurance Company and that there appears to be a slight error in the name of the owner in the cause-title where instead of *Satish* the name *Santosh* has been typed. The two letters while being typed in Hindi does not have much of a difference except for a small change in "matra". Thus, the said ground of the actual owner not being made party to the dispute also does not have much strength and the same deserves to be and is negated.

23. So far as the rate of interest is concerned, considering the date of accident being 9.11.2008, this Court is of the opinion that the rate of interest awarded by the Tribunal that of 7.5% per annum cannot be said to be either excessive or exorbitant in any manner. The rate of interest was much less than the prevalent rate of interest in the Banks during the relevant period. Thus, the ground of interest being on the higher side also stands negated.

24. Now coming to the cross-objection filed by the Respondent No.1-Claimant, undisputedly, the Claimant in the instant case had to undergo two surgeries, first one being an amputation below the knee and subsequently because of the complications which developed he had to undergo further surgery and where the amputation had to be made from above the knee. One could easily visualize the amount of pain and suffering and mental agony which the Claimant would have undergone during this period and after the amputation being made. True it is that the Claimant would not be able to move around in the same manner as he was doing prior to the accident. Further, because of the amputation the Claimant would also require a great amount of assistance for small-small things which he could have otherwise managed himself, had the amputation not been done and which he was doing all by himself before the accident. The Claimant would also not be able to drive motorcycle or for that matter car all by himself and would have to be depend upon somebody for transportation. The Claimant shall also be entitled for affixing an artificial limb for better mobility and with which he would be able to move around. In addition and what is more serious is the amount of treatment and mental agony which the Claimant would face all through his life on account of the accident and the resultant injuries caused.

25. At this juncture, it would be relevant to refer to the decision of the Hon'ble Supreme Court in the case of **Nagappa** v. **Gurudayal Singh and Others**, **2003 (2) SCC 274**, wherein the Hon'ble Supreme Court in paragraph 21 has held as under:-

> **"21.** For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount.

> The function of the Tribunal/court is to award "just" compensation which is reasonable on the basis of evidence produced on record..."

It is also relevant at this juncture to refer to paragraph 23 of the said decision where the Hon'ble Supreme Court dealing with the subsequent future expenses has held as follows:

> "**23.** However, it is to be clearly understood that the MV Act does not provide for passing of further award after the final award is passed. Therefore, in a case where injury to a victim requires periodical medical expenses, fresh award cannot be passed or previous award cannot be reviewed when the medical expenses are incurred after finalisation of the compensation proceedings. Hence, the only alternative is that at the time of passing of final award, the Tribunal/court should consider such eventuality and fix compensation accordingly..."

26. In the light of the above decision of the Hon'ble Supreme Court and the discussions made in the preceding paragraphs, what clearly reflects is that the learned Tribunal while awarding the compensation has awarded an amount of Rs.8,67,910/- without any material and substance available with it and the same has been made only on some assumptions and presumptions and also on guess work and at the same time if we consider the claim of the Claimant it also appears that he would definitely incur substantial future medical expenses towards affixing of an artificial limb and also he is entitled for some amount of money for the loss of amenities that he has sustained because of the injuries.

27. However, considering the fact that the learned Tribunal has as it is awarded certain amount of money without any strong basis and justification nor there being much proof adduced by the Claimant before the Tribunal, this Court is of the opinion that said amount so awarded by the learned Tribunal should be treated as just and reasonable compensation for the loss of amenities which the Claimant has suffered also for meeting the future medical expenses if any, including that of affixing of artificial limb.

28. Thus, as a consequence, this Court does not find any strong case made out calling for interference with the impugned award. Hence, the appeal of the Appellant-Insurance Company and the cross-objection of Respondent No.1-Claimant both deserve to be and are accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/