

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL (ST) NO.5074 OF 2008
WITH
CIVIL APPLICATION NO.1198 OF 2008
AND
CIVIL APPLICATION NO.2811 OF 2014**

The New India Assurance Co. Ltd. ..Appellant/Applicant
V/s.

Shri.Ram Kishore Shukla & Anr. ..Respondents

Mr.I.R. Kulkarni for the Applicant/Appellant.

Mr.V.M. Parkar for the Respondent.

CORAM : M. S. SONAK, J.

Date of Reserving the order : 25 JANUARY 2017

Date of Pronouncing the order : 31 JANUARY 2017

ORDER :

1. Consequent upon condonation of delay, at the request and the consent of learned counsel for the parties the first appeal is taken up for final disposal. Mr.Kulkani, the learned counsel for the appellant submits that there is no legal evidence to sustain the award of Rs.2 lakhs in favour of respondent-claimant. He submits that in the present case there

are admissions on the part of claimants that the treatment which he availed that INHS Asvini Hospital was free, since, the claimant at that stage was an Army personnel. Despite this, the MACT has awarded compensation in respect of the treatment and this is plainly erroneous. Mr.Kulkarni further submits that there is no material to establish that the claimant had to resign from his employment on account of the injury sustained by him in due to the accident. Therefore, the MACT erred in awarding compensation of Rs.80,000/- on this count to the claimant. For these reasons Mr.Kulkarni submitted that the compensation awarded is quite excessive and the same warrants interference in this appeal.

2. Mr.Parkar the learned counsel for the claimant submits that since the appeal has not been pressed against the owner of the vehicle, who has since been deleted as a respondent, the entire appeal fails and its required to be dismissed. He submits that, otherwise there will be contradictory awards i.e. one against the owner and other against the Insurance Company. In support of this plea,

Mr.Parkar has placed reliance upon the decision of the learned Single Judge of the Andhra Pradesh High Court in the case of *Magadri V/s. B. Jayaramarao & Others (AIR 1990 Andhra Pradesh 160)*.

3. Without prejudice, Mr.Parkar submitted that the compensation awarded is infact inadequate and there is no question of any excess involved. He submits that the meager compensation of Rs.5,000/- has been awarded towards treatment and Rs.5,000/- towards conveyance. He submits that material on record bears out the claimant had to resign from service on account of the injury sustained in the accident and therefore, compensation was rightly awarded to the claimant.

4. Finally, Mr.Parkar submitted that the conduct of the appellant in the present case has been gross. From the year 2008 onwards, the respondent-claimant, who is an ex-serviceman has virtually been harassed by the Insurance Company and deprived the respondent-claimant the meager compensation of Rs.2 lakhs awarded to him in the year 2007 in

respect of accident which had taken place on 24-06-1999. For this reason Mr.Parkar submitted that this appeal needs to be dismissed with exemplary costs.

5. In this case, there is no dispute whatsoever that the respondent-claimant, who was 31 years of age on the date of the accident i.e. 24-06-1999 and was serving as a Welder in the Unit No.955AD, EME, Kalina Military Camp, Santacruz (E). Whilst the claimant, along with some other military personnel were traveling towards Santacruz in military vehicle No.75-E-2580, the vehicle had breakdown and had to be parked. The claimant was in the process of arranging certain stones around the vehicle, when, Tempo No. MH-04-AG-1511 driven by one Vishwanath Bhagwan Takle and owned by Ms.Premlata Bharati, who is now deleted as the respondent in this appeal, dashed against the claimant. As a result, the claimant sustained skull fracture and other injuries.

6. In the context of the two grounds raised by the learned counsel for the appellant it must be noted that it is true

that the claimant himself admitted in the course of his evidence that the treatment which he received at the military hospital was free. However, the perusal of the impugned award will indicate that no compensation as such has been awarded to the claimant in respect of the treatment at the military hospital. All that has been awarded to the claimant is Rs.5,000/- towards medicine and Rs.5,000/- towards conveyance. The MACT has observed that even though, the treatment at the hospital may have been free it does not mean that the claimant was not required to spend any amount from his own pocket during the entire period he was receiving the treatment. The award of the amount of Rs.5,000/- towards medicine and Rs.5,000/- towards conveyance charges this amount is extremely reasonable and its quite unfortunate that Insurance Company should appeal against the same.

7. There is ample medical evidence on record which establishes that the claimant suffered skull fracture and the same resulted in post traumatic epilepsy. As a result of such disability, the claimant had to quit his service from the armed

forces. The claimant has deposed all these facts with complete sincerity. He has stated that he was awarded terminal benefits, commutation of service pension, disability element and commutation of disability element benefit. He has also stated that in the normal course, his date of retirement would have been 31-07-2009 but, he had to quit much earlier. Taking into consideration all these factors a sum of Rs.80,000/- came to be allotted to the claimant. The MACT has considered the material on record in great detail and there is no scope to urge that such award of compensation is contrary to the weight of evidence on record. Infact, the award compensation in this case appears to be on a conservative basis and therefore no case is made out to interfere with the impugned award.

8. Since, the appeal is liable to be dismissed on merits the issue as to whether the appeal is maintainable in the absence of the owner of the motor vehicle, need not be decided.

9. There is however, substance in the contention of the

Mr.Parkar that Insurance Company in the present case, has not acted fairly. The impugned award was made on 27-08-2009. This appeal was instituted after delay of about 78 days. Notice was issued to the respondents in the application seeking condonation of delay on or about 05-03-2008. Liberty was granted to effect private service and it was made clear that if steps are not taken the application will stand dismissed for non-prosecution.

10. The appellant delayed in the payment of bhatta charges and affidavit of service was filed only in order to escape the rigours of order dated 05-03-2008. However, such affidavit of service was not accompanied by any acknowledgement that the respondent no.2 i.e. the owner of the vehicle was duly served.

11. Despite opportunities, the Insurance Company delayed even any payment of bhatta charges, so that Court notice could be freshly issued to respondent no.2. In the meanwhile, even the notice issued to the respondent no.1-

claimant was returned unserved as no proper address was furnished. In the year 2009 the matter came on board on several occasions again on account of failure on the part of Insurance Company to take steps.

12. Several orders have to be made by this Court in the matter. On the ground of pendency of this appeal, the compensation amount was not paid to the claimant. Finally, the claimant applied for withdrawal of the compensation amount deposited before the MACT some time the year 2015. Instead of being graceful in the matter, the Insurance Company stated that it wishes to oppose the application for withdrawal of compensation and that reply would be filed to that effect. This was on 22-08-2015. Thereafter, the matter was posted before the Court or before the Registrar Judicial on several occasions only order to enable the appellant to file reply and to take steps to effect service upon respondent no.2. After several adjournments and after availing several indulgences, the appellant ultimately stated that it does not wish to pursue the appeal against the respondent no.2 i.e. the owner of the vehicle

and applied for deletion of respondent no.2 on 23-02-2016. No reply was filed on the application for withdrawal of compensation.

13. From the aforesaid it is quite evident that the appellant Insurance Company has not at all be fair with the respondent-claimant. The appellant Insurance Company has not fair even to this Court because, this matter was required to be considered on several occasions merely on account of inaction on the part the appellant Insurance Company in the matter of service upon unserved respondent. As a result, from the year 2008 the respondent-claimant has been deprived of the compensation awarded by the MACT. The Insurance Company was required to at least take into consideration that respondent-claimant was an ex-serviceman, who had to quit his service on account of the injuries sustained by him in the motor accident.

14. For all these reasons, this appeal is required to be dismissed with exemplary cost. Accordingly, this appeal

dismissed cost assessed at Rs.25,000/-. Such cost to be paid to the respondent no.1-claimant within a period of four weeks from today.

15. Interim order, if any, stands vacated. The amount of Rs.25,000/- deposited in this Court to be transmitted within two weeks to the MACT, Mumbai. The MACT Mumbai to permit respondent No.1-claimant to withdraw the amount deposited by the appellant along with accrued interest unconditionally. The appellant to deposit the amount of cost in the application seeking condonation of delay as well as in this appeal, before the MACT, Mumbai within a period of four weeks from today. The MACT Mumbai to permit the respondent-claimant to withdraw such amount unconditionally.

16. The appeal is disposed of with costs in the aforesaid terms. Civil Applications do not survive and are disposed of accordingly.

(M. S. SONAK, J.)