+IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.444 of 2019

==

Shri Ram General Insurance Co. Ltd. through Manager, E-8, EPIP, RIICO Industrial Area, Sitapura, Jaipur, (Rajasthan)- 302022.

... ... Appellant/s

Versus

1. Md. Faruque Alam, S/o Late Md. Manzoor Alam, Resident of Village - Mirzapur Bardah, P.S.- Muffasil, P.O.- Dariapur, District- Munger.
2. Vikas Mandal, S/o Bateshwar Mandal, Resident of Village- Itwa, P.O.- Itwa, P.S.- Darhara, District- Munger.
3. Ram Kishor Mandal, S/o Late Ganesh Mandal, Resident of Village- Ramdiri, Nawagarhi, P.O.- Nawagarhi, P.S.- Naya Ramnagar, District- Munger.

... ... Respondent/s

==

Appearance :

For the Appellant/s	:	Mr. Alok Kumar @ Alok Kr Shahi, Advocate
For the Respondent/s	:	Mr. Raj Kumar Choudhary, Advocate

==

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

CAV JUDGMENT

Date : 12-07-2024

Heard learned counsel for the appellant as well as learned counsel for the respondents.

2. The instant appeal has been preferred by Shri Ram General Insurance Co. Ltd. (hereinafter referred to as ‘Insurance Company’) against the judgment dated 11.03.2019 passed by the learned Additional District Judge IInd-cum-Motor Accident Claim Tribunal, Munger in M.A.C.T. Claim Case No. 07 of 2017 whereby the learned Tribunal was pleased to direct the appellant/ Insurance Company to pay Rs. 15,35,506/- with interest @ 7% per annum from the date of

filing of the claim petition till the realization of the awarded amount, after adjusting the amount if otherwise paid to the claimant under Section 140 of M.V. Act amounting to Rs. 25,000/-.

3. The facts, in brief, are that the claimant met an accident on 16.09.2015 at about 8.45 A.M. while he was going to Bangalwa from his house with his brother-in-law and as soon as he reached near Village Borna, a Truck (Dumper) bearing no. BR-53-8730 coming from the side of Munger rashly and negligently driven by the driver dashed the motorcycle and hit him resulting claimant sustained grievous multiple injuries. He was brought to Sadar Hospital, Munger where he was provided First Aid Medical treatment. He was referred to Bhagalpur for better treatment where he was treated by the doctors and was discharged on 23.09.2015. Thereafter, he was treated by the Plastic Surgeon from 24.09.2015 to 24.10.2015 but the injuries could not be cured and became permanent disabled. He became 45 % disabled and suffered his occupation of Mason due to which he also suffered earning to the said fatal accident.

4. On the basis of *Fardbeyan* of the injured, Laraiya Taad P.S. Case No. 23 of 2015 dated 23.09.2015 was registered by the police under Sections 279, 337, 338, 427 of the Indian

Penal Code and after investigation police has submitted charge-sheet and found the case true.

5. The case of the claimant is that prior to accident he used to earn at least Rs. 12,000/- per month as a Mason and was maintaining his wife and children but due to the permanent disability he has become unable to earn from his occupation of Mason. It is further claimed that due to 45% disability, particularly, disability from right thigh, leg and hand his working capacity of job of Mason has been reduced to zero.

6. The owner of the said vehicle as O.P. No. 1 and driver of the vehicle as O.P. No. 2 appeared in the case but not filed written statement.

7. The Insurance Company appeared and filed written statement and denied the claim of the claimant. After hearing the parties and after gone through the material on record, vide judgment dated 11.03.2019, the learned Tribunal held that claimant is entitled to get compensation under various heads, which is stated below:-

Sl. No.	**Pecuniary Damages**	**Amount (Rs.)**
1.	Loss towards expenses relating to Medicines and Hospitalization charges	3,37,506.00
2.	Loss of Transportation, Nursing Fooding and Lodging	50,000.00
3.	Loss of earning as per monthly income of injured claimant	10,53,600.00

	Rs. 10,000/- x 30% added future prospect comes RS. 13,000 x 45% deduction of disability comes 5850/- Monthly income and Rs. 5850X12= yearly income comes into Rs. 70,200/- x M15 Total comes Rs. 10,53,000/-	
4.	Loss of Mental pain and suffering Mental shock and Mental Stress, Discomfort and Frustration	50,000.00
5.	Loss of enjoyment of conjugal life	75,000.00
6.	Loss of Litigation cost	20,000.00
	Total	**15,35,506.00**

8. Learned counsel for the appellant- Insurance Company has submitted that the present appeal has been preferred by the Insurance Company on limited point that learned Tribunal in computing the total compensation has wrongly considered monthly income of claimant Rs. 10,000/- ignoring that the claimant failed to prove his income by adducing any document and his notional income ought to have calculated as per minimum wages to unskilled labour @ Rs. 178/- per day. It is further stated that learned Tribunal has wrongly allowed the medical bill of Rs. 3,37,506/- as the same was not duly proved by the persons who had issued the said bills. He further submits that the doctors who issued the disability certificate of the claimant has not been examined and thus, the claimant failed to prove the disability certificate. Lastly, it is submitted that the award of litigation cost is contrary

to law.

9. On the other hand, learned counsel appearing for the claimant has submitted that the claimant has duly proved his case by examining witnesses as well as the documentary evidence got exhibited on his behalf in support of his claim. Learned counsel further submits that the learned Tribunal has rightly awarded the claim which requires no interference by this Court. It is further submitted that the learned Tribunal has rightly held that the claimant has succeeded in proving his case that he met with an accident at the relevant date and time of occurrence, underwent Medical treatment and is entitled for compensation.

10. Having heard the learned counsels for the parties and considering the submissions made, it appears that there is no dispute as to the occurrence and liability of the appellant-Insurer to pay the compensation. In view of this admitted position, it is unnecessary to narrate the factual aspects of the accident.

11. The only question that remains to be decided by this Court is on the aspect of the quantum of damages awarded.

12. The claimant is not a salaried person but was working as a Mason. The mitigating circumstances are also to

be taken into consideration while fixing the notional income. The place of working, nature of job whether skilled or unskilled, age of the person as well as other mitigating factors form part of consideration for the purpose of fixation of notional monthly income for grant of compensation under the Motor Vehicle Act, 1988.

13. The disablement certificate issued by the Medical Board of a Govt. Hospital is a public document. The claimant has given a detailed evidence about his nature of injury and loss of earning capacity to which there is no evidence of rebuttal or denial and no independent witness was called upon to examine on behalf of Insurance Company in this regard. The claimant has proved that he became disabled and has suffered permanent disability up to 45 % and loss of earning has been calculated accordingly.

14. To assess the quantum of compensation to be awarded, this Court has to assess whether the permanent disability caused has any adverse effect on the earning capacity of the appellant. The Hon'ble Supreme Court in case of ***Rajkumar Vs. Ajay Kumar (2011) 1 SCC343*** held that where the claimant suffers a permanent disability as a result of injuries, the compensation for loss of future earning depends upon the

impact and effect of the permanent disability on his earning capacity.

15. The law is now well settled that the proceeding in a claim petition for compensation before the Tribunal is neither suit nor an adversial *lis* and claimant is not required to prove his case as required in the criminal trial.

16. The Hon'ble Supreme Court in case of ***United India Insurance Company Ltd. Vs. Shila Datta & Ors. (2011) 10 SCC 509*** held that a claim petition for compensation in regard to motor accident (filed by the injured or in case of death, by the dependent family members) before the Motor Accident Claims Tribunal constituted under Section 165 of the Act is neither a suit nor an adversial *lis* in the traditional sense. The learned Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matter of inquiry, to assist it in holding the inquiry (vide Section 169 of the Act).

17. In the case of ***Kusum Lata & Ors. Vs. Satbir & Ors. (2011) 3 SCC 646***, the Hon'ble Supreme Court observed that it is well known that in case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this

distinction in mind.

18. The Hon'ble Supreme Court in ***Sunita & Ors. Vs. Rajasthan State Board Transport Corporation & Ors. (2020) 13 SCC 486*** observed as under:-

> "It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."

19. The Hon'ble Supreme Court in the case of ***Rajwati @ Rajjo & Ors. Vs. United India Insurance Company Ltd. & Ors.*** in ***Civil Appeal No. 8179 of 2022 [(2022) SCC OnLine SC 1699]*** decided on 09.12.2022 observed as follows:-

> "It is well settled that Motor Vehicle Act, 1988 is a beneficial piece of legislation and as such, while dealing with compensation cases, once the actual occurrence of the accident has been established, the Tribunals role would be to award just and fair compensation. As held by this Court in Sunita (supra) and Kusum Lata (supra), strict rules of evidence as applicable in a criminal trial, are

> not applicable in motor accident compensation cases, i.e., to say, “the standard of proof to be borne in mind must be preponderance of probability and not the strict standard of proof beyond all doubts which is followed in a criminal cases.”

20. In the case of ***Rajwati @ Rajjo*** (supra) the Hon’ble Supreme Court considering the aforesaid principle, observed as under:-

> “20. In view of the above, we do not agree with the view taken by the High Court while rejecting the salary certificate (Exhibit-19) and Pay Slip (Exhibit-20) of the deceased merely on the ground that the person issuing the two aforementioned documents was not examined before the learned Tribunal. The said documents are conclusive proof of the income of deceased and were also corroborated by the statements of the deceased’s wife (Appellant No. 1 herein) and his co-workers. As such, the High Court was not justified in assessing the income of deceased at Rs. 4,836/- per month on the basis of minimum wages fixed by the State at the relevant time......”

21. Learned counsel for appellant has referred to a notification by the Government of Bihar to indicate the minimum wage of unskilled labour at the time of accident. However, it is not disputed that no evidence was led to establish minimum wage of unskilled labour before the Tribunal. Therefore, in absence of evidence on record, this Court is not

inclined to interfere in the assessed income at this stage.

22. Fixation of monthly income of Rs. 10,000/- in the present case is appropriate warranting no interference by this Court. It is well settled that assessment of compensation cannot be done with mathematical precision. The Motor Vehicle Act, 1988 also provides for assessment of just and fair compensation. It is not necessary to go into the quantum of compensation under various heads and ultimate order of Tribunal.

23. With respect to litigation expenses/ cost, the Hon'ble Supreme Court in ***Syed Sadiq Vs. Divisional Manager, United India Insurance Company Ltd., (2014) 2 SCC 735*** held that along with compensation under conventional heads, the claimant is also entitled to cost of litigation as per the legal principle laid down by the Apex Court in ***Balram Prasad Vs. Kunal Sah, (2014) 1 SCC 384*** and this judgment has been quoted and confirmed in the judgment of Hon'ble Supreme Court in ***Sidram Vs. Divisional Manager, United India Insurance Company Ltd. & Another, (2022) LiveLaw (SC) 968*** wherein the Hon'ble Apex Court awarded Rs. 50,000/- towards litigation expenses.

24. The Tribunal after considering all materials on record awarded compensation, which requires no interference in

the appeal filed by the Insurance Company.

25. The compensation awarded by the Tribunal cannot be said to be excessive. This appeal has no merit. In the result, this Misc. Appeal is dismissed.

26. The appellant/ Insurance Company is directed to deposit the entire award alongwith interest and costs as ordered by the Tribunal, less the amount already deposited, if any, before the Tribunal, within a period of six weeks from the date of this order.

27. Pending applications, if any, stand disposed of.

(Sunil Dutta Mishra, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	25.06.2024
Uploading Date	12.07.2024
Transmission Date	