

Soni vs.shri Ram General Insurance Co Ltd & Ors

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SooperKanoon Citation : sooperkanoon.com/1204341

Court : Delhi

Decided On : Nov-23-2016

Appellant : Soni

Respondent : Shri Ram General Insurance Co Ltd & Ors

Advocate for Pet/Ap. : Mr. O.P. Mannie, Mr. P. Acharya

Judgement :

\$~28 to 31 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: November 23, 2016 (i) + MAC.APP. 260/2016 SONI Appellant Through: Mr. O.P. Mannie, Advocate versus SHRI RAM GENERAL INSURANCE CO LTD & ORS

... RESPONDENTS

Through: Mr. P. Acharya, Advocate for respondent No.1-insurance company (ii) + MAC.APP. 357/2016 PINKU @ SAMRUIT RANJAN DASH versus Through: Mr. O.P. Mannie, Advocate Appellant SHRI RAM GENERAL INSURANCE CO LTD & ORS

... RESPONDENTS

Through: Mr. P. Acharya, Advocate for respondent No.1-insurance company (iii) + MAC.APP. 495/2015 & C.M.11356/2015 SHRIRAM GENERAL INSURANCE CO LTD Through: Mr. P. Acharya, Advocate Appellant versus MAC APPs.260/16, 357/16, 4

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Page 1 of 10 SONI & ORS Through: Mr. O.P. Mannie, Advocate forRespondents (vi) + MAC.APP. 497/2015 & C.M.11364/2015 respondent-claimant SHRIRAM GENERAL INSURANCE CO LTD Through: Mr. P. Acharya, Advocate Appellant versus PINKU @ SAMRUTI DASH & ORSRespondents Through: Mr. O.P. Mannie, Advocate for respondent-claimant CORAM: HON'BLE MR. JUSTICE SUNIL GAUR % (ORAL) JUDGMENT In the above-captioned four appeals, the challenge is to the common impugned Award of 13th April, 2015 vide which compensation of `7,97,840/- has been granted to injured-claimant-Pinku @ Samruti Ranjan Dash and compensation of `7,49,920/- has been granted to injured-claimant-Soni. With the consent of both the sides the above-captioned four appeals are heard together and are being disposed of vide common judgment as they arise out of one Award. In the above-captioned first two appeals, enhancement of compensation is sought by the injured-claimants whereas in the remaining above-captioned two appeals, reduction of compensation is sought by the insurer of the offending vehicle i.e. Tourist Taxi. The bare MAC APPs.260/16, 357/16, 4

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Page 2 of 10 facts as noted in impugned Award are as under: - The facts sans unnecessary details are that on 11.10.2012 at about 12.00 PM, claimant Smruti Ranjan was going on his motorcycle with his neighbour Ms. Soni from Kondli Nagar towards Khoda Village. As he turned towards Khoda Road, a Tourist Taxi bearing registration No.UP- 16T-9120, driven by respondent no.1 in a zig zag and reckless manner, coming from Murga Mandi Road, hit the motorcycle. Due to impact, both claimants fell down on the road and sustained grievous injuries. The driver fled away from the spot. Both injured were taken to LBS Hospital. A case FIR No.380/12, under Section

IPC was registered at Police Station Gazipur, against the respondent no.1. On the basis of the evidence led, learned Tribunal has granted compensation to injured-claimant-Ms. Soni under the following heads:

Future Loss of Income 2. Towards loss of Wages 3. Towards pain and sufferings 4. Towards servant/attendant charges `5,01,396.00 `43,524.00 `60,000.00 `20,000.00 5. Loss of Amenities and enjoyment of life `40,000.00 6. Loss of Marital

Prospects 7. Towards conveyance and special diet 8. Towards medical bills Total
`50,000.00 `20,000.00 `15,000.00 `7,49,920.00 The breakup of the compensation
granted by learned Tribunal to MAC APPs.260/16, 357/16, 4
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Page 3 of 10 injured-claimant-Pinku @ Samruti Ranjan Dash is as under:

Future Loss of Income

2. Towards loss of Wages

3. Towards pain and sufferings

4. Towards servant/attendant charges `4,75,956.00 `52,884.00 `60,000.00
`20,000.00

5. Loss of Amenities and enjoyment of life `40,000.00

6. Loss of Marital Prospects `50,000.00

7. Towards conveyance and special diet `20,000.00 (without bills)

8. Towards medical bills Total `79,000.00 `7,97,840.00 As per the impugned Award, injured-claimant-Ms. Soni had suffered permanent disability of 64% in relation to her right lower limb. It is so evident from the Disability Certificate (Ex.PW3/A) whereas injured- claimant-Pinku @ Samruti Ranjan Dash had suffered permanent disability of 58% in the left lower limb, as is evident from the Disability Certificate (Ex.PW3/A). In the above captioned first two appeals, enhancement of compensation is sought on the ground that the functional disability suffered by the injured-claimants is actually 100%. Regarding the claimant-Pinku @ Samruti Ranjan Dash, it is submitted that at the time of this accident, he was only 19 years old and the aspect of future earnings has not been taken into consideration in assessing the compensation. Learned counsel for claimant-Pinku @ Samruti Ranjan Dash MAC APPs.260/16, 357/16, 4& 4Page 4 of 10 submits that the disability suffered has considerably reduced the marriage prospects of claimant-Pinku @ Samruti Ranjan Dash and the compensation of `50,000/- granted under this head is wholly inadequate and the compensation

granted under various heads is quite low and it deserves to be suitably enhanced. Learned counsel for claimants has addressed more or less the similar submissions on behalf of claimant-Ms. Soni. On the other hand, learned counsel for Insurer of the offending vehicle submits that the disability suffered by claimants has not resulted in substantial loss of earning capacity and so, the grant of compensation towards loss of income is wholly unjustified. It is pointed out that the proof of employment of claimants is not on record and so, there cannot be any loss of income. Thus, it is submitted that the compensation has been erroneously granted under the head of future loss of income and under separate head of loss of wages and so, the compensation awarded deserves to be suitably reduced. Upon hearing and on perusal of impugned Award and the evidence on record, I find that due to permanent disability suffered by injured- claimants, there is substantial loss of earning capacity and so grant of compensation under the head "loss of income" is well justified and thus compensation sought under this head cannot be denied as proof of employment is seldom forthcoming in case of such employed/private employees. No case for reduction of compensation on this account is made out. So, reduction of awarded amount sought by Insurer of offending vehicle on the ground that no proof of income has come on record is negated and it is held that learned Tribunal has not erred in MAC APPs.260/16, 357/16, 4& 4Page 5 of 10 granting compensation under the head "future loss of income"/loss of earning capacity as while taking note of ground realities, documentary proof regarding the earning capacity of the injured is not to be insisted upon in such cases like the instant one. So far as grant of compensation in two different heads i.e. "future loss of income" and towards "loss of wages" is concerned, I find that grant of compensation of `52,000/- odd and `43,000/- odd to the injured- claimants, is on account of loss of earning/wages during the period of treatment and recovery. Whereas, future loss of income has been rightly granted by the learned Tribunal while taking into consideration the compromised earning capacity. This aspect has been clarified by Supreme Court in Kavita v Deepak & Ors. (2012) 8 SCC604and so, it cannot be said that compensation under these two heads cannot be granted. In cases of private driver/tailor etc., there cannot be any documentary proof regarding the employment. In such cases, generally the minimum wages ought to be granted. Upon considering the claim for enhancement of compensation, I find

that Claimant-Soni had suffered grievous injuries resulting in non-union fracture of right femur causing permanent disability of 64%. It has come in evidence of claimant-Soni that despite bone grafting, the shaft bone had not united due to which her working capacity as a tailor is considerably diminished. However, she has not stated in her evidence that due to permanent disability suffered by her, she is not able to perform the tailoring work. Though claimant-Soni claims to be unemployed after accident but she has not stated in so many words that after this accident, MAC APPs.260/16, 357/16, 4& 4Page 6 of 10 she is unable to perform the tailoring work. In view thereof, the functional disability of claimant-Soni cannot be taken to be 100%. Thus, I find that the functional disability of claimant-Soni has been rightly taken to be 32% in relation to her whole body. In case of claimant-Pinku @ Samruti Ranjan Dash, I find that it has come in the evidence that he was operated upon for closed tibial interlocking nailing and thereafter the permanent disability suffered by him was assessed at 58%. A bare perusal of the evidence of claimant-Pinku @ Samruti Ranjan Dash reveals that he has nowhere said in his evidence that after this accident, he is unable to work or earn anything. In view thereof, functional disability cannot be taken to be 100% to enhance the compensation. In case of claimant-Soni learned Tribunal has erred in applying the minimum wages of an unskilled workman. The factum of claimant-Soni being a private tailor is not challenged in evidence and so the minimum wages to be applied in her case have to be a skilled workman. Learned counsel for claimants points out that instead of minimum wages of `7254/- p.m. for an unskilled workman, wages of `8112/- p.m. for a skilled workman has to be taken and "loss of wages" has to be assessed as `5,60,701/- (rounded off) instead of `5,01,396/- as awarded by the learned Tribunal. The aforesaid calculation is not disputed by learned counsel for the Insurer and so the compensation awarded to the claimant-Soni under the head "loss of wages" is enhanced from `5,01,396/- to `5,60,701/-. As far as claimant-Pinku @ Samruti Ranjan Dash is concerned, I find that he had relied higher secondary certificate (Ex. PW-1/4) before MAC APPs.260/16, 357/16, 4& 4Page 7 of 10 learned Tribunal, but "future loss of income" has been worked out while taking him to be matriculate. Since claimant-Pinku @ Samruti Ranjan Dash was higher secondary pass therefore his earning capacity ought to have been computed at `10,000/- p.m. instead of `8014/- p.m. Accordingly, under the

head "future loss of income", the compensation granted to him is enhanced from `4,75,956/- to `5,40,000/-. Under the head "pain and suffering", injured-claimants have been granted compensation of `60,000/- each. Injured-claimant-Soni was discharged from the hospital within 10 days. Even if it is taken that she had subsequently visited the hospital as OPD patient then also I find that compensation granted to her under this head is reasonable. Such a view is being taken because nothing much has been said by her in her evidence on this aspect. Injured-claimant- Pinku @ Samruti Ranjan Dash had been on complete bed rest for a period of 20 days and thereafter he was under treatment in various hospitals as per his treatment record. In such a case, the reasonable compensation under the head "pain and suffering" ought to be `1,00,000/- instead of `60,000/-. Accordingly compensation granted to claimant- Pinku @ Samruti Ranjan Dash under the head "pain and suffering" is enhanced from `60,000/- to `1,00,000/-. Under the head "loss of amenities and enjoyment of life" compensation of `40,000/- only has been awarded to both the injured- claimants. Considering that both the injured-claimants were unmarried and were in their early twenties, I find that compensation granted under this head is on much lower side. The reasonable compensation in this head ought to be at least `1,00,000/- in the facts and circumstances of this MAC APPs.260/16, 357/16, 4& 4Page 8 of 10 case. Accordingly, the compensation under this head is enhanced in case of both the claimants from `40,000/- to `1,00,000/- each. Under the head "loss of marital prospects", compensation of `50,000/- only has been granted to both the injured-claimants. While taking into consideration that functional disability suffered by claimant- Soni as 32%, the compensation granted is enhanced from `50,000/- to `1,00,000/- and in case of injured- Pinku @ Samruti Ranjan Dash, it is enhanced from `50,000/- to `75,000/-. Upon considering these appeals in its entirety, I find that no case for reduction of compensation granted is made out and no further enhancement of compensation except as granted above, is called for. Consequentially, the appeals filed by the Insurer of offending vehicle are dismissed whereas the two appeals filed by the claimants are partly allowed by modifying the impugned award as under:-

"In respect of Claimant-Soni Sl. Head 1. Future earning capacity Compensation Granted `5,01,396.00 Final Compensation `5,60,701/

Towards loss of Wages `43,524.00 `43,524/

Towards pain and sufferings `60,000.00 `60,000/

Towards servant/attendant charges `20,000.00 `20,000/

Loss of Amenities and enjoyment of life `40,000.00 `1,00,000/

Loss of Marital Prospects `50,000.00 `1,00,000/

Towards conveyance and special diet `20,000.00 `20,000/

Towards medical bills `15,000.00 `15,000/- Total `7,49,920.00 `9,19,225/- MAC
APPs.260/16, 357/16, 4

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Page 9 of 10 In respect of Claimant Pinku@Samruti Ranjan Dash Head Future
earning capacity Towards loss of Wages Compensation Granted `4,75,956.00
Final Compensation `5,40,000/- `52,884.00 `52,884/- Towards pain and sufferings
`60,000.00 `1,00,000/- Towards servant/attendant charges `20,000.00 `20,000/-
Loss of Amenities and enjoyment of life `40,000.00 `1,00,000/- Loss of Marital
Prospects `50,000.00 `75,000/- Sl. No.1.

2. 3.

4. 5.

6. 7.

8. Total Towards conveyance and special diet (without bills) Towards medical bills
`20,000.00 `20,000/- `79,000.00 `79,000/- `7,97,840.00 `9,86,884/- The enhanced
compensation shall carry the interest as awarded by the learned Tribunal and the
manner of disbursement of the enhanced awarded amount shall be in the same
ratio as indicated in the impugned Award. The enhanced awarded amount shall be
deposited by the Insurance Company with the learned Tribunal within four weeks.
The balance amount deposited vide order of 3rd July, 2015 also be released to
respective respondents-claimants. The statutory deposit in above captioned third
and fourth appeal be refunded. These appeals and the applications are

accordingly disposed of. NOVEMBER23 2016 s/vn (SUNIL GAUR) JUDGE MAC
APPs.260/16, 357/16, 4

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