

Mithun Kalikrishna Banerjee Vs. Nita Pavishwar Deleted Sitanath Vishwas Bangali and 2 ors.

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Court : Gujarat

Decided On : Sep-05-2006

Reported in : 2007ACJ1367

Judge : M.S. Shah and; K.M. Mehta, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 173

Appeal No. : First Appeal No. 679 of 2003

Appellant : Mithun Kalikrishna Banerjee

Respondent : Nita Pavishwar Deleted Sitanath Vishwas Bangali and 2 ors.

Advocate for Pet/Ap. : Ashutosh R. Bhatt, Adv. for Appellant 1

Disposition : Appeal allowed

Judgement :

K.M. Mehta, J.

1. Mithun Kalikrishna Banerjee, appellant- original claimant- petitioner has filed this appeal under Section 173 of the [Motor Vehicles Act, 1988](#) against the judgment and award dated 1.2.2002 passed by the Motor Accident Claims Tribunal (Aux.II), Ahmedabad (Rural) in MAC Petition No. 1358 of 1995. The learned Judge by his impugned award has partly allowed the claim petition and held that the petitioner is entitled to get Rs. 1,50,200/- from the opponents jointly and severally along with interest at the rate of 9% per annum from the date of the claim petition filed in forma pauperis till realization.

2. The appeal was filed in September 2002 and the same was admitted on 13.1.2004. Thereafter this Court fixed the hearing in July 2004. Today the matter has been heard.

3. The relevant facts giving rise to this appeal are as under:

3.1 The appellant- original petitioner -claimant was serving as a conductor on Crane No. DLI.T.BI.1956. Opponent No. 1- Nita Pavishwar is the driver of the Crane and opponent No. 2 Daljit Kaur Sujatsinh Saluja is the owner of the said crane. From the facts stated in the claim petition, it appears that on 22.8.1995 at about 9-00 AM, in the compound of Victor Steel Industries, Odhav, Ahmedabad, opponent No. 1 was driving the said crane. While the appellant was showing the signal for side when the opponent No. 1 was taking the crane in the reverse way, the crane dashed with the hook of the electric wire and due to current of electric wire, the right hand of right portion of the appellant-petitioner was severely burnt and thereby he sustained serious injuries. It has been stated that the accident occurred due to rash and negligent driving on the part of opponent No. 1.

3.2 It has been alleged in the claim petition that the petitioner was aged 20 years and he was serving as a

conductor and earning Rs. 1000 to Rs. 1200 per month at the time of accident. He was also carrying on labour work and earning Rs. 600/- p.m.. In all, the claimant-petitioner was earning Rs. 1800 to Rs. 2000/- per month at the time of accident. As regards injury, the petitioner submitted that the petitioner had been admitted in Shardaben Hospital as an indoor patient and operation was performed and skin grafting was also performed. The petitioner spent about Rs. 25,000/- towards medical treatment and medicines, and Rs. 2,000/- towards transportation, Rs. 1500/- towards special diet. Therefore, in all, the petitioner claimed Rs. 4 lakhs.

3.3 Before the Tribunal, the United India Insurance Co. Ltd. Opponent No. 3 filed written statement at Exh.19 wherein the insurance company denied that alleged accident occurred due to rash and negligent driving on the part of opponent No. 1. It was also denied that the petitioner had sustained alleged injuries. It was submitted that the claim amount is excessive and the petitioner is not entitled to get any amount of compensation as prayed for. It appears that opponent Nos. 1 and 2 have not filed any written statement.

3.4 The learned Judge framed the following issues at Exh.24.

(i) Whether the applicant proves that he received injuries because of rash and negligent driving of the driver of the vehicle involved in the accident ?

(ii) Whether the applicant is entitled to compensation? If yes, what amount ?

(iii) In case, if the finding of issue No. 2 is in the affirmative, who is liable to pay compensation ?

3.5 Before the Tribunal, the petitioner has examined himself at Exh.25 and he has also examined Dr Aditya Indulal Upadhyay, Orthopedic Surgeon at Exh.36. Over and above, the petitioner has also produced the following documentary evidence in support of his injury:

Exh.37 A Disability Certificate issued by Dr Aditya Upadhyay, M.S. (Ortho)Exh.38 A copy of complaint dated 23.8.95 filed by opponent No. 1 Nitapvishwas Sitanathviswas BengaliExh.39 A copy of panchnama of the place of incident dated 22.8.95Exh.40 A copy of statement of the petitioner taken by the police dated 22.8.95Exh.41 A copy of police vardhi in respect of accidentExh.42 A Follow-up card issued by Shardaben Hospital, AhmedabadExh.43 A Medical case papers issues by Shardaben Hospital, Ahmedabad
3.6 On the basis of the aforesaid evidence, the learned Judge has taken monthly salary of the petitioner at Rs. 1200/- and assessed 50% permanent disability and ultimately future loss at Rs. 600/-. So annual future loss of income would come to Rs. 7,200/-. As the petitioner was aged 20 years, the learned Judge has taken 16 multiplier and thus in all Rs. 1,15,200/- has been awarded as future loss of income. In all, the learned Judge has awarded compensation of Rs. 1,50,200/- under the following heads:Rs. 1,15,200/- towards future loss of incomeRs. 20,000/- towards pain, shock and sufferingRs. 5,000/- towards medical treatment and medicinesRs. 5,000/- towards special dietRs. 5,000/- towards attendant charges & transportation.-----Rs.; 1,50,200/- Total-----

4. Mr. Bhatt, learned Counsel for the appellant has invited our attention to the the evidence on record. He has stated that the petitioner has stated in his deposition that he was earning Rs. 1,500/- per month and he was also doing labour work in spare time and earning Rs. 500/- per month. So, in all, he was earning RS. 2,000/- per month.

4.1 As regards injury, the petitioner has produced disability certificate of Orthopedic Surgeon Dr Aditya I Upadhyay at Exh.37 wherein it has been stated that disability in respect of permanent functional loss having been caused to the petitioner in this respect was to the extent of 70%. Dr. Upadhyay was also examined and in his deposition at Exh.36 stated that he had examined the petitioner on 19.3.1996 and as per the disability certificate at Exh.37, the petitioner suffered the following injuries:

Burns 12 cm. X 10 cm. X 1.5 cm over right lower half of chest

Right ankle burns 10 X 7 X 1.5 cm.

Burns over right arm 8 cm X 4 cm X 1 cm

Burns 4 cm X 3 cm X 1 cm over right elbow

Degloving injury over left leg for which amputation of left leg was done at 8.5' below knee joint.

Compound communitied injury over right forearm for which operation amputation of right upper limb was done.

4.2 He has further stated that from the evidence of the petitioner at Exh.25 after the accident he has taken medical treatment in the Shardaben Hospital for three months as indoor patient and he has sustained burn injury on the right hand and the right hand upto elbow has been amputated. In all, he has spent Rs. 60,000/- towards medical treatment and special diet. He has also stated that once he was discharged from hospital, thereafter he had to again visit hospital for check-up for about 20 times and, therefore, he has claimed Rs. 5,000/- towards attendant charges and transportation.

4.3 Mr. Bhatt, learned advocate for the appellant stated that in view of the documentary and oral evidence on record, the learned Judge is not right in assessing the income of injured at Rs. 1200/-p.m.. He has stated that when the petitioner has stated that he was earning Rs. 1500/-p.m. and Rs. 500/- extra, so it should be taken as Rs. 2000/-p.m.

5. We have gone through the evidence on record and as the petitioner was 20 years old on the date of accident and was working as a conductor, we assess the monthly income at Rs. 1500/-p.m.. If we take Rs. 1500/- per month income then as the petitioner was 20 years old, his future income would be Rs. 2250/- (1500 + 3000 = 4500 % 2 = 2250). As per the medical evidence, we are inclined to accept the contention of the learned advocate for the appellant that appellant had suffered 70% disability. Then it comes to Rs. 1575/- monthly loss to the applicant i.e. Rs. 18,900/- yearly loss to the appellant.

6. The petitioner was 20 years old at the time of accident which took place in the year 1995 and now we are in 2006. It is no doubt true that the Schedule fixes the multiplier of 16, but looking to the facts and circumstances of the case, we are inclined to have 18 multiplier in this behalf. So the future loss of income would come to Rs. 3,40,200/-.

7. In view of the injury sustained by the appellant and also medical treatment, we are of the view that towards pain shock and suffering, instead of Rs. 20,000/- the petitioner should be awarded Rs. 50,000/-.

8. As regards medical treatment and medicines, special diet and attendant charges and transportation, in all Rs. 15,000/- is awarded by the learned Judge. Looking to the facts and circumstances of the case which we have narrated hereinabove, we are of the considered view that the petitioner should be awarded Rs. 30,000/- instead of Rs. 15,000/-. So, the petitioner is entitled to the following amounts of compensation:

Rs. 3,40,200/- towards future loss of income
Rs. 50,000/- towards pain, shock and suffering
Rs. 30,000/- towards medical treatment and medicines
special diet and attendant charges and transportation-----Rs. 4,20,200/- Total-----

9. As regards interest, the petitioner is entitled to 9%p.a. interest from the date of claim petition.

10. The insurance company has produced the insurance policy Exh.50 and as per the contract of policy having insured and indemnified the owner opponent No. 2 of the vehicle, the insurance company is liable for the same. Hence, all opponents are jointly and severally liable to pay the compensation amount.

11. In view of the above discussion, the appeal is partly allowed. The amount of compensation awarded by the Tribunal at Rs. 1,50,200/- is raised to Rs. 4,20,200/- with interest at the rate of 9%p.a. from the date of the claim petition till realization and with proportionate costs of the claim petition and of this appeal.

12. From the record it appears that the insurance company has not deposited the amount even as per the award of the Tribunal. If that be so, the insurance company is directed to deposit the amount as the per the award of the Tribunal and also additional amount as per the present judgment within one month from the date of receipt of a certified copy of this judgment. Upon deposit of the amount, the Tribunal shall disburse 20% of the amount to the petitioner and 80% shall be invested in three fixed deposits with a nationalized bank near the residence of the claimant for a period of five years with the usual conditions about prohibition against premature encashment/ encumbrance etc. of the deposits and with permission to the claimant to withdraw periodical interest accruing on the deposits.

13. The appeal is accordingly allowed to the aforesaid extent.

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