

(2013) 09 AHC CK 0154

Allahabad High Court (Lucknow Bench)

Case No: F.A.F.O. Defective No. 104 of 2010

Mohd. Sarif

APPELLANT

Vs

Tajammul Hasan and Others

RESPONDENT

Date of Decision: Sept. 30, 2013

Citation: (2014) 1 AWC 469

Hon'ble Judges: Satish Chandra, J; Rajiv Sharma, J

Bench: Division Bench

Advocate: R.K. Dubey, for the Appellant; Amit Kumar Singh, Pooja Arora, S.C. Gulati and Ved Prakash, for the Respondent

Final Decision: Partly Allowed

Judgement

Rajiv Sharma and Dr. Satish Chandra, JJ.

Cause shown in the affidavit in support of the application is sufficient to condone the delay. Accordingly, the application is allowed and the delay in filing the appeal is hereby condoned. The appeal is taken on merit.

2. Present appeal has been filed by the appellant u/s 173 of Motor Vehicles Act, 1988, for the enhancement of the compensation, against the judgment and order dated 28.7.2009, passed by the Motor Accident Claims Tribunal, Lucknow, in Claim Petition No. 463 of 2006, where a total compensation of Rs. 2,07,800 was awarded.

3. The brief facts of the case are that on 11.5.2006, at about 7.30 in the morning, the appellant-claimant was carrying wheat to Lucknow by Mahindra Pickup bearing No. U.P. 32AN-2217. When he reached near Sudoli Circle, from opposite direction, a truck bearing No. U.P. 70AT-0725 was coming, whose driver was driving it rashly and negligently and hit the pickup. The cleaner of the pickup died on the spot and the claimant got serious injuries. He filed a claim petition before the Tribunal, who vide its impugned order has awarded a total compensation of Rs. 2,07,800. Not being satisfied, the appellant-claimant has filed the present appeal.

4. With this background, Sri R.K. Dubey, learned counsel for the appellant submits that the claimant was working as a grain merchant and was able to earn Rs. 4,000 per month. After the accident, necessary F.I.R. was lodged. The appellant-claimant was admitted in Trauma Centre, Medical College, Lucknow, where he was admitted for more than eight days.

5. Learned counsel also submits that the award is meagre one. He also submits that the disability is 60%, but the Tribunal has accepted only 30% disability. Lastly, he made a request that the compensation may kindly be enhanced.

6. On the other hand, Sri Ved Prakash, learned counsel for the opposite party No. 2-New India Assurance Co. Ltd.; and Sri S.C. Gulati, learned counsel for the opposite party No. 4-National Insurance Co. Ltd., have justified the impugned award.

7. After hearing the parties and on perusal of the record, it appears that both the drivers were having valid driving licence. On the date of the accident, the policy was alive. The truck was insured by the opposite party No. 2-New India Assurance Company Ltd. and the Pickup Van was insured by the opposite party No. 4-National Insurance Company Ltd. The Tribunal after examining the entire evidence has observed that the driver of the truck Sri Ram Kailash was solely responsible for the accident.

8. The only dispute is pertaining to the compensation. In the instant case, the claimant has shown that his income was Rs. 4,000 per month. But, no proof was given in this regard. So, the Tribunal has rightly considered the notional income of Rs. 3,000 per month. By looking the age group of 35-40, the multiplier of 16 was rightly applied.

9. In the instant case, the Chief Medical Officer assisted by two other doctors have certified that the claimant has suffered 60% disability. But the Tribunal has considered that non-functional disability is 30%. So, the Tribunal has taken 30% disability for the purpose of computation of the award.

10. By considering the totality of the facts and circumstances of the case, we are of the view that disability is disability. It cannot be distinguished between functional and non-functional. Once, the Chief Medical Officer has certified that there was 60% disability, the same will have to be taken into consideration by the Tribunal unless the certificate issued by the Chief Medical Officer is in question.

11. In the instant case, the Chief Medical Officer has issued a certificate on 23.7.2008, where permanent disability was shown as 60%. So, the claimant is entitled for the compensation by considering the disability of 60%. Hence, we modify the impugned award and compute the compensation as Rs. 36,000 per annum, out of which, 1/3rd will have to be deducted for the personal expenditure, i.e., $Rs. 36,000 - Rs. 12,000 = Rs. 24,000$ per annum. Out of it, 60% comes to Rs. $14,400 \times 16$ (multiplier) = Rs. 2,30,400. Thus, the compensation comes to Rs.

2,30,400, and the appellant-claimant is entitled for Rs. 2,30,400. In addition, the appellant will also get Rs. 25,000 and Rs. 10,000 for treatment, attendant, nutrition, etc., which was already awarded by the Tribunal after examining the necessary documents. Thus, the total compensation comes to $Rs. 2,30,400 + Rs. 25,000 + Rs. 10,000 = Rs. 2,65,400$ alongwith interest @ 6% per annum from the date of filing of the claim petition before the Tribunal. In the result, the appeal filed by the appellant-claimant is allowed partly.