Icici Lombard General Insurance Co. ... vs Ajay Kumar Mohanty . on 6 March, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2740, (2018) 2 CGLJ 180, (2018) 1 WLC(SC)CVL 711, (2018) 1 ACC 731, AIR 2019 SC (CIV) 489, (2018) 2 RECCIVR 305, (2018) 70 OCR 284, (2018) 2 RAJ LW 950, (2018) 3 SCALE 620, 2018 (2) SCC (CRI) 256, (2018) 3 CIVLJ 698, (2018) 2 ACJ 1020, (2018) 2 CURCC 109, (2018) 185 ALLINDCAS 188 (SC), (2018) 4 ALLMR 494 (SC), (2018) 128 ALL LR 230, (2018) 5 BOM CR 80, (2018) 2 TAC 5, (2018) 2 JCR 324 (SC), 2018 (3) SCC 686

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Bench: Chief Justice, A.M. Khanwilkar, D.Y. Chandrachud

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 7181 OF 2015

ICICI LOMBARD GENERAL INSURANCE CO. LTD. .....APPELLANT

Versus

AJAY KUMAR MOHANTY & ANR. .....RESPONDENTS

WITH

CIVIL APPEAL No. 1879 OF 2016

JUDGMENT

Dr D Y CHANDRACHUD, J 1 In a claim for compensation under Section 166 of the Motor Vehicles Act, arising out of a disability sustained by the claimant as a result of a motor accident, the Tribunal awarded an amount of Rs. 22,85,322/-. The High Court in an appeal filed by the insurer reduced the compensation to Rs. 12,00,000/- Interest was reduced from 7.5 per cent per annum to 7.0 per cent. The only reasoning contained in support of the order of the High Court reads as follows:

> "Considering the grounds taken in appeal and the submissions made by the learned counsel for the parties and keeping in view the findings of the learned Tribunal given in the impugned award with regard to the quantum of compensation amount awarded and the basis on which the same has been arrived at, I feel, the interest of justice would be best served, if the awarded compensation amount of Rs. 22,85,322/- is modified and reduced to Rs. 12,00,000/-. The award of interst @ 7.5% per annum is also modified and reduced to 7% only. Accordingly, the claimant is entitled to the modified compensation amount of Rs. 12,00,000/- along with interest @ 7% per annum from the date of filing of the Claim application. The impugned award is modified to the said extent."

2 Ex-facie, there has been no application of mind by the High Court to the evidence on the record and to the relevant facts and circumstances. The above extract cannot be regarded as the expression of a reasoned view. Ordinarily, we would have remitted the case back to the High Court for a fresh determination. However, we are inclined not to do so in order to prevent a miscarriage of justice which delay in itself is likely to occasion. The accident took place on 25 April 2009 when the appellant was 32 years of age. The judgment of the Tribunal was rendered on 26 February 2014. The High Court delivered its judgment on 15 April 2015. Leave was granted by this Court on 25 February 2016. Hence, we have heard the learned counsel appearing on behalf of the contesting parties on merits and proceed to resolve the dispute so as to render finality to the case.

3 The accident in question took place on 25 April 2009 when the claimant was proceeding from Keonjhar to Badbil. The vehicle fell over a bridge of NH

215. The claimant was rescued by the villagers and was shifted to hospital for treatment. He suffered from a fracture to the left elbow and femur. The Tribunal entered a finding of fact that the evidence of the claimant remained unshaken and that the accident was caused by the rash and negligent act of the driver of the vehicle. The vehicle was insured with ICICI Lombard General Insurance Company Ltd. (the insurer).

4 While assessing the claim for compensation, the Tribunal noted the evidence of PW2, the Doctor who had issued a disability certificate to the claimant. The Doctor opined that the disability was temporary and not permanent. It appears that an admission was elicited during the course of the cross-examination to the effect that he had made certain interpolations in the disability certificate without the consent or knowledge of the CDMO. The Tribunal held that whether the disability was permanent or temporary, it was duty bound to make an assessment. From the income tax returns of the claimant for 2007, 2008 and 2009, the Tribunal observed that his annual income would work out to Rs. 1,45,231/-. The Tribunal thereafter observed that the annual income was Rs. 2,62,372/-.

The Tribunal however accepted the evidence of the claimant which placed his income at a lower amount of Rs. 2,22,000/- annually on the basis of the evidence of the claimant that as a B- Class contractor, he was earning Rs. 18,500/- per month. The Tribunal applied a multiplier of 17 per cent. Treating the disability to be 55 per cent, on the basis of the certificate of the District Medical Board, Bhadrak, the Tribunal computed the compensation at Rs. 20,75,700/-. In addition, an amount of Rs. 2,09,622/- was awarded on account of medical expenses. A total quantum of Rs. 22,85,322/- was awarded.

5 Learned counsel appearing on behalf of the insurer submits that the order of the Tribunal is contradictory and contrary to the weight of the evidence. The error has been compounded by the failure of the High Court to attribute reasons. Counsel submits that the Tribunal proceeded on the manifestly erroneous basis that the claimant suffered a permanent disability. It was urged that the evidence of PW 2, the doctor, indicates that the disability certificate was unauthorizedly interpolated by him. The admissions of the doctor in the course of his evidence that the injury was of a temporary nature and was likely to improve have been ignored. Moreover, it has been submitted that the judgment of the Tribunal, especially paragraph 10, would indicate that the Tribunal has committed serious and apparent errors of computation and there is an internal inconsistency in its reasoning. 6 On the other hand, learned counsel appearing on behalf of the claimant submits that while PW 2 admits having interpolated the disability certificate, this should in fact weigh in favour of the claimant as the nature of the interpolation would indicate. Like the insurer, the claimant also has a grievance in regard to the fact that the order of the High Court is not reasoned. However, what the claimant submits is that there was no justification for the High Court to reduce the quantum of compensation awarded by the Tribunal. 7 On perusing the order of the Tribunal, we find merit in the contention of the insurer that while calculating the income in paragraph 10 of its order, the Tribunal has committed an error of computation. The Tribunal has on the basis of the income tax returns for 2007, 2008 and 2009 arrived at an average income of Rs. 1,45,231/-. However, the Tribunal has thereafter noted that the average income comes to Rs. 2,62,372/-. Ultimately, the Tribunal proceeds on the annual income of Rs. 2,22,000/- on the basis of the testimony of the claimant that he was earning Rs. 18,500/- per month. This is contradictory. In our view, on the basis of the finding of the Tribunal that the average income of the claimant for the previous three years was Rs. 1,45,231/-, it would be necessary to take into account the evidence of PW2 that the disability is to the extent of 55 per cent. In other words, the loss of earning as a result of the aforesaid disability would work out to Rs. 79,877/- per year. 8 In arriving at the quantification of compensation, we must be guided by the well-settled principle that compensation can be granted both on account of permanent disability as well as loss of future earnings, because one head relates to the impairment of the person's capacity and the other to the sphere of pain and suffering on account of loss of enjoyment of life by the person himself.

9 In Sri Laxman @ Laxman Mourya v Divisional Manager, Oriental Insurance Co. Ltd1, this Court held thus:

> "The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for

the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident." In Govind Yadav v New India Insurance Company Limited2, this Court after referring to the pronouncements in R.D. Hattangadi v Pest Control (India) (P) Ltd.3 , Nizam's Institute of Medical Sciences v Prasanth S. Dhananka4, Reshma Kumari v Madam Mohan5, Arvind Kumar Mishra v New India Assurance Co. Ltd.6, Raj Kumar v Ajay Kumar7 held thus:

"18. In our view, the principles laid down in Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Raj Kumar v. Ajay Kumar must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident." (Id at page 693) 1 2011 (12) SCALE 658 2 (2011) 10 SCC 683 3 (1951) 1 SCC 551 4 (2009) 6 SCC 1 5 (2009) 13 SCC 422 6 (2010) 10 SCC 254 7 (2011) 1 SCC 343 These principles were reiterated in a judgment delivered by one of us (Justice Dipak Misra, as the learned Chief Justice then was) in Subulaxmi v MD Tamil Nadu State Transport Corporation8.

10 In the present case, the evidence of PW2 Dr Umakanta Jena indicates that he had initially, before issuing the disability certificate, examined the shoulder joint, elbow joint and left femur as per the discharge certificate. The discharge certificate indicated that the injuries sustained were grievous in nature. The Doctor initially placed a tick mark over the word 'permanent'. However, subsequently he made an interpolation by cutting the word 'permanent' and "not likely to improve". The evidence of the Doctor is reproduced below, insofar as it is material:

"4) The disability is temporary but not permanent. The disability is likely to improve. The disability certificate is the original one. By mistake, I gave a tick mark on the word "permanent". Per day about one hundred disability certificates are issued. So, I committed this wrong. I have not mentioned which documents I verified prior to issuance of this disability certificate. There is nothing in the certificate to show that there was nailing. Particularly in this case, the disability may improve. Any fracture of extremity will cause disability. I cannot give any authority to the opinion of my above sentence.

5) It is not a fact that the percentage of disability has been made by me being gained over by the injured and that there was no disability. It is not a fact that being gained over by the injured I gave this disability certificate.

TO COURT:-

Q. No. 1:- Whether the certificate issued by you is creating confusion?

Ans; Yes.

Q. No. 2: Whether you will be paid T.A. and D.A. from State Exchequer for your mistake?

Ans:, No, I should be paid.

8 (2012) 10 SCC 177 Q. No. 3:- Whether my attendance in the court is a govt. duty or C.L.?

Ans: For my mistake I should take C.L. Q. No. 4:- Can you explain why you interpolated the certificate which was signed by 4 doctors including CDMO, Bhadrak?

Ans: I cannot explain.

Q. No. 5:- Was not it desirable to obtain the consent of other three doctors before cutting and putting tick mark and making interpolation on an already prepared public document?

Ans: I should have obtained the consent and signature of all other signatories before interpolating the document." 11 The doctor has admitted to having made an interpolation in the disability certificate. The above evidence indicates that the disability is temporary and not permanent. The Doctor admitted that the disability certificate indicated a tick mark on the word 'permanent' by mistake. He further stated that the disability in the present case was likely to improve.

12 Having regard to all these facts and circumstances, we find merit in the contention that the claim for compensation on the basis that the disability was permanent was clearly not established. There was no basis to award an amount of Rs. 20,75,700/-. The Tribunal has awarded an amount of Rs.

2,09,622/- towards medical expenses. We accept the figure of an annual loss of income of Rs. 79,877/-. The disability being of a temporary nature, we award compensation of Rs. 5 lakhs towards loss of income. We allow compensation of Rs. 2 lakhs towards trauma, pain and suffering. In addition, the claimant is entitled to medical expenses of Rs. 2,09,622. We are of the view that the ends of justice would be met by directing a payment of Rs. 9,10,000/- . The claimant shall be entitled to interest at the rate of 9 per cent per annum from the date of the filing of the petition. The insurer shall deposit the compensation along with interest before the Tribunal within twelve weeks which shall be disbursed to the claimant on proper identification.

13 For the above reasons, we set aside the impugned judgment and order of the High Court. Both the appeals are disposed of in terms of the directions issued above. There shall be no order as to costs.

.....CJI [DIPAK MISRA] .....

...J [A M KHANWILKAR] .....J [Dr D Y CHANDRACHUD] New Delhi March 06, 2018