

Karnataka High Court

Bajaj Allianz General Insurance ... vs Puttalingaiah on 26 May, 2011

Author: Subhash B.Adi

IN THE HIGH COURT OF ' KARNATAKA AT BABIGALORE
DATED THIS THE 26*" DAY OF MAY 20} 1
BEFORE

THE HONBLE MRJUSTECEI, SUBHASH 3.33;): i'

MISCELLANEOUS FIRST APPEAL NO.431t3/i20€3j3 "

QALV

MISCELLANEOUS FIRST APP15;:AL»--No.:i52?7"[J~2"r;nV8 i. 'V

IN M.F'.A.NO.ef1~819/2008

BETWEEN:

Bajaj Allianz. General

Insurance Co. Ltd.,

Divisional Office, NCL353, ? ;
Sri. Hari Complex, Seetha Vila"s.Road
Mysorew 570 024 1 . ..
By NO.105A, Cea1"s4P}a;éa, 3;._S'E1o:5r,"=
136, ResidenCy«*R0adf_.5;'. 'V __

Banga10re--~ 560 025. "

By its Manag€:r."=._ =:.,__ _ _ = ~ .. APPELLANT

(By Sri. 0:'\$\\Iaf_Lc:217V1V, M _ " ')

AND:

_ V 1 . Fgiiaialingaiéthé H V'

. . , ,3\$E..+.)7%ars" ' ----- ~ "
V ' V. Sfo Nnéggwda @ Guddigowda
* j}*Eu1'i'igéMr\$: 'pg4ra}, M13. Halli Post
'MaCi':iil;j_tq,'V'\$\\,~éi'andya Dist;

2, "'\$:::K,.:;me'sha,

M33013,
.A [LS/okiemchaiah
V V 2.5, Lakshmanaiah Redd}? Building
' Basavanapura, Barmerghatta
Barzgaicsre ~ 560 £383 .. RESPQNQENTS

u SEEEL Pfaseetha C2, Aév. far R}: R2 Serveé}

JUDGMENT

These two appeals arise out of the judgment "5..VV:V'£1_(:{\$'t'____iV1;1_ M.V.C.Ne.158/2007' dated 28.12.2007men the~'i::e:"1jjo{"*2~iZ1.A5c,fi*.;u,7- Maddur.

2. M.F.A.No.43i9/2008* is4&V"."bj;I 2 M.F.A.No.2527/2008 ie by the iviasiiiquestioned the judgment and award liability and quantum of compensation has sought for enhancement of c;on5ipe'iisation. --.

3. The faet\$*»vieae1irig'tothese apfjealseéife: The e_ia,irnant eiivstainecigrieyousi injury in a road accident that oeeui?'ed_ abnut 3.30 p.m., he was moving on the iefi isidieieofi Maddur~i\Iaiavalli road near Sushee1g1I1inia's 'V i'z1n%:1', '1 a'V'Bnjaj Disenvery meter bike bearing : 'v'._Nn;I{A'4i5i/E'K4rfiQ38 eainew in a rash and negliigent manner and finished uijhe.:~*eIaimant, as a result of which, he feii down. i he shifted to Maddur Government Hespitai, from " .i_h'e1'e he shifted in KIMS Hespitai, Bangiaore. He was treated as inpatieni fer about three months. '-7i7he:'eeii;ier aiso he was under ireainieni. F :31' the injury, he was "--4.Ve\$ìVeì'e1:eei and {he Deeier has epineé ihai {he eiairniané, has beeozne pa\$'2;;;:2ie\$'ie ané has ins: seneaeíen give? heih {he ieweì" insureii " L.

_ 4 _ limbs and as a result of which, he cannot sit or stand on his own. He has opined that there is 100% disability. The 'l'ribu__rial on appreciation of the evidence held that the el21ir:1ant is entit-lel(l_ for Compensation of Rs.l5,l5,=f\$~23/-- with 6% unsatisfied with the same has Sought for»errhahtiemerttl"whereas;'V. the insurer had challenged the same thee grolt:.r1'd.'of well as on the quantum of eompe'r1sa_tion." V'

5. Sri.O.Mahesh, learned Colineel appearifighw-fo□éhel insurer submitted that, the accideftt, p.m. on 6.2.2007 on Maddi;r~Malayol'tA._ro.étet»A}Sjoeheelamma's land.

The claimant was; to: 'at 6.30 pm. and the complaint by the brother of the elaimant.:vVhV';lliou:gv.ih_v evidence has stated that, he was ;:§L:e£1t¢ Hospital, no records are produced to Show ae'V--_to7ybv1"1~:{lt was the nature of injury and the accidehtgv-----E-"is only at 8.30 pm. when the claimant VX3738' Hospital at Bangalore, it is mentioned as RTAA certificate - EXPB does not even hear the Vehicle' :3.trrr1ber, place of occurrence or any details as regard to éteejelertt, As an after thought, brother of the claimant has I' 3 eomplaiht on 8,2.2i3(?)?. The Complainant; M brother of the

7.eEa.irr1a:zt; though has giver: the ntzroher of the vehiele thvoiveet in the aeeiderzt as Kéy□ ;' its the ez:3r:2\$Ea\$;r:t_ 'oar; he has not A 3 ..

given the same number to the hospital. It has come in the evidence that the claimant was taken to the hospital at Bangalore by the eemplairiant, the hoepital though has 111ent,ionedV--ae RTA case, but has not treated as MLC nor has informeet The brother of the Claimant eoutd not have ihfomhing

the hospital authorities as 'egard~' _ 'to_ riatti':e'i'v.ofV ' ; accident and the vehicle involved. xfiactithiat not bear the vehicle number, faeethat dated V 8.2.2007 and further, the spet~it1ah.aza1;' 'is.._HpVrepared on 19.2.2007, the seizure maha1:7Ja1= on 19.2.2007, in the seizure mahazar' it of the vehicle brought the the was seized by the Police, it the owner came and produed:'the--_ these documents, he submitted that, it creates' seridus aidsito whether the scooter referred to _ in the'»(:.§}:3'i*i1p1aint Wasiifealijg invoiwed in the accident, if the scooter vihx<t31t}ed,_h:□Qthing prevented the brother of the claimant to trif:)t*tt:_ authorities and file a eompiant immediately eh the'«..sa:~_ie' He further submitted that, PWQ ~ Doetez' is an it Surgeen, he is not a eempeteht Deeter to speak. the The hospital reer□ehewe that the etaimant has ,:§:_if_§§ered paraplegia aha it eztyt shame that he has Zest seneatieh " ~31} the §}{?:t°tf§{}Y2 et" the héidjgg pa1*tteu}at'§}; teeter ttmht, there is no _ 5 _ 100% disability. Doctor - PW~2 has also not stated as to on what basis he has determined the disability at 100'3/:s an<iV.-'-*i1i*ther submitted that RTC produced at Exs.P1? to P32, stand in the name ef the elaintant. The ine:_jnf'1eV.eeifti'fieate*. produced at Ex.l3'i6 does not prove the"'ineen:€_e Even assuming that the Claimant has 'sni"iie:fed plaraplegia;vl'l_it.tl:ces not mean that there is 100% disahiiliity" not there levssesf iheorne. L' as the lands could be c1i_ltiV'ateti_..nfi'th the Veithers. He further submitted that, the'*elloetet_ competent doctor, his evidence eught_ 'i1et the Tribunal. He relied on the that, PW~1 in his evidence has to Macldur Government Hospital iavanel -- was taken to KIMS Hospital, Bangalore, lt*._eLwever;, are produced tn show that the claimant was tak'en_lto1lvIa:ldur hospital. If really he was taken to and tteated, the claimant could have produced scmgie□leeeiineitsand it would have revealed the truth as to whether the' sustained by the elaimant was on account of aeeicent or net.

V V 6, As far as quantum of compensation is concerned, he ____":.snh;nitted that, the Tribunal has erreneeusiy awarded higher Weenipensatisn even azithetzt due eegard to the eviéenee en reeeré ans snhniitteé that the inveivenien: at the vehicle has set been W 7 , proved by the claimarit, as such, the insurer cannot be hel_r:1__ liable to indemnity the Compensation.

7'. On the other hand, learned Counsel appegzarihg Claimant submitted that. PW-i in his evidence has he, was admitted to Maclclur Heepital iIiiti;e'tll}, '§_:lt3't::§?.'et'tiS§i;' of: sf injury? he was immediately shifted ta Bangalorie T.':'1'I1"Cl théit how he was brought to Bangalorelrleepital. li"'. '_lV!2 in hie evideriee has eategerieally 'jS'tett;ed_."thettt-Itjelletii mant □ves éttimitted to the hospital on 6.2.2007: it t'y;r;§\$1'_v1.injur:es i.e., (1) compression fra<§:t::itet_'of u with spinal cord eompresiori ltetati' paraplegia with bowel and and the contusion were C€)Y1fiI'II1€(:ll"Qf1 was operated on 15.2.2007 with deCompi7ese.ioh. of " stiinal cord and posterior spinal instrumentetien atidiVv_stahilitzation with Steffi instrurrietitatori '~;,1nde::_, genleralétilanaesthesia. The patient was discharged on ariviée to sit with K.T.Brace more around in wheel chair, "§a§§:ei'\8;...tTi€:»V€1fr1€I1'tS of the both lower limbs and bowel, " -hletclder EiI1§i:baCk Care, Patient was eoiriirig for follow-up cheek _ l "tipl.AA3.e,eitpatier:tt He epiried that there is iOO% disahiiti; ta the .____"§érhel§;e body.

.§{V€lg-

8. Learned Counsel for the claimant also relied en the observations made by the learned Judge ef the Tribunal in the Course of reenrdiiig the evidence of PW--l. Learned Qeirzinsel submitted that, the

Tribunal has Observed that the gas not in a position to give his evidence by entering ___int"-:2. th_e"*wiitneeis box as he was brought an stretcher bygfixse neesensi.' Sirieevvhe was not in a position to sit or stand. he Was"-pernitteç;l"vtC' gix:e"vhis.t evidence by lying on the stretcherbeiere the'--enurt.;i_ = 'l:'helVVas}l;)ect of' claimant was taken to Ma.d:1}ir notlbeenlehalleiiged in the <:ross~e>«:a1:nination. the Complaint is concerned V" that, after the accident, his _l\$ç to the Bangalore hespital ::\$:mn1eriViahtely*-adhritted and because of the serious nature' vtreatrnt was given to PW~1. in this prneess;,__there' 'delay in filing the complaint. VNeVerth_ elesie., after tiays of the accident, Complainant ~ A'~elainiant'sbretgher went tn the Police Station and filed a eenplaint as" he has stated that, his brother sustained it ggriexggiig en aeeennt of rash and negligent driving ei" it :v.v4A4"se'Q:)te%r bearing Nn,l<'A~5l/K4238 and he was attending to his hn3th'e:%,A'las his brether had last sensatinn in bath the legs and as M there was a éelay in filing the complaint, taken only Rs.7'G\$Ooo/~.

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9. As far as compensation is Concerned, learned Counsel for the claimant submitted that, PW~1 in his evidence has stated that, even after the operation, he cannot stand, he eaifnoteven control urine, urinary pipe is fixed and the same""h'a~s__l""t:o.__lee changed daily by going to Madclur Gevernment in a week he goes to KIMS Hospital,::pl3angalore_: treatment as outpatient. He hires _1uggage'a..uto 't\$):.ll'f.El\%f;l'. Helostg the sensation in both the legs. got acres land, the entire agricultural work wa3._&_Contro1l'eti:' said land he has grown paddy, tender Coconut business apart ls-usiness. He has grown sugarcane disability, he is not in a position tQ.euli_it}ate Vl.ar;tlg onaeecount of which, he has lost the ineorfgg, r ' submitted that, though the Tribunal hasVV"aeCeptecl ::lisability at 100%, that the Claimant requires;pernnanehtassistanee to attend to nature Call and day-J A'~i;_o--.i:la3;,, aetlivi/'itie.sv;"still has not appreciated the cost and also future nietliealpe>spei1ditui'e and has awarded meager compensation on V these heads.' "As far as income is concerned, the inoorne of the it ""l:v"".4A"clgaimant "not less than Rs.liOo,000/- per anhurn, but the % E:

it 53;»! I E» :5

13. As far as vehicle number is concerned, claimant himself has stated that, the vehicle, which hit him, is hearing No.KA~5i/K4238. it is not the ease of the insure4ri~.iii.e_t~._ihe motor eyele involved in the accident was heiienging hie.' person and there was eoiision. In turnpihe evidence shows (her , the vehicle belongs to a person in Bangaie.-i*e., 3 Ji:siA.beea"nse ti"T;€], '€ is a delay in filing the eompiairzi,-.ii canriei be thatiheie.

claimant has not suffered accident involving the vehicle in other evidence led or shown by the insurer. if is appreciated, PW~1 has " vihrnrnediately after the accident, he Hospital from where and that aspect of the matter is ieross-examination of PW~1. Prima facie it_shoWs'~ih::ii_the'=_ae'eieeni occurred near Maddur. The PWA-2 ~x'D'oe-tor clearly shows that he had treated the 'eaiarneitei evidence, he has stated that the ciainnani: was inpei□eni, operated and has suffered paraplegiai iess of iesensatienkiri heth the legs, he has been advised is move on wheei eannei sit or stand er Walk. This is fortified by the ____ "'i.ehsei'vaiioen hf ihe iearned Judge

of the Tribunal} iha: PW-i W ié□ieiniani was V§3£'o{)'L£§%:'?i'§. en sireieher and {he iearneé Judge fesiin□ihei rzeiher he eeuiei sié; zier eeuie SiE§iE{f§ arié was eiiiweé {he give , l4 -

Having regard ta this evidence on record and having regard to the medical evidence showing that the elaimant hasulabeeome paraplegic and he Cannot stand and sit, in such ei;'e'u:iis.tah{_:es, the elainiant requires continuous treatment and..alS'Qa'V.person' attend to him. It is in these eireunistaneepls {the eVidehee_phas be appreciated and eornpensatien, has grantedt' iii. The Tribunal has aeepted that sthe evlairnanit has' become 100% disabled. New Atahat is the Contribution the claimant liave' the family and also to the agricultural work. only person to cultivate the llagjreatei' impact on the income of as er; 'the Cultivation, if it is cultivatedlthrcitigh;sg rhe then there would be some loss of :nt§c.::_1e.V stand in the name of the father QI.'_Y1oli. lheing .theh'sc>n",: the Claimant is entitled by way of "V's:ia:ev-la} athei*Vgise""tl'ie lands available to the family and his of agricultural work is essential for deriving _ 'income. if the service of the claimant is taken alexgen at l?sl.%%,500/- per month, the age of the Claimant being 34 "the" elaimant is entitled for Rs.8§64~,OGO/-- {Rs.4,500/- as against Rs. 10§50,GOQ/» awarded by the Tribunal. As 'afar less at aizieziitées granted by the 'l':*ibti:1al at Rs. ili.Q§,€30Q/~: pain aiad suilileringg at R.sil,§G£CiG€3f>: §l"<'11'iSp{ }l'°l£ilLl{ }i"E charge at _ -

Rs.52,200/~, as the elairnant had hired luggage auto and the said person has been examined as PW~3; further the niedieai expenditure at Rs.i,O'?',i223/~ are not on the higher any amount of eorriperisation would not bring back' hisVV'gioi;;_"of his past life. As regard to the futurev-;rn'ed--i.oa1eéexpendiure,ffodod ' and nourishment during treatmehti addttendant. 2 compensation appears to be on ti1(i:4""I\T>_ \?x7€I' side.' _The that the V claimant was in hospital for aboututhree-,rnonths,_thereafter he had gone as outpatient and on treatment, compensation towards. attendant: and nourishment and further opinion, requires enhancement: " V _ 15," Consideriné g ' thensarnegml find that, instead of Rs.7oi0OOz/-~. medical expenditure, same is enhanced to 1;'(<I),QoA(A)--,/_'d--V'i~.';e., additional Rs.30,000/~; towards dvdatitenddaiiit '\rV\7}l'.i\$11v is inevitable and which is required to 'he' to go to hospital, he requires to engage a require additional sum of Rs.-4oi000/~.

Fnrtheér, ..io'oddand nourishment, ii' advised, requires another Hence, eiairnant is entitled for additional surn of iiowever, as against toss of future earning of ""vfaé.':oiso,000;-i the same is reduced to Rs.8i!E34ii3€3i3; '~. Henee, in nay ogiiniorr, it is just and &1}§3?G§}Ei8i€ is reducee the eorngierisation

-15'-

by Rs.1,01,000/~ i.e., claimant is entitled for Compensation of Rs.14,14.51~23/~ as against Rsi15¥15,='--}23/~ awarded by the Tribunal wiih interest the/ream.

Ae:::<:ording1y, M.F.A.Nc:>.4~319X2{ }O8 filed by allowed in part. M.F.A.No.2527/2008 filed dismissed. The amount in deposit be i.1_"a11;<;fe:f:'éd_io._th.éTribun_a}'. 333% KNM/~