

A. Robert

Vs

United Insurance Co. Ltd.

Civil Appeal No. 4738 of 1998

(S. B. Majmudar, D. P. Mohapatra JJ)

27.08.1999

JUDGMENT

S. B. MAJMUDAR J.:-

1. We have heard learned counsel for the appellant claimant as well as learned counsel for Respondent 1 Insurance Company in this appeal. The name of Respondent 2, who was the insured of the motor vehicle, has stood deleted and the SLP against him has been dismissed by order dated 14-9-1998 on account of absence of service to him. Hence, the question of statutory liability of the Insurance Company survives for our consideration.

2. The appellant at the age of 15 years met with a serious motor vehicle accident caused by the motor lorry belonging to the insured, the original Respondent 2 which dashed against the appellant at Shivaji Nagar in Bangalore City on 17-6-1984. He suffered from various injuries which were detected as under:

- i. fracture of left humerus;
- ii. lacerated wound on the middle aspect of the left knee 3" wide and suspected fracture of pelvis; and
- iii. cut wound over the lateral aspect of right knee  $\frac{1}{2}$ " x  $\frac{1}{8}$ ".

3. After the first aid, the appellant was referred to the Orthopaedic Wing of Bowring Hospital. One Dr Hafeezullah treated the appellant and confirmed that the appellant suffered fracture of left humerus. The said fracture was reduced on conservative lines. The appellant's left hand was put under a plaster cast for six weeks. On account of the various injuries suffered by him due to the aforesaid motor accident, the appellant filed a claim petition under Section 110-A of the Motor Vehicles Act, 1939. The claim for compensation was for Rs 2,83,000 against the insured, the driver of the motor vehicles as well as the Insurance Company, the sole remaining respondent in the present case.

4. The Tribunal on diverse heads after hearing the parties, granted a compensation of Rs. 99,000 taking the view that the accident was caused due to rash and negligent driving of the insured lorry. The appellant in search of higher compensation filed an appeal in the High Court. The Insurance Company, the respondent herein filed cross-objections. The High Court substantially confirmed the award of the Tribunal but by correcting an arithmetical error reduced it to Rs 96,500. The appellant claimant has filed the present appeal for grant of higher compensation in the light of the injuries suffered by him.

5. Even apart from the question whether the Insurance Company could have filed cross-objections challenging the quantum of compensation as granted by the Tribunal, we find that for the accidental injuries caused in the present case, the Insurance Company's statutory liability under the 1939 Act would be Rs 1,50,000 at the highest as the insured is now not a party respondent before us. The only question which survives for our consideration is whether the said statutory liability of the Insurance Company is required to be fully foisted on the respondent.

6. In order to decide this question, we have to look at the injuries suffered by the victim of the accident. The question of negligence of the lorry driver is no longer open for consideration in this appeal by the claimant and the Insurance Company also cannot have anything to say on this aspect. Therefore, proceeding on the basis that the accident was caused by rash and negligent driving of the driver of the offending motor lorry we have to see as to what is the appropriate compensation which could be awarded to the appellant. The Tribunal has noted, amongst others, that the appellant suffered from the following injuries:

1. Fracture of pelvis.
2. Bladder was distended.
3. Fracture of left humerus.

7. It has been further observed in the light of the evidence of PW 1 that on 18-6-1984 he did the suprapubic cystotomy emergently. He inserted a catheter over the urethra for the purpose of discharge of urine. On 8-2-1985 under general anaesthesia urethroplasty was done by PW 1. The claimant was then examined by him as he was complaining of burning sensation while passing urine with a little difficulty. Subsequent X-rays taken showed that there was evidence of pyelonephritis on the right side i.e. inflammation in the right kidney. It was also found that there was stricture at the bulbo-membranous region. The witness deposed that on 8-2-1986 dilatation was done under general anaesthesia. Because of the strictures referred to earlier the claimant has to undergo repeated dilatations throughout his life. On account of the stricture over urethra inflammation would be caused whenever there is blockage of urine. It has been further observed by the Tribunal that the claimant will have difficulty while passing urine throughout his life. If the urethra is affected, sexual life of the claimant will also be affected in future. It was also pointed out by PW 1 that the claimant has to undergo dilation once in a month. All this evidence has stood well sustained on record. The evidence of PW 1 revealed that because of the injuries suffered by the claimant, a body of 15 years, his future life is seriously affected including his sexual life. These are serious injuries which required appropriate compensation to be awarded on the head of pain, shock and suffering. The Tribunal granted on this head only Rs 44,000. In our view, looking at the injuries which are permanent in nature suffered by the claimant and which have a permanent adverse effect on this future healthy life including sexual life, an additional amount of at least Rs 56,000 was required to be granted to the claimant on the head of pain, shock and suffering so as to make it Rs 1 lakh instead of Rs 44,000. The High Court unfortunately has not considered the gravity of the injuries suffered by the claimant as established on record and, therefore, has confirmed the award of Rs. 44,000 on the head of pain, shock and suffering. One it is increased to Rs 1 lakh, the total amount awardable to the claimant would work up to Rs 1,52,500. However, the respondent Insurance Company's statutory liability is confined to Rs 1,50,000. We therefore, confine the award to Rs 1,50,000 only which will include compensation already allowed on all remaining items of expenditure on nourishment, medical treatment, travelling expenses and for actual injuries and disablement suffered by the claimant.

8. The appeal is accordingly allowed to the aforesaid limited extent by increasing the award of the

Tribunal and as confirmed by the High Court to a total amount Rs 1,50,000 instead of Rs 96,500 as awarded by the High Court by the impugned order. The awarded amount of Rs 1,50,000 will bear 6 per cent interest per annum from the date of the claim petition till payment. Whatever amount the Insurance Company may have paid pursuant to the impugned award, will naturally have to be adjusted towards the awarded amount and the respondent Insurance Company will have to pay the balance amount with requisite interest at 6 per cent thereon from the date of application till actual payment to the claimant. The respondent Insurance Company is directed to deposit in the Tribunal the balance amount payable pursuant to the present order within eight weeks from today. The deposited amount shall be paid to the appellant on the identification by the Tribunal. There will be no order as to costs.