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S. THANGARAJ

v.

NATIONAL INSURANCE CO. LTD. REP. BY

THE BRANCH MANAGER

B

(Civil Appeal No. 3152 of 2017)

MARCH 06, 2018

[DIPAK MISRA, CJI, A.M. KHANWILKAR AND

C

DR. D.Y. CHANDRACHUD, JJ.]

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Motor Vehicles – Disability sustained as a result of motor accident – Appellant-victim, a loadman engaged by a building contractor, was 26 years old at the time of the accident – Tribunal determined the disability at 70%, and granted compensation of Rs 11,27,359/- with interest @ 12% per annum – High Court reduced the interest awarded by the Tribunal to 7.5% per annum while maintaining the award of compensation – On appeal, held: Injuries sustained by appellant are serious – As a result of multiple fractures sustained by him, appellant has lost complete sensation below the abdomen – Evidently he cannot work anymore as loadman – In the circumstances, assessment of disability at 70% is incorrect – On a realistic view of the matter, the nature of the disability must be regarded as being complete – Compensation granted by Tribunal accordingly enhanced by Rs 3,00,000/- — Appellant entitled to interest @ 9 % per annum, on total amount of compensation (instead and in substitution of 7.5% per annum awarded by the High Court).

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The appellant sustained serious injuries in a motor accident. The Tribunal computed the compensation payable to the appellant on account of the loss of income occasioned by the disability at Rs 9,72,000/-. However, on the basis of the opinion of the doctor that the disability was to the extent of 70%, the net amount was determined at Rs 6,80,400/-. After taking into account the medical and other expenses, the Tribunal awarded a total compensation of Rs 11,27,359/- together with interest of 12% per annum. The High Court maintained the award of compensation but reduced the interest component from 12% per annum to 7.5% per annum.

In appeal to this Court, the appellant pleaded that the High Court has not assessed the compensation in a correct manner. A

Allowing the appeal, the Court

HELD : 1. The submission of the insurer that there was a concession on the part of the appellant before the High Court which must bind him, cannot be accepted. The statement made by counsel for the appellant before the High Court was on whether the Tribunal had granted just and reasonable compensation. Whether in fact the compensation which has been granted is just and reasonable cannot hence be construed as a matter of concession and it would not preclude the appellant from raising a contest in these proceedings. [Para 7] [15-D-E] B C

2. On perusing the record it is evident that the injuries sustained by the appellant are indeed of a serious nature. As a result of the multiple fractures sustained by him, the appellant has lost complete sensation below the abdomen. Evidently he cannot work anymore as loadman. In these circumstances, the assessment of disability at 70 per cent is incorrect. On a realistic view of the matter, the nature of the disability must be regarded as being complete. In the circumstances, there is no reason or justification for the deduction of an amount of Rs.2,91,600/- by the Tribunal (Rs. 9,72,000/- minus Rs 6,80,400/-). The amount so deducted must be restored and is rounded off to Rs. 3,00,000/-. Moreover, the appellant is entitled to interest at the rate of 9 per cent per annum from the date of the claim petition. [Para 8] [15-F-H] D E F

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3152 of 2017.

From the Judgment and Order dated 05.06.2012 of the High Court of Madurai Bench of Madras in Cross Objection No. 24 of 2012 in CMA (MD) No.499 of 2008. G

R. Nedumaran, Adv for the Appellant.

Ambhoj Kumar Sinha, Adv for the Respondent. H

A The Judgment of the Court was delivered by

DR. D.Y. CHANDRACHUD, J. 1. Delay condoned.

B 2. The claim arises out of a disability sustained as a result of a motor accident. The Tribunal granted compensation to the claimant in the amount of Rs 11,27,359 together with interest at 12 per cent per annum. The High Court has simply reduced the interest awarded by the Tribunal to 7.5 per cent per annum while maintaining the award of compensation. The claimant is in appeal.

C 3. The accident took place on 1 August 2004. The appellant was 26 years old at the time of the accident. The accident took place when the appellant was a pillion rider on a motor cycle ridden by one Edwin. As the motor cycle was proceeding from Marthandam, a lorry bearing Registration No.TN 69 Z 2979 dashed against it. The lorry thereafter dashed against an electric pole and collided with a residential property resulting in the death of an occupant of the house. The appellant sustained serious injuries in the accident. The injuries have been described in the evidence of PW 4, the doctor at the hospital where the appellant was treated. The appellant sustained a fracture in his spinal cord, right leg and right hip bone. As a result of the accident the appellant has no sensation or movement in his legs. The Tribunal accepted the evidence of PW 4 and observed thus:

E “Moreover PW 4 the doctor has stated in his evidence that below the abdomen of the petitioner, there is no movement and sensation in two legs...”

F The Tribunal determined the disability at 70%, on the basis of medical opinion. The Tribunal computed the compensation payable to the appellant on account of the loss of income occasioned by the disability at Rs 9,72,000. However, on the basis of the opinion of the doctor that the disability was to the extent of 70 per cent, the net amount was determined at Rs 6,80,400. After taking into account the medical and other expenses, the Tribunal awarded a total compensation of Rs 11,27,359 together with interest of 12 per cent per annum.

G 4. Before the High Court, the insurer filed an appeal against the award of the Tribunal. The appellant filed cross objections. The High Court has reduced the interest component from 12 per cent per annum to 7.5 per cent per annum.

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5. Learned counsel appearing on behalf of the appellant submits that the High Court has not assessed the compensation in a correct manner. There was – it has been urged – no justification to compute the disability at 70 per cent. The appellant was at the relevant time a loadman engaged by a building contractor. The nature of the disability involves a complete loss of sensation in both the legs. Hence, it would not be possible for him to work as a load man. Moreover it was urged that there was no justification to reduce the award of interest to 7.5 per cent per annum and the award of the Tribunal on interest should be maintained.

6. On the other hand it has been urged on behalf of the insurer that the High Court was justified in maintaining the award of compensation since it was urged on behalf of the appellant-claimant at the hearing before the High Court that the Tribunal had granted just and reasonable compensation. Learned counsel supported the judgment of the High Court.

7. Having perused the order passed by the High Court, we are not in agreement with the submission of the insurer that there was a concession on the part of the appellant before the High Court which must bind him. The statement made by counsel for the appellant before the High Court was on whether the Tribunal had granted just and reasonable compensation. Whether in fact the compensation which has been granted is just and reasonable cannot hence be construed as a matter of concession and it would not preclude the appellant from raising a contest in these proceedings.

8. On perusing the record it is evident that the injuries sustained by the appellant are indeed of a serious nature. As a result of the multiple fractures sustained by him, the appellant has lost complete sensation below the abdomen. Evidently he cannot work anymore as loadman. In these circumstances, the assessment of disability at 70 per cent is incorrect. On a realistic view of the matter, the nature of the disability must be regarded as being complete. In the circumstances, we find no reason or justification for the deduction of an amount of Rs 2,91,600 by the Tribunal (Rs 9,72,000 minus Rs 6,80,400). The amount so deducted must be restored and is rounded off to Rs 3,00,000. Moreover we are of the view that the appellant is entitled to interest at the rate of 9 per cent per annum from the date of the claim petition.

- A 9. The appeal is accordingly allowed by enhancing the compensation granted by the Tribunal by an amount of Rs 3,00,000. The appellant would be entitled to interest @ 9 per cent per annum, on the total amount of compensation (instead and in substitution of 7.5% per annum awarded by the High Court). The differential amount shall be paid over to the appellant within a period of eight weeks from today.
- B There shall be no order as to costs.

Bibhuti Bhushan Bose

Appeal allowed.