**Abdul Samee Vs. Mohd. Ishaq**

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**SooperKanoon Citation** : sooperkanoon.com/369831

**Court** : Mumbai

**Decided On :** Dec-08-2003

**Reported in** : III(2004)ACC574; 2004(2)ALLMR798

**Judge** : S.T. Kharche, J.

**Appellant** : Abdul Samee

**Respondent** : Mohd. Ishaq

**Judgement** :

**S.T. Kharche, J.**

1. Heard.

2. In these two appeals common questions are involved and, therefore, the same are being disposed of by this common judgment.

3. The Tribunal awarded the compensation of Rs. 22,000/- with interest @ 15% per annum from 9.6.1987 till realisation to the claimant-injured by name Abdul Samee Abdul Rehman in Claim Petition No. 30/1988 filed by him under Section 110-A of the Motor Vehicles Act, 1939 (for short, the Act). This award has been challenged by the claimant on the ground that compensation awarded to him was neither just nor reasonable and fair in this First Appeal No. 834/1991. Whereas the Tribunal made the owner of the scooter said to have been involved in the Accident

liable to pay compensation and the same is challenged by the owner in the First Appeal No. 409/1991 on the ground that the scooter was not at all involved in the Accident.

4. Brief facts are as under:

The Accident occurred of 3.12.1986 on Karnptee Road near Kumbhare's building of Ganpati at about 5.00 p.m. The claimant was riding on the bicycle and was going towards his house oh the relevant date and time. The scooter bearing No. MCG 6042 was; being driven in a rash and negligent manner by its driver and as such it had given dash to the claimant from rear side causing him grievous injuries like fracture of left leg, etc. The claimant was immediately moved to the Central Railway Hospital where he was indoor patient for some period. He underwent the medical treatment and is said to have incurred medical expenses of Rs. 3,480/-, travelling expenses of Rs. 6,000/- incurred by his family member for attending the hospital. It is contended that the age of the claimant was about 51 years at the time of Accident and he was employed in the Railway Department and drawing salary of Rs. 2434/-. He had claimed compensation of Rs. 30,000/-on Account of injury sustained to his leg, Rs. 10,000/- as compensation for pain and sufferings. He has also claimed Rs. 12,960/- as special diet and so on. The total claim put forth by him was to the tune of Rs. 1,00,000/- which was inclusive of pecuniary as well as non-pecuniary damages.

5. The owner of the motor vehicle by name Mohd. Issac resisted the claim on the sole ground that the scooter was not involved in the Accident and, therefore, he is not liable to pay the compensation.

6. The parties adduced the documentary as well as oral evidence before the Tribunal and on hearing the learned Counsel for the parties, the Tribunal has recorded the finding that it is Mohd. Iqubal who is the brother of Mohd. Issac was driving the scooter on the fateful day in a rash and negligent manner, causing grievous injuries and disability to the extent to 24% to the claimant. The Tribunal, on appreciation of the evidence also was of the view that award of Rs. 12,000/-on Account of loss of salary and Rs. 10,000/- on Account of pain and suffering which worked out to Rs. 22,000/- in all would be just, fair and reasonable and, therefore,

he passed the award making the owner of the motor vehicle liable to pay the same as mentioned above and it is this award which has been challenged in these appeals.

7. The learned Counsel for the appellant claimant contended that Abdul Samee had sustained 24% disability and this fact has been duly proved through the medical evidence of Dr. M.G. Gupta (P.W. 5). He contended that the claimant had sustained fracture of left lower tibia lower 1/3rd and the claimant was required to take voluntary retirement because of the disability sustained by him and hence there was a considerable monetary loss of salary. He contended that the claimant was drawing salary of Rs. 2,134/- and as such the Tribunal ought to have awarded him a reasonable compensation for pecuniary and non-pecuniary damages. He contended that the award of Rs. 22,000/- in all is grossly inadequate and unreasonable amount of compensation and cannot be sustained in law and, therefore, the impugned award deserves to be modified by enhancing the amount of damages to the tune of Rs, 1,00,000/-.

8. The learned Counsel for the claimant contended that the Tribunal has recorded the finding that the scooter owned by Mohd. Issac bearing No. MGC 6402 is involved in this Accident and the findings are based on the evidence adduced on record. He contended that it was the driver of the scooter who had taken the injured to the Railway Hospital for the purpose of medical treatment and at that time he had given his name as Mohd. Rafique to the doctor which was recorded in the hospital record. He contended that subsequently it revealed that the name of the driver of the scooter was Mohd. Iqubal who is the brother of the owner Mohd. Issac and, therefore, the police have criminally prosecuted Mohd. Iqubal for the offences punishable under Sections 279 and 338 of the Indian Penal Code. He contended that Mohd. Iqubal did not examine himself as a witness and, therefore, adverse inference will have to be drawn against him. He contended that, therefore, the involvement of the scooter in the Accident has been duly proved and the findings of the Tribunal on this count are not liable to be disturbed.

9. The learned Counsel for the owner of the scooter contended that in fact the scooter bearing No. MCG 6042 owned by Mohd. Issac was not on road on the

date of Accident and it was locked in the godown. He contended that the First Information Report was lodged by the claimant himself after about 5V4 months and, therefore, it cannot be read in evidence for fixing the liability on the owner of the scooter, in absence of any evidence to show that the scooter was involved in the Accident. He contended that the eye-witness examined by the claimant also do not know as to who was driving the scooter on the fateful day. He contended that though Mohd. Issac has been criminally prosecuted by the police, it did not follow that he is the same person who was driving the scooter at that time. He, therefore, contended that the impugned award passed by the Tribunal holding that the scooter is involved in the Accident is unsustainable in law.

10. The learned Counsel for the owner of the motor vehicle further contended that the claimant did not sustain any kind of permanent disability within the meaning of Section 92-C of the Act. He contended that the claimant was declared fit on 14.6.1987 to join his duties by Dr. M.G. Gupta, but the claimant had chosen to take voluntary retirement and, therefore, According to the learned Counsel, the damages on Account of loss of earning capacity need not be granted. He contended that the Tribunal was perfectly justified in awarding the total amount of compensation to the tune of Rs. 22,000/- and there is no reason as to why the finding should not be confirmed.

11. I have carefully considered the contentions canvassed by the learned Counsel for the parties. The contention of the learned Counsel for the claimants that the said vehicle was not involved hi the Accident cannot be Accepted because admittedly the Accident occurred on 3.12.1986 and the claimant Abdul Samee had sustained grievous injury in the said Accident after the scooter had given dash to him. The driver, who was driving the said scooter on the relevant date and time himself had taken the injured to the doctor and the name of that driver was recorded in the hospital record. At that time the driver had given his name as Abdul Rafique but subsequently it was revealed that it was not Abdul Rafique who was driving the vehicle and in order to save his skin, he had given his false name to the doctor. The Tribunal observed in para 10 that Out-patient Department card clearly shows that the claimant was admitted at 6.00 p.m. on 3.12.1986 and this card of out-patient department also bears the scooter number and name of one

Mohd. Rafique. Obviously, the O.RD. card was in the file of the case papers which was brought by Dr. Gupta at the time of his deposition. This observation of Tribunal would make it clear that the scooter number was correctly recorded in the O.P.D. card and it does not make any difference as to whether the name of the driver was either Abdul Rafique or Mohd. Iqubal.

12. What is relevant to note is that police have criminally prosecuted Mohd. Iqubal for the offences punishable under Sections 279 and 338 of the Indian Penal Code, etc. and it is he, who is facing the criminal prosecution on the allegation that he had driven the scooter involved in the Accident in rash and negligent manner causing grievous injuries to the claimant. Therefore, the involvement of the scooter in the Accident has been duly established as there is no reason for this Court to take a different view of the matter.

13. Now, this Court has to take into consideration as to whether the quantum of compensation awarded by the Tribunal is just and reasonable. In that context, it may be useful to refer the decision of the Hon'ble Supreme Court in the case of R.D. Hattangadi v. Pest Control (India) Pvt. Ltd., : [1995]1SCR75 , wherein it is observed that; 'broadly speaking while fixing an amount of compensation payable to a victim of an Accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant towards: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (ii) other material loss. So non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e., on Account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on Account of injury the normal longevity of the person concerned is shortened; (iv) inconveience, hardship, discomfort, disappointment, frustration and mental stress in life. When compensation is to be awarded for pain and suffering

and loss of amenity of life, the special circumstances of the claimant have to be taken into Account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation or non-pecuniary loss is not easy to determine but the award must reflect that he different circumstances have been taken into consideration.'

14. It is settled law that while awarding the compensation, the Court has to consider pecuniary and non-pecuniary damages. The claimant is said to have sustained 25% disability. But, the evidence of Dr. Gupta (P.W. 5) would reveal that the claimant had sustained fracture to his left tibia to lower 1/3rd and he was declared fit on 14.6.1987 and he had no permanent disability or partial disability when he was declared fit for his original job. Even the evidence of Dr. Rajendra Chandak (P.W. 4) would reveal in the cross-examination that the disability noticed was to the extent of 25% at that time was temporary disability. The evidence of doctor further shows that the disability is likely to disappear in case of some patients and as per recommendations of Limb Department, he has certified the extent of disability. One thing is certain that the claimant has sustained disability to the extent of 24%, but it cannot be said that the claimant had sustained any kind of permanent or partial disability within the meaning of Section 92-C of the Act.

15. However, it appears that the Tribunal did not take into consideration grant of pecuniary and non-pecuniary damages and concluded by saying that Rs. 10,000/- can safely be awarded as compensation for pain and sufferings undergone by the petitioner and Rs. 12,000/- could be awarded on Account of loss of salary, making total award to the tune of Rs. 22,000/-. This award passed by the Tribunal deserves to be modified.

16. It is not in dispute that the claimant had obtained voluntary retirement w.e.f, 1.6.1998 and he was absent from his duties for about six months from the date of the Accident. He was drawing salary of Rs. 2,134/- as he was working as Junior Clerk. Hence, the Tribunal was justified in awarding the loss of salary to the extent of Rs. 12,000/-. Since the claimant did not establish that he had sustained any kind of permanent disability, he would not be entitled to claim any benefits of loss of earning capacity, because he himself was declared fit to join his duties after six

months, but he did not join the same and had taken voluntary retirement.

17. In such situation, in my view the damages could be computed as under:

Ax Pecuniary Damages:

1. Medical attendance: Rs. 1,000.002. Loss of earning of profit uptothe date of trial: Rs. 12,000.00B. Non-pecuniary Damages: 1. Damages for mental and physical shock, painand suffering, already suffered or likely tobe suffered in future: Rs. 5,000.002. Damages to compensation for the loss of amenitiesof life which may include a variety of matters: Rs. 2,000.003. Damages for inconvenience, hardship discomfort,disappointment frustration and mentalstressing life: Rs. 5,000.00----------Total Rs. 25,000.00----------

It is obvious that award of total damages of Rs. 25,000/- would be just, fair and reasonable in the facts and circumstances of the present case.

18. That takes me to consider the question of award of interest. The Tribunal has awarded the interest @ 15% per annum which, in my view was on higher side and in this context reference may be had to the decision of the Supreme Court in the case of Kaushnuma Begum v. New India Assurance Co. Ltd. : [2001]1SCR8 , wherein it is observed that: 'Now, we have to fix up the rate of interest. Section 171 of the M.V. Act empowers the Tribunal to direct that 'in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf'. Earlier, 12 per cent was found to be the reasonable rate of simple interest. With a change in economy and the policy of the Reserve Bank of India the interest rate has been lowered. The Nationalised Banks are now granting interest at the rate of 9 per cent on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9 per cent per annum from the date of the claim made by the appellants. The amount of Rs. 50,000/- paid by the Insurance Company under Section 140 shall be deducted from the principal amount as on the date of its 'payment of interest shall be recalculated on the balance amount of the principal sum from such date.

19. Having regard to the observation of the Supreme Court, it is clear that the award of interest @ 9 per cent per annum from the date f the petition till realisation would be reasonable and the legal representatives of the original claimant are held to be entitled to receive the total compensation of Rs. 25,000/-. The interest amount shall be calculated on the principal amount after deducting the amount of no fault liability as on the date of its payment and interest shall be recalculated on the balance amount of the principal sum from such date.

20. In the result, the First Appeal No. 409 of 1991 stands dismissed and the First Appeal No. 834 of 1991 is allowed and the award of the Tribunal is modified as mentioned above. In the circumstance, no orders as to the costs.