

Ravi Kumar Vs. Indian Textiles Cooperative Ltd. and anr.

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Court : Karnataka

Decided On : Jan-09-2003

Reported in : I(2006)ACC184

Judge : M.F. Saldanha and; M.S. Rajendra Prasad, JJ.

Appellant : Ravi Kumar

Respondent : Indian Textiles Cooperative Ltd. and anr.

Judgement :

M.F. Saldanha, J.

1. We have heard the appellant's learned Advocate and respondents' learned Advocate.

2. Through this appeal the appellant, who was 19 years of age and a tailor at that time and who was involved in the accident which took place at 5 p.m. on 16.9.1990 on National Highway No. 4, was injured and sustained injuries to his right hand, the main one being a crush injury. He was in hospital for 8 days. His own evidence is to the effect that he was unable to do his work for nearly 2 months. The medical certificate is produced, but, unfortunately, even elementary evidence with regard to the exact nature of handicap, if any, and the report of disability, if any, have not been established.

3. Times without number, this Court has expressed its most serious disapproval with regard to the manner in which these proceedings are conducted before the Tribunal. It is not only the cavalier approach but a down right unprofessional approach and considering the fact that the persons involved are either injured or that the claim is on behalf of the persons who have lost their lives, we expect a certain level of humanism to be displayed by the learned Advocates who take up these cases.

4. Every single piece of advice and every single instance of disapproval and even strictures passed by this Court in terms is literally like the water off a duck's back as far as the M.A.C.T. Bar is concerned. Instead of paying heed to the High Court orders these directions are being flouted with scant and total disregard and there is a flood of complaints regarding the non-receipt of compensation amounts wholly or partly by the beneficiaries. The time has, therefore, now come when this Court will have to administer a final warning that if we receive even the slightest report of professional negligence which is displayed in conduct of these proceedings, whether it goes to the question of leading evidence of the doctor or any aspect of professional duty, this Court will quantify the loss that has accrued to the party concerned, as a result of this negligence and the Court will haul up the person responsible for it and order the lawyer responsible to make good the loss. These are undoubtedly harsh orders, but they will be necessary in the interest of justice, because instances of this type are being regularly reported not only to this Court but to the Supreme Court also. The Government should consider amending the Consumer Protection Act, so as to bring into its fold this category of Advocates as such a step appears to be the only course left for prevention of professional misconduct. What we desire is the improvement in the state of affairs and the commitment to the client and to the professional duties as the Courts are legitimately entitled to insist on this.

5. Since, on every earlier occasion whatever the High Court has said, have been totally ignored, the Registrar General is directed to forward a xerox copy of this judgment to the Presidents of every one of the Motor Accident Claims Tribunal Bars in the State with a direction that our observations be brought to the notice of the learned Members of the Bar with a request that they take due heed to what the

High Court has asked them to do. Once learned Advocates are put on notice, there will be no scope for ignorance of these directives as the High Court would take a stringent view hereafter.

6. The present case is a classic illustration of professional misconduct. We are helpless in the matter of quantifying the fair amount of compensation payable to the appellant under the head of injuries as there is no material brought on record by the learned Counsel on the important aspect as to what extent these injuries actually have reduced his earning potentiality, as also, as to what is the condition of his right hand after the accident, whether it is completely healed or whether he lives with a lifelong disability is not forthcoming.

7. Respondents' learned Counsel has very rightly pointed out to us that while the law may entitle the appellant to just compensation, the law postulates that the compensation must be awarded on the basis of the evidence or material that could justify the figures in question. The learned Counsel is perfectly right and this is one of the reasons why we have to make these observations and sound the warning as indicated earlier.

8. The respondents' learned Counsel has emphasised one important aspect, namely, that even though the driver of the offending car pleaded guilty and was convicted, considering the admission of the appellant himself that there were two people on the bicycle, even though we have no evidence on record to indicate precisely how and under what circumstances the accident took place, this Court is entitled to draw an inference from the fact of double riding that cycle would have been to be rather unstable and if that is the case it is very obvious that the bicycle could not have been moving in a safe manner and in a straight line. It is an accepted position that when the bicycle is overloaded with two persons riding on it, that it would certainly be oscillating in a zigzag fashion and this could have been the obvious reason for the collision.

9. Under these circumstances, though normally we would have been inclined to disqualify the appellant from any compensation since there is no appeal against the order of the Tribunal we limit the quantum on the ground of contributory negligence to 50 per cent.

10. After hearing the learned Counsel for both the sides, we take cognizance of the loss of earnings for the period of two months. We also take judicial notice of the consequence of the serious injuries caused to the right hand and level of limitation of earning that it would result in for the future. We have also assessed the aspect of pain and suffering and aggregate of all these heads including aspect of disability which again has to be a matter of conjecture, we have added a sum of Rs. 1,000 because it has come in the evidence that, the bicycle in question was completely crushed. In the aggregate we assess the total compensation payable at Rs. 30,000 out of which we deduct 50 per cent leaving the figure of Rs. 15,000. The Tribunal had awarded a sum of Rs. 4,000, which stands enhanced by Rs. 11,000 by virtue of our order.

11. The respondents are directed to deposit the whole/balance of compensation payable with the Tribunal within an outer limit of 12 weeks from today. The interest that has been awarded is at the rate of 6 per cent per annum, we direct the enhanced rate of interest at the rate of 8 per cent per annum, which shall apply to the enhanced amount from the date of filing of the appeal until the date of payment. On receipt of the compensation amount, the Tribunal shall take necessary steps to disburse the same to the appellant.

12. With these directions the appeal succeeds and stands disposed of. The Registrar General to follow the directions indicated earlier with regard to circulation of this judgment. Parties to bear their own costs.