

Anil Kumar Vs. Sonpal and ors.

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Court : Allahabad

Decided On : Aug-28-1995

Reported in : II(1995)ACC648

Judge : N.L. Ganguly, J.

Appellant : Anil Kumar

Respondent : Sonpal and ors.

Advocate for Pet/Ap. : Mr. P.K. Saxena

Judgement :

N.L. Ganguly, J.

1. F.A.F.O. No. 313 of 1979 Anil Kumar v. Sonpal and Ors. has been filed by the victim injured in the motor accident which took place on 6.10.1972 by the truck No. UPO 877. The truck in question belonged to Sonpal, respondent in this appeal, who was also filed F.A.F.O. No. 292 of 1979 against the same judgment and order of the Tribunal F.A.F.O. No. 287 of 1979 has been filed by M/s. United India Insurance Co. Ltd. Successor-in-Interest to the British India General Insurance Co. Ltd. Since these three appeals arise out of the same judgment and award of the Motor Accident Claims Tribunal, they are taken up together. Heard Mr. P.K. Saxena, learned Counsel for the appellant and Mr. D.C. Pandey, brief holder of Mr. A. Kumar, learned Counsel for Sonpal respondent.

2. The facts of the case are not in dispute so far as the accident is concerned which took place on 6.10.1972 and the vehicle which was responsible for the injuries caused to the appellant Anil Kumar belongs to Sonpal & Harish Chand is also not disputed. The appellant Anil Kumar claimed compensation damages for the injuries received by him in the accident. Rs. 2900/- was claimed as general compensation damages and Rs. 6,000/- as expenses incurred for the treatment. The victim Anil Kumar at the time of the accident was aged about 15 years. His father was an Income tax payee. The victim in the accident got injuries and one of his leg bone was fractured. The victim was treated by Dr. K.P. Sri vastava, who was a Reader of Agra Medical College and was Bone Specialist. It has been stated by the said witness that the injured was treated in a private Nursing Home, Sarkar Nursing Home. X-Ray was done and revealed a compound fracture in his left leg. He also filed Bed-Head ticket and further stated that the operation was performed on 8.1.1973 at S.N. Medical College and he had one skin grafting of right leg. Another second operation was performed on the left leg and a steel rod was inserted because the bone of left leg was fractured at many places and it could not be treated without inserting a steel rod. The Doctor further opined that on account of skin grafting the upper skin of right leg of Anil Kumar has become normal but the leg has become permanently stiff. He further stated that on account of the insertion of steel rod, the left leg has also become abnormal and due to these defects in both legs, Anil Kumar cannot walk fast and is not fit for active services like police, army etc. No evidence in rebuttal to the medical opinion of the Doctor was there on behalf of the respondents. The Court below found that no doubt that injured could stand on his leg and even walk but he cannot still be considered a normal person as he would not be able to run, walk fast and sit like a normal man. The injured was confined to Hospital for four months. The injured had claimed Rs. 5,000/- as expenses for treatment but the Court below awarded Rs. 3,000/- towards medical expenses. The learned Counsel for the appellant submitted that the injured had proved by oral and documentary evidence that Rs. 6,000/- was spent for treatment. It has not been shown that the documents and receipts of medicines purchased and three operations charges etc. in fact amounted to Rs. 6,000/- since the Court below has assessed the amount as Rs. 3,000/- for treatment, I do not consider to modify the amount without evidence

about the additional expenses, as argued without any cogent material on record.

3. The learned Counsel for the appellant submitted that Rs. 29,000/- was claimed by the appellant as damages and compensation for the permanent disability and the Court below had erroneously granted Rs. 20,000/- as general damages. The Tribunal relying on a decision reported in AIR 1977 SC 1189 Madhya Pradesh State Road Transport Corporation v. Sudhakar and Ors. awarding Rs. 20,000/- as general damages in which a child of four years had received injuries in his right leg and the fracture of the bone was a compound fracture of his both right tibia and fibula. Skin grafting had to be done in that case also and the child was in the Hospital for 11/2 months. The Doctor in that case had opined that the child had developed a limping the deformity was likely to be removed by another operation, and it was also likelihood that the other possibilities could not also be ruled out. The Tribunal on relying the such judgment, was of the opinion that since in similar case, the Supreme Court had awarded Rs. 20,000/- as general damages, the present appellant's injured was also awarded Rs. 20,000/-. The Tribunal had not appreciated the fact in the correct perspective of the law laid down. It was a case in which the disability was not of permanent nature but in the present case, the Doctor opined that the injury was of a permanent nature and the disability was not to be cured and the appellant throughout his life has to suffer the consequences of the accident. He would not be able to walk, normally, run and get any such job like police and, army. The Court below had not appreciated the facts of the present case in its proper perspective. The damages that has been claimed by the appellant was Rs. 29,000/- and Rs. 20,000/- has been awarded. The child aged about 4 years victim in the case of 1977 AIR Supreme Court was confined in the Hospital for 11/2 months, whereas this appellant was confined to the Hospital for about 4 months. The finding has been based on the opinion of the Doctor. The nature of the injury is of permanent nature. The disability also is such which is incurable and the person shall have to face that effect of the accident rest of his life. In these circumstances, I consider that the amount claim of Rs. 29,000/- was just amount, which should have been paid and the Tribunal below was not justified in awarding Rs. 20,000/- relying the Supreme Court case, which materially differ on the facts and nature of the injuries in that case.

4. In view of the above observations, I consider that the judgment and award of the Tribunal deserves to be modified to the extent that the appellant is entitled for an award of Rs. 29,000/- as general damages.

5. The learned Counsel for the appellant submitted that the Tribunal below has not allowed any interest on the amount awarded as general damages and expenses for treatment. The award was given on 31.1.1975 and the accident had taken place on 6.10.1972. In view of the provisions of Section 110-CC of the Motor Vehicles Act, 1939, this is necessary and mandatory for the Tribunal to have awarded the interest where the claim was allowed. The provision of Section 110-CC of the Motor Vehicles Act, 1939 is quoted as under:

110-CC : Award of interest where any claim is allowed--Where any Court or Claims Tribunal allows a claim for compensation made under this Chapter, such Court or Tribunal may, 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 it may specify in this behalf.

After considering the submission of the learned Counsel for the appellant and the respondents, I consider it appropriate that the appellant shall be entitled to receive interest on the amount of compensation at the simple interest 6% p.a. from the date of accident i.e., 6.10.1972 till the final payment of the amount of damages of Rs. 29,000/-, Rs. 3,000/- expenses for treatment, is paid with interest. Appeal No. 313 of 1979 is allowed with costs.

6. Heard learned Counsel representing Sonpal in F.A.F.O. No. 292 of 1979. The learned Counsel submitted out that the findings of the Tribunal are perverse and without consideration of evidence on record. The learned Counsel for the appellant submitted that the accident had occurred due to the negligence of the claimant and there was no negligence on the part of the appellant Sonpal. The learned Counsel for appellant Sonpal had not been able to substantiate the grounds, mentioned above. The detailed discussions of the evidence in the earlier part of this judgment shows that the Tribunal has taken into consideration the evidence on record adduced by Anil Kumar, victim injured and the evidence of the Expert Doctor, who proved the injuries, the nature of the injuries and the disability caused,

shown that the appreciation of evidence done by the Tribunal is perfectly just and correct which calls for no interference. The Appeal No. 292 of 1979 is dismissed with costs. In F.A.F.O. No. 287 of 1979 the learned Counsel representing the Insurance Company has failed to appear and address the Court. I have perused the record for the discussions of the evidence made above in this judgment, I do not find that there is any scope for interference in the appeal of Insurance Company. The F.A.F.O. No. 287 of 1979 is also liable to be dismissed. F.A.F.O. No. 313 of 1979 Anil Kumar v. Sonpal and Ors. is allowed with costs. F.A.F.O. Nos. 292 of 1979 and 287 of 1979 are dismissed with costs.

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