

SalauddIn Vs. Raju and ors.

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Court : Madhya Pradesh

Decided On : Feb-19-1990

Reported in : I(1991)ACC628

Judge : R.K. Verma, J.

Appellant : Salauddin

Respondent : Raju and ors.

Judgement :

R.K. Verma, J.

1. This order shall also govern the disposal of Misc. Appeal No. 111/85 (Raju v. Salauddin and Anr.), C.R. No. 194/85 (Abdul Gqffar v. Raju and two others) and C.R. No. 195/85 (Bafati v. Raju and two others).

2. This is an appeal by the claimant-injured against the award dated 5.1.1985 passed by the Motor Accident Claims Tribunal, West Nimar, Nandleshwar in Claim Case No. 31/81, whereby the learned Tribunal has awarded a sum of Rs. 3, 500/- as compensation to the claimant with interest @ 6% per annum from the date of the claim petition (25.4.1981) till realization.

3. The facts giving rise to this appeal and the connected cases, briefly stated, are as follows:

On 16.12.1980, the appellant Salauddin and Abdul Gaffar and Bafati were going to weekly market for selling their goods and for that purpose they hired the mini-truck bearing registration No. CPF-9326, which they boarded along with the goods. On the way between Padlia and Jhirnya villages, the said mini-truck turned turtle near Ras-Baidy due to rash and negligent driving of the truck by its driver Raju. In this accident, the appellant-claimant Salauddin and Ors. on the mini-truck sustained injuries as a result of which one leg of the appellant-claimant was fractured below the knee.

4. Dr. Hukumchand Soni, Medical Officer of Primary Health Centre, Jhirnya (applicant's witness) medically examined the appellant-claimant and other injured persons on 16.12.1980. He found a fracture on the leg of the appellant-claimant. On examination of Abdul Gaffar he found a penetrating wound on his lower limb and two injuries on his chin. As regards the injured Bafati, Dr. Soni found a contusion 2' x 2' on dorsal aspect of foot of right leg showing tenderness and movements restricted. On further investigation by X-Ray at Barwani, Dr. Krishna Kumar Agarwal (applicant's witness) found that tibia fibula bone of right leg of the appellant-claimant Salauddin was fractured. As regards the injured Bafati, the meta-tarsal phalangeal joint No. 3 and 4 were displaced from its position towards right.

5. The claim cases No. 31/81, 30/81 and 29/81 were respectively filed by the appellant-Salauddin, Abdul Gaffar and Bafati respectively, before the Motor Accident Claims Tribunal, Mandleshwar. The cases of these claimants were consolidated for evidence by the learned Tribunal.

6. After trial, the learned Tribunal held that the truck in question was hired for carrying goods and that the accident occurred due to rash and negligent driving of the mini-truck in question by its driver Raju. It also held that the appellant-claimant suffered fracture of tibia fibula bone of his right leg.

7. As regards the other injured persons Abdul Gaffar and Bafati, the learned Tribunal found that Abdul Gaffar had sustained penetrating wound on the chin, lips and also a simple wound on the head and the injured Bafati suffered dislocation of meta-carpal phalangeal joint.

8. The learned Tribunal, on the basis of evidence adduced in the case, awarded a compensation of Rs. 3, 500/- to the appellant-claimant and Rs. 1, 500/- each to the other two injured claimants Abdul Gaffar and Bafati, holding the driver Raju and the owner of the offend in vehicle Santosh Kumar jointly and severally liable. As regards the Insurance Company-respondent No. 3 which had admittedly insured the owner of the vehicle during the material period, the learned Tribunal found it not liable on the ground that the Insurance Policy as also Section 95 of the Motor Vehicles Act did not cover the risk of liability in respect of a person being carried in the goods vehicle, who is not an employee of the insured, placing reliance on a Division Bench decision of this Court in South India Insurance Company Ltd. v. Heera Bai and Ors. [1967 ACJ 65 (M.P.)].

9. Being aggrieved by the inadequacy of the compensation awarded and the finding that the Insurance Company was not liable to pay compensation to the appellant, the claimant has filed this appeal. The other injured persons Abdul Gaffar and Bafati who were each awarded Rs. 1, 500/- only, have filed revisions namely, C.R. No. 194 and 195 of 1985 respectively. The respondent-driver Raju has filed a cross-appeal (M.A. No. 111/85) challenging the findings on the question of rash and negligent driving, the quantum of compensation awarded and the finding that the Insurance Company was not liable to pay compensation.

10. learned Counsel for the appellant-claimant has submitted that the learned Tribunal has awarded too meagre a sum as compensation, which can hardly be termed a fair compensation. It has been submitted by the learned Counsel that the learned Tribunal has committed an error in rejecting the opinion of Dr. Soni as regards disability suffered by the appellant as a result of the accident, which has been stated to be 45% by the claimant's witness Dr. Soni. Dr. Soni has stated that he had examined the claimant after the accident on 16.12.80 and he had again examined him on 9.11.1982 i.e. after about two years. He found that the claimant was suffering from chronic Osteomyelitis and that there was a bend in the bone of the claimant at the place where, it was fractured and that there was limping in his walking and presence of pain. Learned Tribunal has rejected this evidence about disability acquired by the appellant-claimant as found by Dr. Soni on examination of the claimant two years after the accident, on the ground that the certificate of

disability given by Dr. Soni is based on external clinical examination and not on examination of the X-Ray and that Dr. Soni had not examined the claimant after 9.11.1982. There can be no doubt that the tibia and fibula bone of the claimant had been fractured as was found on X-Ray photo, having been taken by Dr. Krishna Kumar Agarwal, who has stated so in his evidence.

11. On the state of evidence as laid in the case. I am convinced that there is no good reason to disbelieve the evidence of Dr. Soni that the appellant-claimant has suffered a disability in the leg due to fracture resulting in limping while walking. The long treatment undergone by the claimant, as stated by him, also lends support to the continuing problem of disability in his leg. In my opinion, the statement of Dr. Soni regarding disability of 45% sustained by the claimant is credible and deserves to be accepted.

12. Accordingly, the compensation amount must be raised to a sum of Rs. 15,000/- which, in my opinion would be a fair compensation, having regard to deprivation in earning capacity and enjoyment of life necessarily resulting from the disability of the kind suffered by the claimant, who has now acquired a limping leg, as a result of the accident.

13. learned Counsel for the appellant has further contended that the learned Tribunal has erred in placing reliance on *South India Insurance Co. Ltd. v. Heera Bai (supra)* ignoring the Full Bench Decision of this Court in *Hari Shankar Tiwari v. Jugru Laxman Sahu and Ors.* 1987 MPLJ 594 which squarely applies to the facts of this case and lays down that the Insurance-Company is liable to cover the risk of a hirer/agent or his employee travelling with the goods in a goods vehicle under proviso (ii) clause (b) of Section 95(1) as a passenger carried for reward or by reason of or in pursuance of a contract of employment. The contention of the learned Counsel, in my opinion, deserves to be accepted. The respondent-Insurance Company must be held liable jointly and severally with the driver and the owner of the mini-truck in question for payment of compensation amount to the claimant in view of the aforesaid Full Bench decision.

14. As regards the cross-appeal (Misc. Appeal No. 111/85) filed by the driver-Raju, respondent No. 1, it has not been demonstrated as to how the findings on the

question of rash and negligent driving is wrong. However the contention raised in the cross-appeal that the respondent Insurance Company is also jointly and severally liable for compensation, is accepted as discussed above.

15. As regards Civil Revisions No. 194/85 and 195/85, the amount of Rs. 1, 500/- in each case seems to be not commensurate with the injuries, pain and suffering and the duration of treatment the claimants Abdul Gaffar and Bafati were required to undergo even though the nature of injuries was not grievous. In the circumstances of the case, I deem it just and proper to raise the amount of compensation to Rs. 3, 000/- in each case.

16. The rate of interest @ 6% per annum awarded by the learned Tribunal also deserved to be raised to 12% per annum.

17. In the result, this appeal is partly allowed. The award of the learned Tribunal shall stand modified inasmuch as instead of Rs. 3, 500/-, as awarded by the learned Tribunal the appellant-claimant shall be entitled to receive Rs. 15, 000/- with interest(r) 12% per annum from the date of claim petition till realisation from the respondents whp are held jointly and severally liable.

18. The cross-appeal (Misc. Appeal No. 111/85) Raju and Anr. v. Salauddin and Anr. is partly allowed inasmuch as the respondent Insurance Company is also held jointly and severally liable with the driver and the owner for payment of compensation to the claimant.

19. The Civil Revision No. 194/85 (Abdul Gaffar v. Raju alias Rajnath and 2 others) and Civil Revision No. 195/85 (Befati v. Raju alias Rajnath and two others) are also partly allowed. The award of the learned Tribunal in each of these two cases shall stand modified inasmuch as the claimant shall be entitled to receive a sum of Rs. 3, 000/- instead of Rs. 1, 500/- as compensation from the non-applicants No. 1, 2 and 3, who are held liable jointly and severally for the same, with interest @ 12% per annum from the date of the claim petition till realisation.