

Ansari Mohammad Vs. Hari Ram and ors.

Ansari Mohammad Vs. Hari Ram and ors.

SooperKanoon Citation : sooperkanoon.com/512776

Court : Madhya Pradesh

Decided On : Sep-12-2003

Reported in : II(2004)ACC246

Judge : P.C. Agarwal, J.

Appellant : Ansari Mohammad

Respondent : Hari Ram and ors.

Judgement :
ORDER

P.C. Agarwal, J.

1. Ansari Mohammed (A1), the son and Munna Khan (A2), is father were awarded compensation of Rs. 22,000/- each with interest at the rate of 12% per annum since 18.8.1999 against all three respondents in claim case numbers 19/98 and 22/98 which were tried and decided together on 7.2.2001. Both these appeals are for enhancement of compensation amount. There has been no cross-appeal or cross-objection under Order 41 Rule 22 of the Code of Civil Procedure by any of the respondents.

2. Both of the appellants have been vegetable vendors. They were travelling with their vegetables on 18.11.1990 in a mini truck owned by Vijay Kumar (R2) and driven by Hariram (R1) and insured with United Insurance Company Limited (R3).

Due to negligent driving of the mini truck the same collided with a tree and was overturned. Munna Khan (A2) had suffered following injuries on his person vide Ex. P/6:

- (1) Lacerated wound 10 cm. x. 3 cm. x skin deep on left medial upper part of leg.
- (2) Contusion 8 cm. x 6 cm. on left upper part of leg.
- (3) Contusion 10 cm. x 7 cm. on left mid of thigh.
- (4) Abrasion 2 cm. x 1.5 cm. on right knee.
- (5) Lacerated wound 3 cm. x 2 cm. on mid upper lip.

On taking x-ray photograph of left thigh a fracture on lower 1/3rd of left femur was noted vide Ex. P/8. x-ray plates (Ex. P/10 to Ex. P/18) were submitted in support. Later Dr. V.N. Nagarch on 5.4.2000 had given a certificate vide Ex. P/20 according to which he had developed a permanent disability which is of 60%.

3. Ansari Mohammad (A1) had suffered following injuries vide Ex. P/7:

- (1) Constusion with swelling-illeg--of elbow on right lower part of arm.
- (2) Contusion 2 cm. x 1.5 cm. Over-illeg--base of middle finger.
- (3) Multiple abrasions on back of chest in the area 20 cm. x 4 cm. of various sizes and shape 10 cm. x. 1.5 cm. to 8 cm. x 1 cm.

On taking his x-ray, fracture of right humerus lower 1/3 and fracture of first metatarsal bone were noted vide Ex. P/23. Ex. P/24 x-ray plate was submitted in support thereof. Dr. V.N. Nagarch on 5.4.2000 has assessed such disability to be at 40% vide Ex. P/22.

4. Before the Tribunal Munna Khan (A.W. 1), his son Ansari Mohammad (A.W. 3) and another vegetable vendor Nawal Kishore Dubey (A.W. 4) were examined besides Dr. V.N. Nagarch (A.W. 2). Hariram (R1), mini truck driver was not examined. From statement of Munna Khan (A.W. 1), his son Ansari Mohammad (A.W. 3) and Nawal Kishore (A.W. 4) it was well proved that negligence of driver

Hariram (R1) was the reason of the accident and injuries caused to both the appellants. Such finding has not at all been challenged before this High Court and have become final.

5. Accident happened on 18.11.1990. For long 8 years appellant had not submitted any claim. Munna Khan (A.W. 1) had claimed that first he was treated at Bhitwar and then was referred to Gwalior. He was treated for 10-15 days at Gwalior. He was treated for 5 years at Jhansi still he is being treated at Government Hospital, Dabra and by Dr. V.N. Nagarch. However, no hospital record, prescriptions of doctors or cash memos for purchase of medicines for the long period between 18.11.1990 and the date of record of evidence on 7.4.2000, have been submitted. Only Dr. V.N. Nagarch (A.W. 2) is examined, who has claimed to have medically examined Munna Khan (A.W. 1) on 5.4.2000, i.e., more than 9 years of the accident. The Tribunal below has not relied upon statement of Dr. V.N. Nagarch (A.W. 2).

6. Ansari Khan (A.W. 3) has claimed that he was taken to hospital and then was referred to Gwalior Hospital. He was treated at Jhansi by a private doctor. He had consulted Dr. V.N. Nagarch (A.W. 2) also. He has claimed that he had spent about Rs. 1.00 lac in treatment and Rs. 50,000/- in special diet, according to him, even now his hand is not cured and he cannot work. It is noteworthy that Nawal Kishore Dubey (A.W. 4) has not supported either Munna Khan (A.W. 1) or Ansari (A.W. 3) in respect of alleged deformities and disabilities of both these father and son. Certainly, no prescriptions of doctor or cash memos for purchase of medicines or other hospital papers regarding admission and discharge have been submitted by Ansari (A.W. 3) also. Only Dr. V.N. Nagarch (A.W. 2) had claimed to have examined Ansari (A.W. 3) on 5.4.2000 and had certified vide Ex. P/21 that the bones were malunited and Ansari (A.W. 3) had suffered 40% disability. However, it is noteworthy that x-ray photograph for the malunited bone either of the arm or metatarsal area has not been filed before the Tribunal.

7. The learned Tribunal has awarded compensation of Rs. 22,000/- in lumpsum to both the appellants with interest at the rate of 12% per annum. The Advocate for the appellants has relied upon Sanjay Kumar Agarwal v. Arjun Kumar 2002 (2)

MPWN 63, in which lumpsum compensation of Rs. 60,000/- was granted to the claimant for fracture of Sup-Pubic Ramus right side and fracture of Sacrum to a young man of 25, who could not appear in Law Examination due to injuries and had remained admitted in hospital for about a month. Gorli Bai v. Kantilal 2000 (3) TAC 402, was also relied upon in which for fracture of pelvic bone and permanent disability to a rustic woman of 35 years of age, who was a labourer earning Rs. 20/- to Rs. 25/- per day, compensation of Rs. 50,000/- was allowed.

8. Looking to the injuries suffered by Munna Khan (A2), his compensation is enhanced to Rs. 35,000/- while that of Ansari (A1) is enhanced to Rs. 30,000/-, on which interest at the rate of 9% per annum shall be payable from the date of the claim, i.e., 15.4.1998.

9. Mr. Section Gajendragadkar, Advocate for Insurance Company, has relied upon New India Assurance Co. Ltd. v. Asha Rani III (2002) ACC 753 (SC) : (2003 (1) TAC 1 (SC), Oriental Insurance Co. Ltd. v. Devireddy Condareddy I (2003) ACC 214 (SC) : 2003 (1) TAC 481 (SC); and National Insurance Co. v. Mahila Angori Bai 2003 (2) TAC 402, and has argued that the Insurance Company is not liable to pay compensation in respect of death or bodily injury caused either to the owner of goods or his authorised representative when being carried in a goods vehicle with his goods. However, there has been no cross-appeal of counter-claim by the Insurance Company and the award against such Insurance Company has become final. This has been an appeal for enhancement of the compensation. Certainly, enhanced compensation would be payable by the driver and the owner of the mini-truck.

10. Thus, compensation in Misc. Appeal No. 150/2001 is enhanced to Rs. 30,000/- instead of Rs. 22,000/- with interest at the rate of 9% per annum since the date of claim, i.e., 15.4.1998. Compensation in Misc. Appeal No. 152/2001 is enhanced to Rs. 35,000/- instead of Rs. 22,000/- with interest at the rate of 9% per annum since the date of claim, i.e., 15.4.1998. Such enhanced compensation shall be payable by Hariram (R1) and Vijay Kumar (R2), i.e., driver and owner of mini-truck only. United Insurance Co. Ltd. (R3) would not be liable to pay enhanced compensation. Both the awards are modified to that extent.

