

Sunil Kumar Vs. Roshanlal and ors.

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Court : Delhi

Decided On : Oct-09-1972

Reported in : AIR1973Delhi241

Judge : P.N. Khanna, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110-D and 116; Motor Vehicles Regulation - Regulation 1

Appeal No. : F.A.O. No. 24-D of 1966, against order of Gian Chand Jain, Motor Accidents Claims Tribunal, Delhi, D

Appellant : Sunil Kumar

Respondent : Roshanlal and ors.

Advocate for Def. : R.L. Tandon, Adv.

Advocate for Pet/Ap. : P.P. Malhotra, Adv

Judgement :

1. This judgment will dispose of two cross-appeal. F. A. O. 24-d of 1966 and F. A. O. 80-d of 1966 directed against judgment of the Motor Accidents claims Tribunal. which have arisen in the following circumstances:

2. On August 14, 1964 Sunil Kumar herein referred to as 'the appellant' who at that time was six years of age, was involved in an accident with a Dtu bus, bearing

registration No. Dlp 251. owned by the Municipal Corporation of Delhi. respondent No.2. and Delhi Transport Undertaking (now Delhi Transport Corporation) herein referred to as Respondent No. 3' which at the time of the accident was driven by the driver, respondent No.1. The accident took place at about 11.45 a.m. on the East Park Road, Karol Bagh, New Delhi as a result of which the appellant received severe injuries and was rushed to Willingdon Hospital New Delhi where his right leg above the knee had to be amputated. The appellant filed his claim through his next friend, his father, M. L. Dhingar, for a sum of Rs. 50,000 as compensation on account of injuries received on his person. The accident was said to be the result of rash and negligent driving on the part of respondent NO. 1. the driver. The appellant claimed that he had lost chance of becoming an Engineer or being appointed a gazette officer or joining the military service and marrying in a good family. The entire future life of the appellant was said to have been ruined as he had been rendered a permanent dependent on others. The respondents, however, denied negligence on the part of the driver and stand that the bus was proceeding on the East Park Road from Rohtak Road side towards Filmistan cinema. when it reached the crossing of the Gali Purana Shidipura, the appellant came all of a sudden running from the side of the Gali to cross the main road along with certain other school children. Ignoring the approach of the bus, the appellant is said to have struck against its right rear portion and was thrown off.

3. The motor Accidents Claims Tribunal held that the accident was due to the rash and negligent driving on the part of the driver, respondent No. 1. It also held that the appellant was damaged and Rs. 2989/- towards special damages and Rs. 10,000/- towards general damages for personal suffering and loss, enjoyment of life and probable future loss of income. The petitioner was thus held entitled to a total sum of Rs. 12,989/- and an award was made for that amount in appellant's favor against the respondent with costs.

4. In appeal, F.A.O. 24-D of 1966. Sunil Kumar the appellant has asked for enhancement of the damages to Rs.50,000/- while in appeal, F.A.O. 80-D Of 1966 respondent No.3 the Delhi Transport Undertaking (now the Delhi Transport Corporation) has prayed for the setting aside of the award and dismissal of the claim petition on the ground that there was no negligence on the part of the

respondents.

5. Mr. Roshan Lal Tandon the learned counsel for respondent No. 3 contended that the child had been crushed under the right rear wheel of the bus, when the bus was in about of the middle of the road. this according to him, shows that the child had come up to the middle of the road and had fallen under the rear wheel, when the driver could not possibly have noticed the child so falling. The fact that the front portion of the bus was not involved in the impact. He said was enough to establish that the driver was not to be blamed for this accident. He referred to the statements of three eye-witnesses. who have appeared on behalf of the appellant. as also to the statement of witnesses of the respondents.

6. According to Aw 1. Sunder Mohan who was standing outside his shop. the appellant was coming from the school holding a bag and a takhti in his hand, from the said of Filmistan and was going towards Rohtak Road, on his left side of the road at about three feet from the left party. when the offending bus over taking some other traffic in the process of which it came to the right hand side of the road. the appellant was struck by the from mudguard and was crushed under the rear wheel. According to Aw 4. Nand Kishore the child was found to have been crushed under the right rear wheel. he, however was not in a position to witness the impact as his vision was obstructed owing to the Poisson at which he was station at that time. According to Aw 6. Prakash Chand, the right front wheel had crushed the child who was then said to have been run over by the rear wheel. As against this our eye-witnesses have deposed on behalf of the respondents. Rw 1. Naunitlal, stated that the child struck against the right said of the bus, near the rear wheel and then came under it. Rw 2, stated the same thing while Rw 4 the conductor and Rw 5, Roshan Lal, the driver have also stated the same thing. Trilok Singh. A.S.I. who investigated the case. prepared the site plan and to the sport photographed. Exhibit P-3 is a certified copy of the site plan. Exhibits Aw 2/1 and Aw 2/2 are the photographs. when were provided to have been prepared by Aw 2. Crimes Trilok Singh stated that the bus was standing in the same position in which it was at the time of the accident and that the did not notice any skid marks on the road.

7. In paragraph 16 of the written statement respondent No.3 stated that when the bus reached the crossing of the Gali Purana Shidipura the appellant came running from the Gali side all of the sudden to cross the road along with other school boys and hand struck against the right rear portion of the bus. when he was thrown off. this version however is belied by the site plan, exhibit P-3, which shows that the appellant was crushed under the rear wheel of the bus at a spot which is a few paces away towards the Filmistan side, from the crossing, showing that the bus had already crossed the crossing. The child could not have been coming from the Shidipura Gali side, which Gali does not join the main road at the site of the accident. The appellant was admittedly carrying a bag and a takhati and few other children were also accompanying him. He was thus coming from his school which, according to A.W. 1 Sunder Mohan was at a distance of now about half a furlong from the site of the accident. No proof about a school of the Gali Shidipura is forthcoming; it must be on the Filmistan side, as stated by A.W. 1. the site plan, exhibit P-3 shows space measuring nine paces from the left edge of the right edge of the road. the bus was thus on its wrong side of the road. The child too was about seven paces from the right edge of the road as he must have been crossing the road from the Eastern side towards the Western side, on which side, according to the statement of the witnesses the appellant has his residence. The others children are said to have already crossed the road. The bus driver must have seen the appellant about to cross it. It was, therefore a clear case of negligence of the driver. The photographs, exhibits Aw 2/1 and Aw 2/2 also reveal that the bus was on the right side of the road at the time of the accident leaving fairly sufficient space on its left side to allow traffic to move easily on that side. showing that it was overtaking the traffic going on the left side of the road. According to Regulation 1 in the Tenth Schedule referred to in Section 78 of the Motor Vehicles Act. The driver is required to drive the vehicle as close to the left handside of the road as may be expedient. According to Regulation 6, the driver is required to slow down when approaching a road intersection or a road junction and he is not to enter the said intersection or junction unless he had become aware that he may do so without endangering the safety of persons thereon. The accident having occurred immediately after the junction the driver was duty bound to take care about the safety of all the persons using the road at that time and not to endanger them in

any way.

8. The driver admits having noticed the school children including the appellant who were at that time using the road. He was, therefore, expected to take more than ordinary care while driving the vehicle, especially on a busy street : AIR 1972 Ker 159 . which emphasises extra care when children are on the road. The accident was clearly the result of rash and negligent driving on the part of the driver, respondent No.1. There is, therefore, no force in the appeal. F. A. O. 80-D of 1966 filed by the Delhi Transport Undertaking now the Delhi Transport Corporation respondent No.3. which must be dismissed.

9. Coming to the question of quantum of damages, raised in appeal, F. A. O. 24-D Of 1966, filed by the appellant, it is noticed that out of Rs. 2989/- assessed by the Tribunal towards special damages a sum of Rs. 2429/- has been calculated as the expenses for the artificial leg. The calculation has been based on the statement of Dr. A. M. Amesure, who said that the appellant would have to change the artificial limb after every two years till the age of 18 years. As the appellant was of the age of 8 years at the time of the judgment of the Tribunal. it was taken that he would require five artificial limbs till he reached the age of 18 years. From a letter received from the Artificial Limb Center, Poona, it is gathered that the artificial limb would cost Rs.365.31. This would be reduced by 40% in the case of children below 14 years. In other words the first three artificial legs would cost of Rupees 699/- at the rate of Rs. 233/- for each leg. while the other two would cost Rs.730/- at the rate of Rs.365/- for each limb. In the said letter it is also stated that an additional sum of Rs. 80/- would be required for the accessories. this would mean a sum of Rs.400/- for the five legs. which sum has not been taken into account by the Tribunal . The total cost of five artificial legs together with their accessories would be Rs. 1829/- The tribunal has allowed Rs. 500/- towards traveling charges for the appellant going to Poona and back on five occasions. It has also allowed Rs.500/- for staying there for 10 to 12 weeks on the first occasion. Nothing has been allowed for the appellant's stay in Poona on subsequent occasion even though the subsequent stay may not be for 10 to 12 weeks and may be of a shorter duration. The appellant will require at least Rupees 200/- on each occasion. Thus the total expenses for going to Poona and back of the stay there

on all the five occasion would be Rs. 1800/- The appellant being disabled and of a very young age, will necessarily require an attendant to accompany him to Poona, for which purpose another sum of Rupees 1800/- if not more. will have to be allowed.

10. The Tribunal has not allowed any thing for subsequent replacement of the artificial limb after the appellant has reached the age of 18 years. Looking to the normal wear and tear. it would not be too much to expect at least four changes of the artificial limb during the rest of the appellant's life. A sum of Rs. 2018/- can be safely allowed as the expenses for the said four artificial legs. The total expenses for the leg would, therefore, be Rs. 7447/- to this has to be added a sum of the Rs.553/- allowed by the Tribunal towards other special damages in the shape of medicines and post-operation care and other miscellaneous expenses. Thus a total sum of Rs. 8000/- has to be allowed to the appellant towards special damages.

11. The assessment of general damages for personal suffering loss of enjoyment of life and the probable loss of future earnings is never an easy task. It has to be based on some rough and ready assessments. Mr. Prem Pal Malhotra. the learned counsel for the appellant contended that the loss of earning capacity of the appellant should be calculated at Rs. 200/- per month at least for a period of 40 to 50 years. To support this contention he relied on K. Gopalakrishnan v. Shankar Narayanan, : AIR1968 Mad436 , where the High Court of Madras awarded Rs. 57,865/- as loss of earning assessed for the 30 years in the case of the student of the 20 years of age. whose left leg above the knee had to be amputated. as a result of the injuries received in the accident. In the present case. the appellant was a child of six years of age at the time the accident. His father at that time. it is stated at the bar, was a mail sorter, although at present he is said to be the Chief Mail Agent. Nothing has been brought on the record to prove his earning and his capacity to bear the expenses of the appellant's higher education. the prospects of the appellant getting higher education even if he had not met with the accident. is just a matter of guess. The quantum of damage awarded in the Gopalakrishnan's case, : AIR1968 Mad436 , therefore cannot be safe guide for the assessment of general damages in this case. In 1966 Acc Cj 343. which was a case of

amputation of leg of a 36 years old clerk drawing Rs. 140/- per month, a sum of Rs. 12900/- was awarded toward general damages calculated on the basis of loss of earning for 19 years. In 1967 ACj 325 a sum of Rs.6000/- was awarded as damages for the amputation of the right foot of a claimant. 20 years of age. In 1971 ACj 58. a girl aged Six years was awarded Rs.20,000/- for the amputation of leg.

12. In the matter of assessment of damage of appellant court does not normally interfere with the award made by the Tribunal unless the said award can be said to be unreasonably on the high or the low side. The award of Rupees 10,000/- toward general damages in the instant case by the Tribunal however appear to be high inadequate, keeping in view the prospects of the long life facing the appellant during which he shall have to remain a dependent on others. With the loss of one leg he has permanently lost the hope to lead on normal active life. which he would have been able to lead if he had not been involved in the accident. The very knowledge that the appellant will have to do with only one leg is going to be a heavy burden on his mind during the rest of his life. His capacity to enjoy the fullness of life has been permanently impaired; and he has been permanently impaired; and he had been condemned to lead a life dependent on others in one form or the other. His future earnings are also going to be affected. Keeping all this in mind, the assessment made by the Tribunal must be said to be highly on the low side. I would therefore, increase the quantum of general damages allowed to the appellant from Rupees 10,000/- to Rs.20,000/-

13. In the result appeal F. A. O. 80-D of 1966 is dismissed as having no merit while appeal. F. A. O. 24-D of 1966 filed by the appellant is allowed and the assessment of Rs. 12,989/- made by the Tribunal towards damages is increased to Rs. 28000/-. Accordingly, an award for Rs.28000/- is made in favor of the appellant against the respondents with costs. Counsel fee Rs. 200/-.

14. Order accordingly.