

inderjit Vs. Mehar Singh Etc.

inderjit Vs. Mehar Singh Etc.

SooperKanoon Citation : sooperkanoon.com/691897

Court : Delhi

Decided On : Dec-10-1987

Reported in : 1988RLR153

Judge : Jagdish Chandra, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110

Appeal No. : First Appeal No. 89 of 1976

Appellant : inderjit

Respondent : Mehar Singh Etc.

Judgement :

Jagdish Chandra, J.

(1) This is an appeal from the order dt. 25.10.75 of Motor Accident Claims Tribunal, Delhi, whereby he had awarded to the appellant Rs. 23,885.00 as compensation to be recovered jointly and severally from the respondents together with costs of the petition as also future interest @ 6% per annum from date of award till the date of realisation of the awarded amount, in case the respondents failed to deposit the awarded amount within two months from the date of the award. The break up of the awarded amount is as follows :- (1) General damages Rs. 20,000.00 (2) on account of injuries sustained: Rs.711.10 P, (3) Transport Rs.

2,275.00, (4) Nourishment expenses : Rs, 900.00.

(2) The accident involving the petitioner took place on 10.2.71 at about 9.15 A.M. on Ring Road near Raj Talkies when the petitioner was coming on a two Wheeler scooter from Srinivas Puri and going towards his office in R.K. Puram and when he reached near Raj Talkies he was struck against by a speeding truck which came from behind and his left leg was badly crushed. He also sustained other injuries on his person. His left leg was amputated above the knee to save his life. He remained in the hospital up to 16.3.71 and during that period remained unconscious from 10.2.71 to 3.3.71. His age was 26 years and was employed as Assistant in the Intelligence Bureau, Ministry of Home Affairs, at Rs. 472.00. P.M. The marriage of the petitioner was scheduled to be held a week after the accident but the same was cancelled by his prospective in-laws on account of his having been rendered invalid on account of the amputation of his left leg. After the accident he felt rejected in society and that his life had become destitute. For these reasons the Tribunal relying upon Virendra Kumar vs. Gyani Ram 1975 A.C.J. 12 wherein the accident took place on 16.4.64 and the injured was a student and his left arm was amputated above the elbow and had remained in the hospital from 16.4.64 until Nov. 1964, and later in July 1965 suffered shock, bodily pain, had to discontinue studies and suffered a sun stroke followed by an attack of jaundice while recovering from the injury and there had been considerable diminution of his earning capacity besides loss of happiness and enjoyment of life, awarded general damages of Rs. 20,000.00. In that case the general damages awarded by the Tribunal of Rs. 7,000.00 were enhanced to Rs. 20,000.00 by Delhi High Court.

(3) The learned counsel for the appellant assailed the quantum of general damages of Rs. 20,000.00 awarded by the Tribunal. The appellant had claimed a total sum of Rs. 2,50,000.00 by way of compensation before the Tribunal. The learned counsel for the appellant has contended that the amount of general damages awarded by the Tribunal was hardly adequate and in support of his contention has relied upon a number of authorities.

(4) The first authority is Jagdeep Singh vs. Anokh Singh 1987 A.C.J. 373. In that case the accident had taken place on 27.8.78 and the general damages were assessed by the Punjab & Haryana High Court at Rs. 1,00,000.00 where the injured was aged 18 years and qualified for interview for N.D.A. and there was fracture of pelvis and both bones of right leg. There was also lacerated wound on eyebrow requiring stitches and plastic surgery and shortening of leg by three inches with stiffness and limping. The injured remained under treatment for about two years and had to undergo seven operations for skin-grafting, bone-grafting and nailing.

(5) In Jasbir Kaur vs. Harbans Singh, 1987 A.C.J. 508 the accident had taken place on 19.5.77 and right arm of the injured house hold lady aged 26 years had to be amputated and she remained hospitalised for three years and had to undergo two operations. The Tribunal awarded Rs. 53,000.00 but in appeal the Punjab & Haryana High Court awarded Rs. 70,000.00 as general damages.

(6) In Ganesh Kant v. Hira Lal 1986 Acj 705 Rajasthan High Court assessed general damages at Rs. 99,900.00 in the case of the injured aged 25 years, a graduate not having any job in his own name or fixed income whatsoever, looking after the factory of his father, could not ride a motor cycle or a cycle and experienced difficulty in boarding or alighting from a bus. His right foot had to be amputated on account of the accident. The accident had taken place on 12.12.79. The injured was going on motor cycle and was struck against by a speeding truck. On account of the contributory negligence of the injured the aforesaid compensation was reduced to 50%.

(7) In Chander Kumar v. State 1985 Acj 500 where the accident had occurred on 24.5.76 the injured was 68 years old at the time of the accident. His right leg above the knee had to be amputated. There were crush injury and multiple fractures of both tibia and fibula and extensive muscle damage of left leg, contusion over the left loin and left side of the head and lacerated wounds over the right shoulder and left ear. He was operated upon eleven times to save left leg and was hospitalised for more than two years in long spells. He was awarded general damages of Rs. 64,480.00 by the Tribunal which was raised in appeal by the High

Court to Rs. 1,00,000.00.

(8) In *Puran Chand v. Balbir Singh*, the injured was a constable aged 47 years. He lost his right arm, short of shoulder joint, during the accident. His official career was affected as a result of the aforesaid permanent disability. He would have become a Head Constable but for this permanent disability, and by promotion he would have earned an additional salary of Rs. 150.00 p.m. Approximately for ten years he could have looked forward to work as Head Constable and possibly to be a S.I. of Police also. He was awarded general damages of Rs. 25,000.00 by the Tribunal which amount was raised to Rs. 75,000.00 in appeal by High Court.

(9) On the other hand, learned counsel for the respondents has also relied upon certain judgments. He has relied upon 1975 A.C.J. 122 which had been relied upon by the learned Tribunal in awarding the general damages of Rs. 20,000.00 to the appellant and the same has already been noted above with its details.

(10) In *The Fazilka Dabwali T. Co. v. Madan Lal*, : AIR 1977 SC1482, wherein their Lordships of the Supreme Court came to the opinion that the judgment of the Single Judge of P&H; High Court enhancing the compensation from Rs. 7,000.00 to Rs. 12,000.00 was correct and in that case there was amputation of one foot and injury to the other leg which gave a limp to the injured child because of the injury as a result of the accident. The accident in that case had taken place on 27.4.62.

(11) In *Shanti Devi v. G.M. Punjab Roadways* 1970 A.C.J. 287 it was a fatal accident causing death. On the basis of this authority the counsel for the respondents simply wanted to show that courts should not allow a misfortune to turn into a wind-fall, as held in this authority at page 290 by P & H High Court.

(12) There is no precise mathematical formula to assess the amount of general damages to be allowed as compensation to an injured person. Different accidents may entail different injuries on the persons of the injured persons and those injuries may also vary in the intensity and gravity from case to case. Each case has to be decided in regard to the quantum of compensation having regard to the facts and circumstances of the case. In 1975 A.C.J. 122 (supra) this Court laid

down the following criteria :-

'In determining fair and reasonable compensation on account of general damage it is not possible to ignore the imperative that the compensation must be relative to the prevailing social and economic conditions and awards made in such cases must keep pace with the growing inflation, ever-increasing cost of living and the consequent devaluation of the real worth of the rupee. Even the meagre amount awarded in 1967, which has not as yet been paid, would, if paid in 1974, represent in terms of real value only a part of it.'

(13) In the case in hand the injured was 26 years old and employed as Assistant in the Intelligence Bureau, on a monthly salary of Rs. 472.00. He is a graduate. His left leg was to be amputated above the knee to save his life. He remained in the hospital from 10.2.71 to 16.3.71 and during that period remained unconscious from 10.2.71 to 3.3.71. The marriage of the petitioner which was scheduled to be held a week after the accident, was cancelled by his prospective in-laws on account of his aforesaid amputation of the left leg and no proposal for marriage was forthcoming after the accident. It is in the evidence of the injured that after the accident he feels rejected in society and that his life has become destitute. It is also in the evidence of the petitioner that his job was transferable throughout India and he could not be sent out to difficult places and after the accident he is unqualified for being sent outside and has suffered financial loss because he would have got 50% additional basic pay and other facilities while being posted in difficult places. He, however, conceded in his cross-examination that his office had not issued to him any letter in that regard, but because of his handicap he cannot be considered for being sent to difficult stations. Regarding his promotion the evidence of the petitioner is that his next promotion was to the post of Section Officer for which there are two channels--one by seniority and the other by competitive examination. But he admitted that his department had not issued any letter on account of his handicaps that he cannot take any other examination. It is in the evidence of D.C.Goel PW2 Officer of the petitioner that the petitioner has been given usual increments and other privileges attached to this post and that his present salary (when PW2 came in the witness box) was Rs. 538.00. The learned Tribunal rightly came to the conclusion that the injured had not suffered any loss of

emoluments. Any how on account of amputation of the left leg the injured is bound to suffer from loss of happiness and enjoyment of life in the normal manner.

(14) As pointed out in 1975 A.C.J. 122 (supra) by this Court that growing inflation, ever increasing cost of living and the consequent devaluation of the real worth of the rupee are also relevant considerations besides other. The accident in that case had occurred on 16.4.64 whereas the accident in question of the appellant occurred much later on 10.2.71 and during the said period more inflation, higher cost of living would have taken place, as it is a matter of wide knowledge that inflation and increasing cost of living continue year in and year out and so the compensation on account of general damages awarded of Rs. 20,000.00 by this Court in 1975 A.C.J. 122 (supra) in regard to the accident of 1964 could not be taken as the safe guide for assessing the general damages in the case in hand.

(15) Similarly, the general damages awarded of Rs. 12,000.00 by a Single Judge of High Court and approved in : AIR 1977 SC1482 (supra) where one foot of the injured had to be amputated and the injury to the other leg had resulted in a limp to the injured child as a result of the accident which had taken place as early as 27.4.62 can also not be a safe guide for assessing the general damages in the case in hand. It has, however, to be borne in mind that courts should not allow a misfortune to turn into a wind-fall.

(16) The general damages awarded of Rs. 20,000.00 by the Tribunal appear to be definitely highly inadequate and he is entitled to a higher amount of compensation by way of general damages. In the authorities relied upon by the appellant the accidents had taken place much later in Aug. 1979 and May 1976 and the inflation and increasing price index would still have arisen much more since Feb. 1971 when the accident in question took place. Further more, there were far greater sufferings for the injured persons in those cases than the appellant in the instant case. The petitioner has not suffered in promotion and increments in salary. Looking to all the above mentioned circumstances and the authorities referred to above, the appellant appears to be entitled to Rs. 40,000.00 on account of compensation towards general damages.

(17) The learned Tribunal awarded a sum of Rs. 2,275.00 as special damages to the injured @ Rs. 50.00 p.m. only for the period 11.5.71 to Aug. 1975 by way of transport damages. There was evidence that the injured was having a two wheeler scooter prior to the accident on which he would go to his office, but after the accident he started attending office from 11.5.71 and had been going there and returning home on a three wheeler scooter and the evidence of Ram Lal PW7 showed that he was carrying the injured from his house to his office and back on his three wheeler scooter and that formerly he used to charge Rs. 107.50 paise p.m. but had started charging Rs. 140.00 p.m. The Tribunal came to the view that there was difference of Rs. 50.00 p.m. between the maintenance of the two wheeler scooter by the petitioner prior to the accident and the hire charges of the three wheeler scooter paid by him after the accident. The Tribunal is obviously wrong in awarding transport compensation only upto Aug. 1975. The additional transportation charges have to be borne by the injured till his retirement from his job. He was 26 years of age at the time of accident which took place on 10.2.71. The injured is entitled to the special damages on account of transportation for 28 years more, taking his retirement at the age of 58 years. Calculating the transportation damages @ Rs. 50.00 p.m. for 28 years more, the petitioner becomes entitled to an additional sum of Rs. 16,800.00 besides Rs. 2,275.00 already allowed to him by the Tribunal.

(18) The Tribunal awarded future interest @ 6% per annum from the date of the award i.e. 25.10.75 up to the date of realisation of the awarded amount. The learned counsel for the appellant contended that the injured was entitled to interest @ 12% per annum from the date of the claim petition to the date of payment and for this he relied upon Jagbir Singh v. G.M. 1987 A.C.J. 15 wherein the rate of interest was enhanced from 6% to 12% by the Supreme Court and interest at that rate was awarded from the date of the claim petition to the date of payment. The accident in that case had also occurred on 13.2.71 a date quite close to the date of accident i.e. 10.2.71 in the case in hand. In almost all the authorities referred to above and cited by the learned counsel for the appellant future interest at the rate of 12% per annum has been allowed by the High Courts from the date of the claim application till payment. In view of these authorities the contention of the respondents that future interest awarded @ 6% per annum was just and proper,

the same being in the discretion of the Tribunal as per section 110-CC of the [Motor Vehicles Act, 1939](#) (as amended up to date), cannot be accepted as the discretion does not appear to have been exercised properly as there is no justification to award interest at a very low rate 6% per annum and that too not from the date of making the claim application. Award enhanced by Rs. 36,800.00 and rate of interest enhanced to 12% from date of claim petition.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com