

Rinkoo Vs. Arvind Kumar and ors.

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Court : Delhi

Decided On : Aug-23-2004

Reported in : III(2004)ACC158; 113(2004)DLT361; 2004(76)DRJ452

Judge : R.S. Sodhi, J.

Acts : Indian Penal Code (IPC) - Sections 279 and 338

Appeal No. : FAO 594/2003

Appellant : Rinkoo

Respondent : Arvind Kumar and ors.

Advocate for Def. : Rajan Khosla, Adv.

Advocate for Pet/Ap. : Suman Kapoor, Adv

Judgement :

R.S. Sodhi, J.

1. This appeal is directed against the judgment dated 9th May, 2003, of the Motor Accident Claims Tribunal (for short the 'Tribunal' in Suit No. 142/93, whereby the learned Tribunal has awarded a sum of Rs.57,000/- together with with interest @9% p.a.

2. The brief facts of the case as has been noted by the Tribunal are as under :

' The petitioner, a minor filed this petition for grant of compensation through her father/natural guardian of Rs. 20 Lacs against the respondents on account of injuries sustained by her in road accident dt.23.9.92. The brief facts of the case as made out from the petition are that at the time of accident the petitioner was 4 and 1/2 years of age and a student. On 23-9-92 at about 12 noon the petitioner got down from her school bus at C.V.D.road behind Sadar Bazar, Delhi Cantt. N.Delhi and while she was in the process of crossing the road the respondent Arvind Kumar came driving a three-ton lorry bearing no. 90D-85140-Y (Army vehicle) in a rash and negligent manner and hit the front left wheel of vehicle against the petitioner and thus caused grievous injuries to the petitioner. The petitioner was taken to Base Hospital by respondent and conductor of the vehicle. The petitioner was found to have suffered fracture of right lower limb and upper right arm, and her left leg and foot were completely crushed. An FIR no. 388/92 u/s 279/338 IPC was registered at police station-Delhi cantt. The petitioner remained admitted in Base Hospital till 12-10-92 and was removed to Army Hospital where she was in-door patient till 12-12-92. A sum of rupees not less than two lakhs were spent on her treatment by the time of filing the present petition. The petitioner has become disable person. She was operated thrice for skin grafting. The court of enquiry was conducted against respondent no.1 and he was found guilty.'

3. On the pleadings of parties, the following issues were framed by the Tribunal:

1. Whether petitioner suffered injuries in accident that took place on 23.9.92 due to rash and negligent driving of Army Van BA no.90D 85140-Y driven by respondent no.1 and owned by respondent no.2 and 3 as alleged? OPP

2.Whether petition is in its present form is not maintainable as alleged in preliminary objections raised in written statement of respondents? OPR

3.Whether the petitioner is entitled for any compensation? If so, to what amount and from whom? OPP

4.Relief'

4. In order to prove her case, the appellant has examined PW1 Constable Sushil Kumar, PW2 Naik N.A. Baljeet Singh, PW3 Captain Sanjiv Gopal, Physician, Army Hospital and PW4 Naib Subedar Nafe Singh. The appellant has examined herself as PW5 and the father of the appellant was examined as PW6. No evidence was led on behalf of the respondents in spite of the opportunity having been given. Issue No.1 was decided in favor of the appellant as also the Issue No.2. As regards Issue No.3, it has been stated by the appellant herself that she suffered fracture of left arm and both legs and injuries on her right eye. She was taken to the hospital where she was operated upon. She remained in the hospital for six months. The appellant's leg below the knee was crushed with compound fracture of tibia and fibula and fracture of right femur and cerebral contusion with abrasions on face and forehead. The medical disability certificate shows that the appellant has suffered permanent disability of 60%. The learned Tribunal while appreciating the evidence on record has awarded a sum of Rs.25,000/- on account of physical and mental pain and agony. It has also awarded a sum of Rs.25,000/- for suffering disability, loss of enjoyment, loss of future earnings and amenities in life and frustration. Consequently, taking into consideration Rs.2000/- on account of conveyance and Rs.5000/- on account of special diet, the Tribunal has awarded a total sum of Rs.57,000/-

5. Heard counsel for the parties and with their assistance have gone through the record of the case. It appears to me that the Tribunal while assessing the physical and mental pain and agony has grossly undervalued the same while awarding a sum of Rs.25,000/-. It would be proper and in the interest of justice that where a girl of 4 1/2 years of age has suffered such trauma and 60% permanent disability, she certainly deserves much more and therefore. under the above head I determine the amount at Rs.1 lac and under the head suffering disability, loss of enjoyment, loss of future earnings and amenities in life and frustration which too have been compensated at Rs.25,000/-, I hold such an amount is far too meagre and therefore, assess the same at Rs.1 lac. As regards the other heads, I hold that the same need not be disturbed. Consequently, I modify the impugned award by awarding an additional sum of Rs.1.50 lacs together with interest @9% p.a. with effect from the date of this judgment, that is, 23rd August, 2004.

6. With the above modification, FAO 594/2003 is disposed of.

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