

Abhay Kumar Vs. Devi Lal and ors.

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Court : Rajasthan

Decided On : Mar-25-1994

Reported in : 1995ACJ1038; 1994(2)WLC137

Judge : Milap Chandra Jain, J.

Appeal No. : S.B. Civil Misc. Appeal No. 272 of 1991

Appellant : Abhay Kumar

Respondent : Devi Lal and ors.

Advocate for Def. : R.K. Sharma, Adv.

Advocate for Pet/Ap. : N.K. Jain, Adv.

Judgement :

Milap Chandra Jain, J.

1. This appeal has been filed against the judgment of the Motor Accidents Claims Tribunal (District Judge), Tonk, dated 28.11.1990 by which the claimant-appellant has been awarded Rs. 10,000/- as compensation with interest at the rate of 12 per cent per annum from the date of institution of the claim petition.

2. The facts of the case giving rise to the claim petition may be summarised thus. On 20.10.1984, the claimant Abhay Kumar filed a petition under Section 110-A,

Motor Vehicles Act, 1939 (hereinafter to be called 'the Act'), claiming a sum of Rs. 3,12,000/- as compensation under different heads with the averments, in short, as follows: He is a contractor in the Irrigation Department, Government of Rajasthan. On 18.6.1984 at about 11 a.m. he was going on the motor cycle No. RRD 145 along with the Assistant Engineer (Irrigation) Hari Kumar Joshi and Overseer Parasmal to take cement for the work of his contract. The motor cycle was being driven slowly by the Overseer Parasmal on the correct side of the road. From opposite direction, truck No. RRM 8549 came at an excessive speed. It was being driven by its driver rashly and negligently. Seeing the fast approaching truck, Parasmal took his motor cycle towards his left side on the kacha portion of the road. Despite it, the truck dashed against it. At that time the truck was being driven by its driver Devi Lal Gurjar (O.P. No. 1) and it was owned by the State of Rajasthan (O.P. No. 4). As a result of the accident, all the three occupants of the motor cycle fell down and received injuries. The claimant became unconscious. He received two fractures in his left leg and one in his chest and several injuries on different parts of his body. He is still confined to bed with plaster up to his neck. He was maintaining his family from the income which he was earning as a contractor. As a result of the accident, calamity has fallen on his family. He has been disabled to do his contract work or any other work. He has permanently become handicapped and he cannot now move. He is unable to earn his livelihood. He has received a great mental shock. He is entitled to get Rs. 3,12,000/- as compensation.

3. The opposite parties admit in their reply that the claimant Abhay Kumar received several injuries and fractures in his body in the accident and the remaining averments of the claim petition have been denied. They have averred that no accident took place on 18.6.1984 with their truck and no report of any accident was lodged in the police station.

4. The Tribunal framed four issues. The claimant examined Head Constable of Police Station, Kotwali, Tonk, Ramniwas, AW 1, who recorded the information Exh. 1 in the general diary of the police station, motor cycle driver Parasmal Jain, AW 3, Dr. B.D. Sharma, AW 4, who examined his injuries and prepared the injury report Exh. A/2 and Dr. Chandra Shekhar Sharma, AW 5, who treated him besides

himself as AW 2. The opposite parties (respondents) examined truck driver Devi Lal, DW 1, Assistant Fisheries Development Officer Banwari Lal Mathur, DW 2 and shopkeeper Prem Chand, DW 3. The claimant produced his prescriptions, cash memos of medicines, X-rays, injury report, police report and notices issued by the Irrigation Department for completing the contract work. The opposite parties-respondents did not produce any document. After hearing the learned counsel for the parties, the learned Judge, Motor Accidents Claims Tribunal, Tonk, awarded Rs. 10,000/- as compensation under the head of mental agony only by his impugned judgment.

5. It has been contended by the learned counsel for the claimant-appellant that the Tribunal has seriously erred to observe in its award that the claimant has not filed cash memos of the medicines purchased for his treatment and the record shows that 28 cash memos of the medicines purchased for his treatment have been filed. He further contended that the Tribunal has seriously erred to hold that the claimant did not receive any permanent disability in his leg despite categorical statement of Dr. Chandra Shekhar Sharma (Orthopaedic Surgeon), AW 5, to the effect that the claimant Abhay Kumar has received permanent disability in his knee and it is not curable and also clear-cut admission of the respondents in para No. 2 of their written reply regarding receipt of several grievous injuries and fractures in his body in the accident. He also contended that the Tribunal seriously erred not to award any amount under the head of medical treatment despite the fact that claimant has not disclosed in his statement that no amount was spent by him in getting X-rays of various parts of his body and no suggestion was put in the cross-examination of Abhay Kumar that the various X-rays were done in the hospital free and he did not spend any amount on them. He also contended that the Tribunal seriously erred in not granting any compensation on account of the loss of earning capacity simply on the ground that the claimant did not pay any income tax after the year 1979-80 and in not awarding Rs. 12,000/- paid by him as penalty to the Irrigation Department for not completing the work of contract taken by him on account of the injuries received by him in the accident simply on the grounds that the claimant admitted in his statement that no notice was received by him from the Irrigation Department prior to the imposition of penalty, no paper of the contract given to him in the year 1984 was filed and the contract papers filed relate to the year 1980-81.

It was further contended that the Tribunal seriously erred not to hold that the claimant had to remain on bed on account of serious injuries received in the accident, rod had been fixed in his leg, his contract was cancelled, Rs. 12,000/- have been imposed as penalty and he is unable to move now simply on the ground that no evidence was produced to prove these facts despite the fact that the claimant Abhay Kumar categorically stated so and the same had gone unrebutted and unchallenged. He lastly contended that no evidence was produced by the opposite parties on issue No. 3 relating to the quantum of compensation. He relied upon Sitaram v. National Insurance Co. Ltd. 1992 ACJ 194 (Rajasthan); National Insurance Co. Ltd. v. Sunita 1992 ACJ 245 (Rajasthan); Inder Singh v. Himachal Road Transport Corporation 1993 ACJ 620 (HP); Rafiq Islam v. United India Insurance Co. Ltd. 1992 ACJ 51 (Gauhati) and State of Punjab v. A.V. Unnikrishnan 1993 ACJ 1284 (P&H;).

6. The learned counsel for the respondents contended that it is not proved from the evidence on record that the truck No. RRM 8549 belonging to respondents was involved in the accident and the accident took place on account of any negligence or carelessness on the part of its driver and the learned Tribunal seriously erred to hold that the accident took place due to rash and negligent driving of the truck by its driver Devi Lal . He duly supported the order of the Tribunal awarding Rs. 10,000 as compensation.

7. In reply to the aforesaid contentions of the learned counsel for the respondents, learned counsel for the claimant-appellant contended that neither any cross-appeal nor cross-objection has been filed by the respondents against the order holding that the said accident took place due to the rash and negligent driving on the part of the truck driver Devi Lal and as such the findings on these points are not open to challenge.

8. The driver of the motor cycle, Parasmal Jain, AW 3, has stated on oath that he was driving his motor cycle No. RRD 145 on the correct side of the road at a slow speed, near Raj Talkies, the offending truck No. RRM 8549 came from the front at an excessive speed on the wrong side of the road and dashed against his motor cycle and at that time the motor cycle was going on the kacha portion of the road.

He denied in his cross-examination that the truck driver gave horn. So is the statement of the claimant Abhay Kumar, AW 2. The truck driver Devi Lal has deposed that when he gave horn the motor cycle slipped. He could not tell as to how the motor cycle slipped by mere sound of the horn. He could not tell whether the motor cycle was moving slowly or at excessive speed. Banwari Lal , DW 2, admits in the cross-examination that he went to the shop near the place of occurrence for a cup of tea and his attention was attracted towards the place of occurrence only after the accident had taken place. He could not tell which portion of the motor cycle was damaged. Admittedly, the driver Devi Lal belongs to his department. Shopkeeper Prem Chand, DW 3, says that he has a shop near the place of occurrence, motor cycle slipped near the place of occurrence, it did not stop, it continued to move and as a result thereof the occupants were dragged. He also says that no truck dashed against the motor cycle. In the cross-examination, he disclosed that the truck stopped as soon as the occupants of the motor cycle fell down. The claimant moved an application on 28.3.1985 for calling report No. 755-767, site plan, report of the mechanical examiner, injury reports, X-ray plates and statements of the witnesses recorded under Section 161, Criminal Procedure Code and other record relating to this accident from the Police Station, Kotwali, Tonk. The application was allowed on 2.5.1985, requisition letter was issued and the office reported on 29.1.1987 that Rojnamcha of the period from 5.6.1984 to 19.6.1984 has been received from the Police Station, Kotwali, Tonk, and the other relevant record was not received. Thereafter, no order was passed for summoning of the desired record. No reliance can be placed on the testimony of Devi Lal , DW 1, Banwari Lal , DW 2 and Prem Chand, DW 3. They are most interested witnesses. On the contrary, the statement of claimant Abhay Kumar and motor cycle driver Parasmal, AW 3, inspires confidence. The learned Tribunal has rightly held that the accident occurred on account of the rash and negligent driving of the truck by its driver. Admittedly, neither any cross-objection nor any cross-appeal has been filed by the opposite parties against this decision.

9. The main question for consideration in the present appeal is about the quantum of compensation. The claimant Abhay Kumar has claimed compensation to the tune of Rs. 3,12,000/- under ten different heads. In para No. 2 of the claim petition the claimant has stated that he received grievous injuries and fractures on several

parts of his body in the accident. This para of the claim petition is admitted in the joint written reply filed by the opposite parties. The claimant Abhay Kumar has deposed that in the accident he received three fractures in his leg and injuries on his head, stomach and chest, he became unconscious and when he regained consciousness he found that he was under plaster from foot to chest. X-ray of various parts of his body were taken and X-ray plates are Exhs. A/3 to A/18 (except A/9 and A/10). He has further deposed that he remained confined to bed for 10 months, plaster was put thrice on his leg, he was operated at Jaipur and steel rod was put in his leg. He has also deposed that he is unable to move freely and sit conveniently and on slight movement he gets swelling. He further says that his contract was cancelled by the Irrigation Department, penalty of Rs. 12,000/- was imposed and if he would have completed the contract he would have earned Rs. 20,000/- therefrom. He further says that on account of the accident he was put to great mental agony, suffering and torture, during the manage of his daughter he remained confined to bed and he is doing nothing at present due to permanent disability. In the end of his cross-examination, he says that now he cannot move, he is unable to do any work, his life has been spoiled, he may remain alive for 30 years more and On account of the accident he has to remain so for 30 years more. Parasmal Jain, AW 3, has deposed that in the accident, Abhay Kumar's leg was fractured and several injuries were received on his ribs and several other parts of his body. Dr. B.D. Sharma, AW 4, examined the injured Abhay Kumar on the request of the police. Dr. Chandra Shekhar Sharma, AW 5, Reader in the Orthopaedics Department of the S.M.S. Hospital, Jaipur, has deposed that he found fractures in the left thigh and knee of Abhay Kumar. He operated him, he fixed iron nail in the bone of his thigh, he was an indoor patient in the hospital, he also had a head injury, his plaster was of 10 weeks' duration, it was compound fracture and the wound got infection. He further deposed that the prescriptions Exhs. A/9 and A/10 are of his department, the disability received by him in his knee is of permanent nature, it is not curable and he cannot put his leg straight on account of the injuries received in the knee. Nothing about the nature, extent and duration of the injuries and their treatment received by the claimant Abhay Kumar has been said by any of the witnesses produced by the respondents. The claimant Abhay Kumar and eyewitness Parasmal, AW 3, have not been cross-examined on

these points by the respondents. As such their evidence has gone unrebutted and unchallenged. There is no option but to believe the claimant's evidence. The learned Tribunal seriously erred to ignore the sworn testimony of Abhay Kumar, AW 2 and Parasmal, AW 3. Their testimony finds corroboration from the statements of Dr. B.D. Sharma, AW 4 and Dr. Chandra Shekhar Sharma, AW 5.

10. Compensation to injured persons is awarded under two major heads, namely, pecuniary loss and non-pecuniary loss.

(A) First major head is further divisible in following sub-heads:

(1) Loss of earning capacity;

(2) Expenses;

(3) Loss sustained; and

(4) Loss of income.

(B) Non-pecuniary loss is also divisible under two sub-heads:

(1) Mental agony; and

(2) Pain, shock, suffering and loss of amenities of life.

Loss of earning capacity

The claimant Abhay Kumar, AW 2, has deposed that he was earning Rs. 10,000/- to Rs. 12,000/- per annum prior to the accident and paid income tax till the year 1981. In the claim petition, he has disclosed his age as 40 years. He disclosed his age as 40 years when his statement was recorded. In the injury report dated 18.6.1984, his age has been recorded as 45 years. It has been held in *Jyotsna Dey v. State of Assam* 1987 ACJ 172 (SC) and *Hardeo Kaur v. Rajasthan State Road Transport Corporation* 1992 ACJ 300 (SC) that the average age of an Indian may be taken to be 70 years. If the accident had not occurred, the claimant Abhay Kumar would have worked up to 70 years, i.e., 30 years more. It is correct that Dr. Chandra Shekhar Sharma, AW 5, has not disclosed the percentage of his

disability. No question on this point was also put in his cross-examination. Taking into consideration the amount spent upon himself, it can well be said that as a result of the injuries received in the accident the claimant is suffering loss of earning capacity of at least Rs. 6,000/- per annum. Under the facts and circumstances of the case, the multiplier of 15 would be quite reasonable and adequate. As such the claimant is entitled to get Rs. 6,000/- x 15 = Rs. 90,000/- under the head of loss of earning capacity.

Expenses

The claimant has deposed that he remained bedridden for 10 months, plaster was put three times, iron rod has been inserted in his leg and he has spent Rs. 20,000/- on his treatment. In the claim petition Rs. 10,000/- has been claimed under this head. He has filed 28 cash memos of the medicines of the total amount of Rs. 435.80, 14 X-ray plates have been filed. It has not been put in the cross-examination that these X-rays were done free of cost. Seeing the duration and extent of treatment, Rs. 10,000/- claimed towards treatment cannot be said to be excessive. He is entitled to get this amount.

Loss sustained

Abhay Kumar has deposed that as a result of the accident he could not complete the contract granted to him by the Irrigation Department, it was cancelled and a penalty of Rs. 10,000/- was imposed against him and he paid it. He was not cross-examined on this point also. He is, therefore, entitled to get Rs. 10,000/-.

Loss of income

The claimant has deposed that he had to remain confined to bed for 10 months and still he is unable to move as a result of the permanent disability received by him in the accident. He has deposed that he was earning Rs. 10,000/- to Rs. 12,000/- per annum. As a result thereof, he was deprived of his income. Under this head, he is entitled to get Rs. 10,000/-.

Non-pecuniary loss

The claimant is entitled to get compensation for the mental agony, shock, pain, suffering and loss of amenities of life. The learned Tribunal has awarded under this head Rs. 10,000/-. No interference is called for. Thus the claimant is entitled to Rs. 90,000/- + Rs. 10,000/- + Rs. 10,000 + Rs. 10,000/- + Rs. 10,000/- = Rs. 1,20,000/- (Sic. Rs. 1,30,000/-) in all.

11. Accordingly, the appeal is partly allowed. The amount of award is enhanced from Rs. 10,000/- to Rs. 1,30,000/-. To this extent, the award of the Motor Accidents Claims Tribunal, Tonk, dated 28.11.1990 is modified.

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