

Dalu Ram and Another Vs. Lukman and Others

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Court : Rajasthan

Decided On : Mar-02-2001

Reported in : 2003ACJ1076; 2002(2)WLC48; 2001(2)WLN409

Judge : H.R. Panwar, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110-CC; [Motor Vehicles \(Amendment\) Act, 1988](#) - Sections 163-A and 171

Appeal No. : S.B. Civil Misc. Appeal No. 297 of 1994

Appellant : Dalu Ram and Another

Respondent : Lukman and Others

Advocate for Def. : Manoj Bhandari, Adv.

Advocate for Pet/Ap. : L.R. Choudhary, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

Panwar, J.

(1). This appeal is directed against the Award dated 25.1.1994 passed by the Judge, Motor Accident Claims Tribunal, Balotra thereafter called 'Tribunal') in

Civil Misc. Case No. 69 of 1989, for enhancement of the Award.

(2). Briefly stated the facts which are considered necessary and relevant for the decision of [his appeal, are that on 3.2.89 at about 5 PM appellant Khemaram who on the relevant date was 7 years' of age and was student of 2nd Standard of Sharda Bal Niketan School, Balotra, was going to his house after the school hours on Balotra-Samdari road on its correct side of the road. At that relevant time, a Truck bearing No. RNJ 7169 came from behind and hit him resulting thereby that he sustained various injuries on his person, he fell down on the spot and became unconscious. It was the case of the appellant-claimants that the Truck in question was driven rashly and negligently by respondent No.1 Lukman, who was under the employment of respondent No.2, the owner of the Truck and the Truck was validly insured with respondent No.3. The report of this accident was lodged at Police Station, Balotra. The police after usual investigation filed a challan against respondent No.1 Lukman for the offences under Sec. 279, 337 and 338, IPC. He was taken to Government Nahata Hospital, Balotra for treatment where he was admitted and treated for 20 days and thereafter he was taken to Ahmedabad for better treatment. He was admitted for 8 days in V.S. Hospital, Department of Neuro Surgery. He was again taken to Government Nahata Hospital, where he admitted for 24 days and was under treatment at Balotra and Jodhpur for considerable long period. A claim was filed before the Tribunal under various heads including treatment expenses, which were incurred till filing of the claim and loss of earning for entire future span of life, loss sustained on account of attendants, boarding and loading at Balotra, Ahmedabad and Jodhpur as also transportation charges, loss of income of his father as who remained on leave to attend him.

(3). The respondents filed their written statements. After holding trial, the Tribunal on consideration of material on record came to the conclusion that the accident was the result of rash and negligent driving of the truck by respondent No. 1 Lukman.

(4). The Tribunal while deciding issue No.2, which relates to quantum of compensation, assessed and awarded a sum of Rs. 71,000/--in all including

consolidated interest.

(5). Dis-satisfied and feeling aggrieved by the quantum of compensation awarded being inadequate, present appeal for enhancement of the Award.

(6). I have heard Mr. L.R. Choudhary, learned counsel for the appellants and Mr. Manoj Bhandari learned counsel for respondent No.3.

(7). I have scanned, scrutinised and evaluated the evidence on record and considered the rival contentions.

(8). So far as appellant No.1 Daluram is concerned he has neither suffered any personal injury nor loss and, therefore, the Tribunal rightly disallowed his claim. I am also of the opinion that he is not entitled for compensation in his individual capacity.

(9). Appellant Khemaram, a minor aged 7 years of age filed a claim petition through his father being natural guardian. Soon after the accident, he was taken to Government Nahata Hospital, Balotra where he was medically examined by the doctor who prepared the injury report (Ex. 7A) and on being examined by the doctor, his general condition was noticed by the doctor that he was unconscious, rigidity of left side of body, convulsion present, bleeding profused in ear, right nose and mouth, left pupil constricted, right pupil dilated and not reacting to light. The doctor also noticed the following injuries:-

1. Swelling 4.5 cm x 3.5 cm in right temporal region.
2. Abrasion 1.5 cm x 1.0 cm in post-aurecular area.
3. Abrasion 3.0 cm x 2.0 cm lateral aspect of right knee.
4. Abrasion 1.5 cm x 1.0 cm on lateral border of left fore- arm.

(10). Thereafter he was again examined by the doctor on 4.3.89 and his general condition at the end of 34th day of accident, it was noticed that level of consciousness was unconscious, rigidity over both the upper limbs and abdomen muscles present, therefore, considering the general condition, the doctor opined

that injury No.1 is dangerous to life. A discharge slip issued by the Government Nahata Hospital, Balotra was also produced and tendered in evidence as also Ex. 94. He was further treated at V.S. Hospital, Ahmedabad, Neuro Surgery Department, where he remained admitted from 24.2.89 to 3.3.89, various bills for purchase of medicines were also placed on record from Ex. 12 to 91 and 97 to 122. The appellants in support of their claim examined AW 1 Tagaram an eye witness of the occurrence, AW2 Dr. Narpat Raj Bhandari, Medical Officer Incharge of Government Nahata Hospital, Balotra, AW 3 Peeraram and AW 4 Dalu Ram (father of the injured Khemaram). The respondents did not lead any evidence in rebuttal. AW 1 Tagaram and AW 3 Peeraram are the eye witnesses of the occurrence. AW 4 Daluram is father of Khemaram injured. He made the statement on oath before the Tribunal that his son sustained various injuries on his person including head injury which were caused due to the aforesaid accident by respondent No.1 by driving the Truck No. RNJ 7169 rashly and negligently. He further deposed that his son became unconscious and there was profused bleeding from his person. His son was admitted in the Government Nahata Hospital, Balotra where he remained under treatment for 20 days and thereafter he was taken to Ahmedabad for treatment, where remained admitted in the Hospital for 8 to 9 days and thereafter on being advised he was taken back to Government Nahata Hospital, Balotra where he further remained admitted for 24 days. During this period, he was taken to Jodhpur for check up and treated by Neurologist who came from Bombay and as also he was treated by Dr. Nagendra Sharma, Neuro Surgeon. Thereafter also he remained under treatment of Dr. Nagendra Sharma for about 6 months and he could gain conscious after a period of six months from the date of accident but on gaining the consciousness, it was revealed that appellant Khemaram has lost his speech permanently, his memory has been impaired and as such, he has lost his memory as also head injury resulted into paralysis of both the limbs of one side. This witness further made statement with regard to the treatment expenditure incurred by him till the date of filing the claim petition amounting Rs. 20,000/-, Doctor's fee Rs. 2000/- and expenses on attendants 'Rs. 10,000/-, The witness Daluram could not join his own duty as his son remained in hospital as such he claimed the loss of income of Rs. 1,500/-. Transportation charges from Balotra to Ahmedabad and back, and also

boarding and loading at both the places Rs. 1000/-, 2000/- and 5000/- respectively. This witness also deposed that he is required to incur expenses in future for treatment of his son Khemaram at Bombay and if need be out side India for which a sum of Rs. 2,50,000/- were claimed and also deposed that due to aforesaid accident, his son lost the speech permanently and as such, a sum of Rs. 1 lac was claimed. The compensation on account of his remaining unconscious for 6 months as also for physical pain and mental agony suffered by him were also claimed for a sum of Rs. 3 lacs.

(11). AW 3 Dr. Narpat Raj Bhandari who has medically examined him in compliance of the order of the Tribunal dated 27.7.92 and issued a certificate Ex. 3A. This witness made statement on oath before the Tribunal and proved the certificate Ex. 3A. He clearly deposed that the injuries resulted in total paralysis of right side of the body of Khemaram i.e. right leg and right hand completely been paralysed, as such, it resulted into permanent disability. He also deposed that the appellant sustained injuries on the skull whereby he lost his memory and reduction in intelligentia. He is not capable of speaking as such, he completely lost his speech. This witness deposed that the appellant Khemaram has become fully dependent on his family members and there is remote possibility of any improvement and as such, he deposed that the appellant is permanent disabled with regard to his right leg, hands, loss of speech and memory etc.

(12). The evidence of the appellants' witnesses remain uncontroverted inasmuch as the respondents did not lead any evidence in rebuttal.

(13). While deciding issue relating to quantum of compensation, the Tribunal made the following assessment:-

1. Doctors' Fee Rs. 2,000/-
2. Treatment Expenses Rs. 8,451/-
3. Expenses on Attendants Rs. 1,000/-
4. Transportation Charges Rs. 1,000/-

5. Expenses on attendant at Ahmedabad. Rs. 1,000/-

6. For permanent Disablement Rs. 50,000/-

7. For Medical Check-up at Jodhpur Rs. 2,000/-

Total Rs. 65,451/-

(14). In addition to this amount, the Tribunal awarded a sum of Rs. 5,549/- as consolidated interest and as such, the total compensation was awarded Rs. 71,000/-including interest.

(15). I have given my thoughtful consideration to the rival contentions' raised at the bar and also scanned and scrutinised the evidence on record. In my considered opinion, the compensation awarded by the Tribunal is highly inadequate and do not commensurate with that of injuries and disablement resulted due to the aforesaid accident. It is settled that in appeal, the interference is made for quantum of compensation only on the ground of inadequacy, or the same being too excessive as the case may be. Obviously, in the instant case, the amount awarded by the Tribunal is grossly inadequate and, therefore, needs interference in appeal.

(16). In view of the evidence discussed above, it can not be disputed that because of accident, appellant Khemaram who is a minor boy of 7 years has become paraplegic/paralysis on account of injuries sustained by him. Not only this, the appellant Khemaram has lost his speech and memory permanently. This fact has amply been proved by the evidence of AW 2 Dr. Narpat Raj Bhandari as well as from the statement of AW 4 Daluram, father of minor Khemaram. It is really difficult in this back-ground to assess the exact amount of compensation for pain and mental agony suffered by the appellant as he became life long handicapped. Undisputably, the injuries resulted in total permanent disablement. Though it is impossible to equate the money with human suffering or personal deprivation but looking to the nature of injuries, permanent disablement, age of the claimant and his being totally dependant on others, it would, however, be pertinent to bear in mind the observations made by the Apex Court in case of R.D. Haltangadi vs. Pest

Control India Pvt. Limited (1), Hon'ble Supreme Court stated thus:-

'When compensation is to be awarded for pain and suffering and loss of amenities of life, the special circumstances of the claimant have to be taken into account including his age, unusual deprivation which he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the Award must reflect that different circumstances have been taken into consideration.'

(17). In the aforesaid case, because of accident, the claimant had been crippled and could move on wheel chair. The Apex Court awarded Rs. 3 lacs under the head 'pain and suffering' and 'loss of amenities.'

(18). Therefore, in the light of the above decision of the Apex Court and having regard to the nature and extent of injuries suffered by the claimant, is also taken into consideration. His age and the fact that because of the accident, he had been crippled and cannot do anything at his own but he has to remain dependant. Having regard to the circumstances in which he has been put after the accident, there can be no getting away from the fact that the claimant needed the service of some person to look after him. AW 4 Doluram father of the claimant in clear terms deposed on oath that after accident, his son remained unconscious for 6 months and he was not in a position to speak. As such he lost the speech, he is lying on bed since the date of accident and lost the memory. Not only this, the injured claimant neither can get up from bed nor can walk because of accidental injuries resulted in paralysis. In the same sequence, he further deposed that as long as he is alive he has to render services to his son in order to look after him. The Apex Court in case of Concord of India Insurance Co. Ltd. vs. Nirmala Devi, (2), held as under:-

'The determination of the quantum must be liberal not niggardly since the law values life and limb in a free country in generous scales.'

(19). The Tribunal awarded Rs. 50,000/- for pain and suffering as also for permanent disablement. Keeping in view the circumstances in which the claimant had been put after the accident, it would be just and reasonable to enhance award

under this head from Rs. 50,000/- to 1,00,000/-.

(20). Coming to compensation awarded under the head 'pecuniary loss' in this case, the appellant is entitled for loss of prospective future earning since as held above, he has been rendered totally permanent disabled. Though he is minor boy of 7 years but it can be assumed that had he been not disabled due to accident, on attaining the majority, he would have been a earning person. For the purpose of computing compensation in the case of non-earning person, the provisions are provided in Second Schedule to Sec. 163-A of the Motor Vehicles Act, 1988 wherein the notional income for compensation to those who had no income prior to accident is taken to be Rs. 15,000/- per annum. In case of permanent disablement, the amount payable is required to be arrived at by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining compensation. Though these provisions were not in existence on the date of accident but it can only be used as a guide as observed by the Apex Court in case of U.P. State Road Transport Corporation and another vs. Trilok Chandra and others (3). Keeping in view the fact that accident is of 1987, in my considered opinion, it would be just and reasonable to award Rs. 1,20,000/- for loss of income.

(21). The Tribunal awarded Rs. 15,451/- for treatment expenses, Doctor's fee, medical check up, conveyance and attendants expenses etc. It is also quite likely that the claimant must have also incurred some expenses towards his nourishment, conveyance etc. in past and would further require to incur for rest of the span of his life. As it appears from the evidence of AW 4 Doluram that he would get his son treated at Bombay or elsewhere for which he would require to incur the expenses for his treatment. In this view of the matter, he is entitled to be compensated under the head Nourishment, Attendants and conveyance charges. Even if, the services needed by the claimant rendered gratuitously either by his father or mother or some-one-else, as the case may be, keeping in view the fact that the appellant remained hospitalised at different places including in the private hospitals. Bills amounting to Rs. 8,451/- were produced. In my considered opinion, it would be just and proper to enhance this amount of Rs. 15,451/- to Rs. 30,000/- to cover the expenses on the above heads viz. nourishment, attendants,

conveyance and treatment expenses etc.

(22). Before the Tribunal, though respondent No.3 pleaded in the written statement their liability to be upto Rs. 50,000/- . Issue No. 6 was casted and burden to prove issue No. 6 was on respondent No.3. Undisputedly despite the fact that the Insurance Policy is in power and possession of respondent No.3 who failed to produce the same before the Tribunal. Not only this, in order to prove issue No.6, no evidence was led by respondent No.3. The test in such a situation, would be that who would fail if no evidence is led. Obviously it is respondent No.3 who have led no evidence in this regard and, therefore, must fail. The Tribunal has also decided this issue against respondent No.3. In view of the Division Bench decision of this Court in case of National Insurance Co. Ltd. vs. Narain Dass Mehta and others (4), the respondent No.3- Insurance Company is held liable for entire amount.

(23). In view of the aforesaid discussion, the claimant- appellant Khema Ram is entitled for total compensation of Rs. 2,50,000/-.

(24). The Tribunal has awarded a sum of Rs. 5,549/- as consolidated interest for no cogent reasons. The interest is by statute Section 110 CC (M.V. Act 1939) corresponding to Section 171 of MV Act 1988 which provides where any claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the Claim as it may specify in this behalf. Though the Tribunal had discretion to award interest at such rate and from such date not earlier than the date of making the claim. It is well settled that every discretion conferred by statute must be exercised judicially on the basis of the facts and circumstances of the particular case. The Tribunal has not given any reason muchless justifiable reason in not awarding interest from the date of making of the claim and thus I see no justification by the Tribunal not having awarded interest whatever be rates from the date of making the claim. The Apex Court in case of Dr. K.R. Toondon (Mrs.) vs. Om Prakash and another (5), awarded interest at the rate of 12% per annum from the date of the application. I consider it just and proper to award interest at the rate of 12% per

annum from the date of the application i.e. 1.8.89 till realisation.

(25). In the result, the appellant Khemaram's appeal for enhancement of compensation is allowed and the compensation awarded by the Tribunal is enhanced from Rs. 71,000/- to Rs. 2,50,000/-. This amount shall carry interest at the rate of 12% per annum from the date of making claim i.e. 1.8.89 till realisation. The respondents are held liable jointly and severally, since the Vehicle involved in the accident was validly insured with respondent No.3, therefore, respondent No.3 is directed to deposit compensation amount awarded together with interest, of-course, after adjustment of the amount paid, if any, already to the claimant within a period of 3 months. Out of the amount payable to the appellant claimant Khemaram, 75% of the amount should be deposited in personal name of appellant Khemaram in any Nationalised or Scheduled Bank in Fixed Deposit Account for a period of 5 years, which shall further be subject to renewal. The appellant-claimant shall, however, be at liberty to withdraw the interest accrued thereon from time to time for being spent towards his living expenses. In case any amount is needed by the appellant-claimant to meet the expenses for future treatment the claimant would be at liberty to make an application before the Tribunal for withdrawal of such amount that may be needed by him. In the facts and circumstances of the case the parties are left to bear their own costs.