

Dan Ji Vs. Arjun Lal and Others

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Court : Rajasthan

Decided On : May-11-2001

Reported in : 2002(1)WLN329

Judge : H.R. Panwar, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 166

Appeal No. : S.B. Civil Misc. Appeal No. 437 of 1995

Appellant : Dan Ji

Respondent : Arjun Lal and Others

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

Advocate for Pet/Ap. : Lalit Kawadia, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

Panwar, J.

(1). This appeal is directed against the judgment and award dated 14.8.95 passed by the Motor Accident Claims Tribunal, Dungarpur (for short 'the Tribunal') in MACT Cases No. 40 of 1993 by which the learned Tribunal awarded a sum of Rs.

30,000/- as compensation in favour of appellant and against the respondents.

(2). Aggrieved and dis-satisfied by the quantum of compensation awarded by the learned Tribunal, the appellant-claimant has filed this appeal.

(3). Brief facts which are necessary to dispose of this appeal are thus : On the intervening night of 12th/13th October, 1992, while appellant, Hariya, Laloo and Bhoora were sleeping in their field situated in village Gariyala. They were run over by Truck No. RJB 575 which came from Gariyala side. At the relevant lime, the said truck was driven rashly and negligently by its driver respondent No. 1 Arjunlal. Due to this accident, the appellant sustained service injuries on his person resulting in fracture of both the legs. Despite prolonged treatment, the injuries resulted in permanent disablement to the extent of 55 per cent. The learned Tribunal reached to the conclusion that this accident was result of rash and negligent driving of the truck by its driver respondent No. 1. While deciding the issue of quantum of compensation, the learned Tribunal assessed and awarded a sum of Rs. 300,000/-.

(4). Issue of negligence is not under challenge and, therefore, it has become final.

(5). I have heard learned counsel for the parties and perused the record, i have scrutinised and evaluated the evidence on record.

(6). It was specifically pleaded by the appellant that due to the aforesaid accident resulted in fracture of his both the leg bones. He remained under treatment at Sagwara and other places. He had incurred expenses in all Rs. 40,000/- in treatment, nourishment/special diet etc. It was also pleaded that at the relevant time, he was undertaken the work of agriculture by which his monthly income was Rs. 3000/- but because of accidental injuries, he became permanent disabled and, therefore, he is now unable to undertake agriculture work. He has been deprived of income for the present and future. He has also placed on record the injury report Ex. 4, certificate of permanent disablement Ex. 7, Medical Treatment Prescription of Dr. Mahendra Singh Tyagi, Junior Specialist (Surgery), Sagwara Ex. 10, medical treatment Prescriptions of Dr. Shashank S. Gandhi, M.S. (Orthopaedics), Ahmedabad Ex.8 and 10, and Cash Memos of various Medical

Stores at Sagwara Distt. Dungarpur from Ex. 11 to Ex. 18.

(7). Learned counsel for the appellant contended that looking to the nature of injuries, which resulted in permanent disablement, the compensation awarded by the learned Tribunal is too low and do not commensurate with that of the injuries. The learned Tribunal awarded following compensation:-

1.

For Treatment Expenses Permanent Disablement etc.

Rs. 17,000/-

2.

For Injuries & Fractures;

Rs. 13,000/-

Total

Rs. 30,000/-

I have given my thoughtful consideration to the contentions raised by the learned counsel for the appellant. Undoubtedly, the appellant sustained the following injuries on his person:-

1. Lacerated wound 3 cm x 1 cm x bone deep over front of left leg-upper part-grievous.
2. Abrasion 5 cm x 2 cm over front of right knee joint- simple.
3. Swelling 10 cm x 5 cm over right gluteal R - grievous.
4. Abrasion 3 cm x 1 cm above back of right thigh-Simple.
5. Abrasion 5 cm x 1 cm over lower part of vertebra - simple.

- (8). On being examined by the Radiologist, the X-ray report shows fracture of left Tibia and Febula in upper 1/3rd region and dislocation of right hip joint.
- (9). The injured-claimant was examined by Dr. Anil K. Banbir, M.S. (Orthopaedic), Junior Specialist, Government Hospital, Dungarpur on 4.2.95 and accident took place on 13.10.92. As such, it is clear that the appellant was examined with regard to disability after about more 2 years 6 months. On examination, the doctor found that he is having severe degree restricted movement of left knee with moderate to severe degree restriction of ankle movements. He is having painful and supported walking with pus discharging sinus on left leg with swelling foot. As per 'ALIMCO' he is having fifty five percent permanent disability of left lower limbs.
- (10). The appellant stated on oath before the learned Tribunal that because he was run-over by the aforesaid truck, which resulted in fractures of his both the legs'bone and he became permanent disabled and therefore, he is unable to undertake agriculture work for ever. He categorically staled that he was earning Rs. 3000/- per month by undertaking agricultural work. After accident, the appellant could no! undertake any work. He stated that he remained admitted at Sagwara Hospital for ten days and thereafter he was taken to Ahmedabad where he remained admitted for two moths. On five occasions, he went to Ahmedabad for getting himself examined and treated. He incurred about Rs. 40,000/- on account of treatment expenses, conveyance charges, attendants, lodging and boarding at Ahmedabad. He further stated that he underwent terrible physical pain and suffering as also mental agony and injuries resulted in permanent disablement. He has placed on record certificate Ex. 7 wherein his permanent disablement has been shown to be 55 percent. With regard to his treatment expenses, he categorically made the statement that while he was travelling from Ahmedabad, his bag containing treatment record and bills has been lost in transit while he was sleeping in the bus. His bag was taken away by any body-else. The statement of the appellant further finds support and corroborated by the statement of PW 2 Haliya. The testimony of these witnesses remained unrebutted, inasmuch as, on various material points, deposed by those witnessed in their examination-in-chief remained unchallenged in cross-examination and, therefore, the necessary corollary is that the adversaries do not want to challenger that part of version

which was deposed by the witnesses and must be taken to be truthful.

(11). Looking to the nature injuries, longevity and permanent disablement caused the appellant, in my considered opinion, the compensation awarded by the learned Tribunal appears be highly inadequate and, therefore, deserves to be enhanced.

(12). It has been established by unrebutted testimony of the appellant that injuries resulted in permanent disablement to the extent of 55 percent of left lower limbs. It has also been established that the appellant is agriculturist and he used to undertake agriculture work, by which, his monthly income was Rs. 300/-. At the relevant time, his age was of 40 years. It has also been established that due to disablement, he is no unable to undertake agriculture work and has been deprived of the income for the present i.e. for the period from the date of accident till he underwent the treatment and for the further.

(13). It has also been established that the appellant underwent physical pain and suffering as also he suffered mental agony in present and would continue to suffer on account of injuries for rest of span of his life. Though it is difficult to compute the exact loss with the human suffering or personal deprivation. Looking to nature of the injuries, permanent disablement and age of the appellant, the compensation which commensurate with that of loss sustained, deserve to the awarded. In R.D. Hattangadi vs. Pest Control (India) Pvt. Ltd. and Others (1), the Hon'ble Supreme Court observed as under:-

'Whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. However, all such elements are required to be viewed with objective standards. While assessing damage, the court cannot base its opinion merely on speculation or fancy though conjectures to come extent are inevitable.'

Their Lordships further held that:-

'Boardly speaking while fixing an amount of compensation payable to a victim of a accident, the damages have to be assessed separately as pecuniary damages

and special damage. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for mention and physical shock, pain and suffering, already suffered or likely to be suffered in future (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of Injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.'

(14). In the instant case, the appellant being agriculturist having disability to the extent of 55 percent would not be able to undertake his routine agriculture work as a normal man and definitely his working capacity has substantially been reduced due to permanent disablement. In totality of the facts and circumstances of this case, it is just and proper to take a figure of Rs. 400A per months as loss of income by taking into account the future prospectus. This amount needs to be suitably multiplied according to the age of the appellant. In *Ashwani Kumar Mishra vs. P. Muniam Babu and Others* (2), age of the injured was 23 years and Hon'ble Supreme Court while computing the loss of income applied multiplier of 16.

(15). In the instant case, looking to the age of the appellant, the multiplier of 14 years purchase factor would be just and proper in the facts and circumstances of this case. Thus, loss of income works out to $\text{Rs. } 400 \times 12 \times 14 = 67,200/-$.

(16). It has been established that the appellant remained under treatment for considerable long period including hospitalisation and during that period, he was deprived of his total earning for which he deserves to be compensated. Taking the average of his monthly income to be Rs. 1500/-, the loss for a period of one year comes to $\text{Rs. } 1500 \times 12 = \text{Rs. } 18,000/-$ In the instant case, as established on record that the appellant underwent treatment for a considerable long period

including long hospitalisation. In the facts and circumstances of the case, in my considered opinion, a sum of Rs. 30,000/- would be just and proper compensation for physical pain, mental agony, inconvenience, hardship, discomfort, disappointment etc. The appellant is also entitled for compensation for the expenses incurred on treatment, nourishment, attendance, conveyance charges etc. Although the claimant could not place on record the treatment bills, as the same have been lost in transit but taking into account, the nature of injuries, permanent disablement and the fact that the appellant underwent treatment at Sagwara and Ahmedabad, in my considered opinion, a sum of Rs. 10,000/- will be just and proper compensation for all there heads. In all the appellant is entitled to a sum of Rs. 1,25,000/-.

(17). In view of the aforesaid discussion, this appeal is allowed and the compensation awarded by the learned Tribunal is enhanced from Rs. 30,000/- to Rs. 1,25,000/-. This amount shall carry interest at the rate and from the date as allowed by the learned Tribunal. No order as to costs.