

Tilak Raj Vs. Baldev Raj and ors.

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Court : Rajasthan

Decided On : Nov-18-2005

Reported in : I(2006)ACC718; 2007ACJ127

Judge : R.S. Chauhan, J.

Appellant : Tilak Raj

Respondent : Baldev Raj and ors.

Disposition : Appeal allowed

Judgement :

R.S. Chauhan, J.

1. In an unusual accident involving three trucks, the appellant who was a khalasi, suffered an injury and consequently lost his leg. On 13.9.1989 while the truck on which the appellant was a khalasi was going on Gopalpura Bypass, another truck (to be referred as truck No. 2) overtook the said truck from the wrong side and dashed against truck No. 1. Meanwhile, a third truck (to be referred as truck No. 3) was coming from the front and that too dashed against truck No. 1. Consequently, truck No. 1 was sandwiched between truck Nos. 2 and 3. As a result of the said accident, the appellant's right leg was amputated. Subsequently, the appellant filed claim petition for compensation of Rs. 9,32,000.

2. In the written statement filed by the three different insurance companies, respondent Nos. 3, 6 and 9, they admitted that the respective trucks were insured with them. However, each insurance company blamed the drivers of the other two trucks for causing the accident. After framing five issues, perusing oral and documentary evidence, vide award dated 16.7.1994 the Motor Accidents Claims Tribunal, Jaipur, was pleased to award a compensation of Rs. 1,15,000 to the appellant. Since the appellant is aggrieved by the said award, he has filed the present appeal before us.

3. Mr. K.N. Tiwari, the learned Counsel for the appellant, has argued that because of the accident and the consequent amputation of leg, the appellant has become an unemployed youth. The appellant is not only an illiterate person, but is also from a poor family. Hence, it is extremely difficult for him to secure a decent job in his handicapped condition. He has further argued that in similar cases, the Apex Court has been pleased to enhance the compensation to almost Rs. 4,00,000. In order to support his contention, he has relied on the case of *Grifan v. Sarbjeet Singh* : JT2000(8)SC55 .

4. Mr. Sandeep Mathur, the learned Counsel for respondent No. 2, on the other hand, has argued that considering the fact that the accident took place in 1989, a compensation of Rs. 1,15,000 is just and proper compensation. Therefore, the impugned award need not be interfered with.

5. Mr. Tripurari Sharma, the learned Counsel for National Insurance Co. Ltd., respondent No. 3, has merely stated that since no allegation was made against the truck in which appellant was travelling, therefore, his insurance company should not be held liable. According to him, the accident has occurred because of rash and negligent driving of truck No. 2 and truck No. 3. The other two insurance companies, namely, United India Insurance Co. Ltd. and New India Assurance Co. Ltd. have been served with notice. But, no counsel has appeared to plead their case.

6. On the date of the accident, the appellant was a young man of 20. His entire life was ahead of him. But, because of the unfortunate accident he has become handicapped for the rest of his life. Not only he has been deprived of useful job,

but even in his personal life he would have to suffer physical agony and pain, mental anguish and inferiority complex. His physically challenged status would also adversely affect the prospect for marriage. As far back as in 1994 in the case of *Jai Bhagwan v. Laxman Singh* : (1994)5SCC5 , the Hon'ble Supreme Court dealt with a case of 22 years old man, who lost his left leg. The Supreme Court was of the opinion that both pecuniary and non-pecuniary losses resulting from the injury are to be compensated. In the said case, Hon'ble Supreme Court almost doubled the compensation amount awarded by the learned Tribunal. In the case of *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.*, : [1995]1SCR75 , the Apex Court prescribed the guidelines for the pecuniary and the non-pecuniary losses, which should be considered by the Claims Tribunals while awarding the compensation. According to their Lordships, broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. 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 for: (i) medical attendance; (ii) loss of earning or profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include: (i) damages for mental 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.

7. In the case of *Grifan v. Sarbjeet Singh* : JT2000(8)SC55 , the Supreme Court not only enhanced the compensation by Rs. 2,00,000, but also directed that the said enhancement would be in addition to the compensation of Rs. 2,00,000, already awarded by the High Court. Much as the learned Counsel for the appellant has tried to rely upon this citation, but the facts are clearly distinguishable. In the case of *Grifan* (supra), the injured person was earning Rs. 4,000 per month,

whereas in the present case appellant was earning Rs. 1,000 per month. Therefore, the loss of income due to the amputation of leg is certainly not as high as the loss of income and future prospects suffered by Grifan. But, taking into account the guidelines established by the Hon'ble Supreme Court in the case of R.D. Hattangadi : [1995]1SCR75 and taking a cue from the case of Jai Bhagwan, : (1994)5SCC5 , we direct that the compensation of Rs. 1,15,000 should be increased to Rs. 2,30,000.

8. We, therefore, allow this appeal and direct the respondents to pay a compensation of Rs. 2,30,000 along with an interest of 9 per cent from the date of filing of the claim petition to the appellant. We also direct the learned Tribunal to realize the said amount of compensation from the respondent No. 3 within a period of two months from the date of communication of this judgment. No orders as to costs.

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