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Court : Rajasthan

Decided On : Mar-23-2001

Reported in : 2003ACJ806

Judge : J.C. Verma, J.

Appeal No. : Civil Misc. Appeal No. 842 of 1997

Appellant : Kadir

Respondent : Moln and ors.

Advocate for Def. : G. Bardar, Adv.

Advocate for Pet/Ap. : Sandeep Mathur, Adv.

Disposition : Appeal allowed

Judgement :

J.C. Verma, J.

1. This civil misc. appeal has been preferred by the claimant-appellant against the order dated 3.4.1997 passed by the Motor Accidents Claims Tribunal, Tonk, in Case No. 215 of 1994 by which a sum of Rs. 1,59,000 had been awarded as compensation to the claimant.

2. The claim was filed by the present appellant for compensation because of the injuries sustained by him in the accident on 7.5.1994 when he was working as a 'khalasi' on truck No. RJK 9273; he was asked by the driver of the truck, respondent No. 1 to remove gitty from the tyre and also check oil and water level. On the instructions of the driver, when he was on the job, the driver without any warning and in a rash and negligent manner drove the truck injuring the claimant-appellant on his right leg and right hand which were fractured. The claimant was at the time 20 years of age. His ulna bone of right hand and femur bone of right leg were fractured. He was treated in Tonk and Jaipur hospitals and had been attending to the doctors for months together. He remained under plaster for many months and also bed rest. It is stated that he is unable to move his right leg properly; movement of knee is restricted and leg has been shortened by 2 1/2 inches. As per his statement he had spent about Rs. 60,000 on treatment and even after his deposition before the Tribunal, he had spent further amount. The appellant's case is that because of the injuries and restricted movement of knee and shortening of leg, he is completely unable to do the job and has become jobless. His permanent disablement is of 25 per cent.

3. The Tribunal framed required issues in regard to the accident, negligence and compensation. The appellant had appeared as AW 1. The statement of AW 2 was also recorded. The Tribunal had ultimately given an award of Rs. 1,59,000.

4. The Tribunal after finding the negligent act of the driver of the truck had assessed the annual income at the time to be Rs. 12,000 and awarded loss of Rs. 3,000 per year, i.e., 25 per cent of the income for 18 years, i.e., Rs. 54,000. It was observed that even after two years of the accident the claimant was still being treated and on that account for loss of pay of Rs. 36,000 was further awarded. He was awarded compensation for suffering for being in plaster for three months and for going to Jaipur time and again, i.e., another amount of Rs. 10,000. Rs. 9,000 was granted towards medical expenses and another Rs. 10,000 for special diet, etc. and another Rs. 20,000 was awarded for suffering, etc., as stated total amount as granted was Rs. 1,59,000.

5. This appeal has been filed for the enhancement of compensation and, therefore, there is hardly any necessity to go into the other aspects, i.e., negligence, etc.

6. In case of *Swatantra Kumar Lamba v. Sheila Didi* 1988 ACJ 74 (P&H;), the injured suffered fractured in both bones of left leg and shortening of leg by 2 cm. resulting in limping and permanent disability to the extent of 20 per cent, the movements of the ankle were limited and dorsiflexion was limited to half. The injured found it difficult to stand on tiptoes. The injured was an advocate and 30 years old and could not attend to his professional work for 10 months. The award of Rs. 3,53,500 was granted.

7. Counsel for the appellant relies on a judgment of Supreme Court in *Shashendra Lahiri v. UNICEF* 1998 ACJ 859 (SC), wherein for a shortening of leg by 3 inches, a student of B.Com. aged about 17 years are awarded compensation of Rs. 4,00,000 in addition to the compensation already granted by the High Court, i.e., the total Rs. 4,58,000 but the facts of that case are distinguishable. The injured was a student of B.Com. of the age of 17 years. He had a good education career. The Tribunal had awarded only Rs. 33,000 which was enhanced by the High Court to Rs. 58,000 including the expenses. The present case relates to an unskilled labourer, i.e., a khalasi.

8. In case of *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.* 1995 ACJ 366 (SC), the Apex Court had held that the 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: (i) medical attendance; (ii) loss of earnings of 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.

9. In case of Dr. Cop Ramchandani v. Onkar Singh 1993 ACJ 577 (Rajasthan), on account of 50 per cent permanent disablement Rs. 3,00,000 were awarded as non-pecuniary special damages, wherein the injured suffered amputation of one leg.

10. In the present case the claimant-injured was a labourer/cleaner in the truck. In my opinion granting of only Rs. 54,000 for non-pecuniary damages is too less as to compensate the injured for disablement of shortening of leg by 2 1/2 inches. Apart from other damages as awarded by the Tribunal, in my opinion, the damages because of shortening of leg can be raised to minimum Rs. 1,50,000. By adding other amounts as awarded by the Claims Tribunal, i.e., total compensation is enhanced to Rs. 2,55,000 with the same rate of interest as awarded by the Tribunal. The amount already paid shall be adjusted and the remaining amount along with interest shall be paid within three months from the date of receipt of a certified copy of this order.

11. The misc. appeal is allowed as aforesaid.