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Court : Delhi

Decided On : May-03-2012

Judge : G.P. Mittal

Appeal No. : FAO.NO. 382 OF 1999

Appellant : iqbal Singh

Respondent : Vijender Singh and Others

Judgement :

G. P. MITTAL, J.

(ORAL)

1. The Appeal is for enhancement of compensation of Rs.35,000/- awarded in favour of the Appellant for having suffered serious injuries in a motor accident which occurred on 04.01.1989.

2. The manner of the accident is extracted from the opening para of the impugned judgment hereunder:

“....According to the petitioner, on 4.1.89 at about 6.30 P.M. he along with his brother Harjinder Singh was returning from Noida and was going to Jama Masjid on Moped No.DDY-1636 and his brother was sitting on the pillion of the Moped and when the Moped reached Ring Road, Rose Garden, in front of I.G. Stadium, a

Premier-118 car hit the Moped of the petitioner. As a result of which, he fell down on the road and unfortunately, a DTC Bus No.DLP-3002 driven by respondent No.1 Vijender Singh in a rash and negligent manner and run over the petitioner and his brother Harjinder Singh. The right arm of the petitioner was completely crushed under the wheels of the bus and his brother did not suffer any serious injuries...”

3. The Appellant was removed to LNJP Hospital. He underwent a surgery on 04.01.1989. The Appellant's condition did not improve as per the treatment papers Ex.PW2/1 (collectively) running into 16 sheets. There was no active movement in the Appellant's right hand. There was swelling in the right hand and ultimately it was decided to amputate the Appellant's hand above elbow in order to save his life. According to the Appellant, he took three months to recover from the injuries. The Appellant claimed that he was a self employed person working on a lathe machine at his own premise and was earning Rs.2,000/- per month. He claimed a compensation of Rs.2,00,000/-.

4. The Claims Tribunal on the basis of the manner of the accident took a view that the accident was caused on account of the negligence of the Premier NE (Motor Car) and the DTC bus driven by the Respondent No.1. While awarding a compensation of Rs.60,000/- towards permanent disability and Rs.10,000/- towards pain and suffering and medical expenses, the Claims Tribunal held that the Appellant was entitled to 50% of the compensation and thus an award of Rs.35,000/- was made.

5. The following contentions are raised on behalf of the Appellant:

(i) It was a case of contributory negligence. Even if it is assumed that Premier NE as well as the DTC bus both contributed to the negligence resulting into the accident; it would be a case of composite negligence.

(ii) The compensation awarded is wholly inadequate and needs to be enhanced.

6. On the other hand, it is submitted by the learned counsel for the Respondent No.2 DTC that it would have been a case of composite negligence if there would

have been head-on collision involving two vehicles. Since the Appellant was first struck by Premier NE and thereafter by the DTC bus, it was a case of contributory negligence. It is submitted that the compensation awarded is just and reasonable.

7. I would not agree with the contention raised by the learned counsel for the DTC that if two vehicles are involved in the motor accident one after the other, it would be a case of contributory negligence. In my view, there would be contributory negligence only in a case where the victim himself contributes to the negligence. I am supported in this view by the report of the Supreme Court in *T.O. Anthony v. Karvarnani*, (2008) 3 SCC 748.

8. In order to establish negligence on the part of the DTC bus driver, the Appellant himself entered the witness box as PW1 and produced his brother Harjinder Singh who was a pillion rider as PW2. The Appellant testified that when they reached on the Ring Road near Rose Garden, one NE 118 hit their Moped as a result of which the Appellant and his brother fell down on the road. The DTC bus No.DHP 3002 driven by the First Respondent in a rash and negligent manner came at a fast speed from behind the car and ran him over. PW1 wholly stood the test of cross-examination. He was supported by PW2 Harjinder Singh in the manner of the accident. The Respondent No.1 did not enter the witness box to give his version of the accident. In the circumstances, it is established that there was negligence on the part of the Respondent No.1, the driver of the DTC bus or at the most there was composite negligence on the part of the Respondent No.1 and the driver of NE 118.

9. In *Bherlal v. Kamal Singh*, (2005) 2 TN MAC 39 (Mad), it was held by the Madras High Court that in a case of composite negligence, a third party will not be guilty of a contributory negligence. In *T.O. Anthony v. Karvarnani*, (2008) 3 SCC 748, the Supreme Court held as under:

“6. „Composite negligence?refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the

injured person has choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.”

10. Thus, even if it is held that it was a case of composite negligence, the Appellant was entitled to sue one of the tortfeasors and recover the compensation from him.

11. Now, this is the time to deal with the compensation payable to the Appellant. This accident took place on 04.01.1989. The Appellant says that he was a self employed person, and being a technical person he was earning Rs.2,000/- per month. No documentary evidence was produced by the Appellant in support of his income. If I believe the Appellant, his annual income would be Rs.24,000/-. Admittedly, the Appellant was not being assessed to Income Tax. If his annual income was anything beyond Rs.18,000/- at the relevant time, he was under obligation to file Income Tax Return and pay the Income Tax. In the absence of any cogent evidence with regard to the Appellant's income, I would be guided by the minimum wages fixed by the Government of NCT of Delhi under the Minimum Wages Act. The minimum wages of a skilled person on the date of the accident was Rs. 749/-. The Appellant suffered amputation of his right hand. In *Raj Kumar v. Ajay Kumar and Anr.*, 2011 (1) SCC 343, the Supreme Court brought out the difference between permanent disability and functional disability resulting into loss of earning capacity. A particular injury may have a different impact on the victim as per his vocation. The Appellant's testimony that he was carrying out business and working on a lathe machine as a self employed person was not challenged in the cross-examination. The Appellant suffered permanent disability to the extent of

more than 50% in respect of right arm. In case of amputation of right arm above elbow the loss of earning capacity for a technical person doing work with his hand would be very large. I would assess the same to be 70% as the Appellant could not have worked on the lathe machine with his left hand. He could have just carried out some other work with his left hand. Thus, the loss of earning capacity would come to Rs.1,00,665/-(Rs.749/- X 12 X 16 X 70%).

12. In the case of Govind Yadav v. New India Assurance Co. Ltd., 2011(10) SC 683, the Supreme Court granted a compensation of Rs.1.5 lakhs towards pain and suffering and Rs.1.5 lakhs towards loss of amenities and loss of marriage prospects in an accident resulting in 70% disability on account of amputation of left leg which occurred in the year 2004. Considering that this accident occurred almost 15 years before the accident in Govind Yadav and the Appellant was aged 33 years, I would award him a compensation of Rs.40,000/- towards loss of amenities and disfigurement.

13. The compensation of Rs.10,000/- awarded towards pain and suffering was on the lower side. Considering that the accident took place in the year 1989, the same is enhanced to Rs. 20,000/-. The Appellant has not placed on record any bills regarding his treatment and purchase of medicines. The treatment was carried out in a Government Hospital. Even then, the Appellant would have spent something towards the purchase of medicines and on conveyance for making some hospital visits. I would make an award of Rs.2,500/- under this head.

14. The overall compensation is thus enhanced from Rs.35,000/- to Rs.1,53,165/-.

15. It is urged by the learned counsel for the Respondent DTC that the Appeal was dismissed in default twice. Although, the Appeal was instituted in the year 1999, the blame was largely put on the Appellant for the delay. It may be noted that the Appeal was filed after a delay of 15 days. The delay was condoned by an order dated 05.11.1999 and the Appeal was admitted. The Appeal was dismissed for want of prosecution on 05.03.2008. It was restored and was again dismissed in default on 05.05.2011. The Respondent DTC cannot be held liable with the burden of interest for the delay attributable to the Appellant. In the facts and circumstances, the Appellant would be entitled to interest @ 9% per annum on the

enhanced amount of Rs.1,18,165/- from the date of filing of the Petition till the date of award i.e. 03.05.1999. I would further award interest @ 7.5% per annum for the period of eight years from the date of the filing of the Appeal till the date of this order and then from the date of the order till the date of the payment.

16. The Respondent No.2 DTC is directed to deposit the enhanced amount in the name of the Appellant in UCO Bank, Delhi High Court Branch within eight weeks. The compensation shall be released to the Appellant on deposit immediately as the accident took place at least 23 years back.

17. The Appeal is allowed in above terms.

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