

Rakesh Goel Vs. Mukesh Kumar and Others

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Court : Delhi

Decided On : May-21-2012

Judge : G.P. Mittal

Appeal No. : MAC. APP. No. 64 OF 2009

Appellant : Rakesh Goel

Respondent : Mukesh Kumar and Others

Judgement :

G. P. MITTAL, J.

(ORAL)

1. The Appeal is for enhancement of compensation of Rs0.1,07,610/- granted in favour of the Appellant for having suffered injuries in an accident which occurred on 01.06.2002.

2. There is twin challenge to the impugned judgment. Firstly, it is urged that the Claims Tribunal erred in holding the Appellant guilty of contributory negligence to the extent of 50% and, secondly, that the compensation awarded was wholly inadequate.

3. As far as the first contention is concerned, I need not labour much. Admittedly, there was a head-on collision between a Tata Indica Car No.HR02-H-9912 driven

by the First Respondent herein and another car Tata Indica No.DL7C-A-2877 driven by the Appellant. A Claim Petition was filed by an occupant of the Car No.HR 02-H-9912 against the Appellant as also the driver of the other car which came to be decided on 26.04.2005. The Claims Tribunal, Kurukshetra presided over by Sh. Bharat Bhushan Parsoon returned a finding that there was negligence on the part of the Appellant and the First Respondent in the ratio of 30:70. It is admitted by the learned counsel for the Appellant that the said finding has not been challenged by the Appellant and has thus become final between the parties.

4. The Claims Tribunal while holding the Appellant liable for contributory negligence to the extent of 50%, observed as under:

“I have already discussed the evidence available in this case. I am unfazed by the findings of the other MACT. Certain points remain glaringly on record which are inexorable. They are as under:

- a) it was a head on collision between two cars;
- b) that the road was a single road with no divider;
- c) that the width of the road was not permissible for three vehicles to pass on at the same time;
- d) PW1 admits that a jeep was going ahead of him;
- e) He also observed a car following it.

With the above facts available on record, the same conclusively established that Rakesh Goel, who was driving car number 2877 had ample chance of realizing himself with regard to the situation on the road. He had chances of averting the accident only if he had been cautious of the fact of the width of the road and the vehicle coming ahead from the opposite direction.

As regards the negligence attributed to the car driver of vehicle number 9912, the same set of facts equally applies. In such a case, the negligence on the part of vehicles colliding face to face, the equal blameworthiness can be easily inferred without much cracking of one's mind.

In the result, I hold that the accident occurred and petitioners were injured to due to the part negligence on the part of respondent number 1. The blameworthiness on the part of petitioners is held at 50%. Hence, issue number a stands answered partly as above.”

5. In my view, all the conditions as laid down in Section 11 of the Code of Civil Procedure were satisfied. The procedural law, at least, the principles of CPC, in essential matters, like the principles of res judicata equally applies to the proceedings before a Claims Tribunal. Thus, the observation by the Claimant that it was not bound by the finding of the earlier decided petition by the competent Court of jurisdiction which could entertain the subsequent Claim Petition defies logic and well settled legal principles. Thus, I hold that there was contributory negligence to the extent of 30:70 vis--vis the Appellant and the First Respondent. 30% liability shall be apportioned by the Appellant himself and 70% shall be apportioned by the tortfeasor, its owner and the insurer.

6. A perusal of the Trial Court record reveals that the Appellant too suffered serious injuries. In fact, the Appellant was initially denied a sum of Rs.18,000/- towards future treatment, but the same was granted later on. The relevant portion of the judgment regarding grant of compensation to the Appellant is extracted hereunder:

“In the matter of Rakesh Goel, Ld. Counsel for the petitioner argues that the petitioner had suffered five fractures and his hip joint was dis-located. I have gone through the petition of Rakesh Goel, he is working as Architect with M/s NDMC, New Delhi. Ex.PW1/3 shows that he could not attend the duties from the date of accident i.e. 01.06.2002 till 19.07.2002. Ex.PW1/9 shows that he suffered fracture in the bone and his dislocation. The total medical expenses including the bills is Rs.68,320/- in which the future treatment of Rs.18,000/- is added. A sum of Rs.8,000/- is also added towards the expenses of dentist. PW8 shows that the petitioner was on medical leave between 01.06.2002 to 21.07.2002. PW9 deposes that this witness got reimbursed a sum of Rs.19,895/-. The claim of Rs.18,000/- towards future treatment of Rakesh Goel, is not supported by any expert evidence. In the result, the total sum of medical expenses of Rs.50,320/- can be allowed.

I propose to assess the compensation as under:

1. Pain and suffering:	Rs.60,000/-
2. Actual medical expenses:	Rs.50,320/-
3. Special diet and conveyance:	Rs.30,000/-
4. Expenses on attendant (Ex.PW1/5 to 1/7):	Rs.14,400/-
5. Loss of leave for 51 days:	Rs.42,500/-
6. Future medical expenses (as per PW7):	Rs.18,000/-
TOTAL	Rs.2,15,220/-

It was argued by the Ld. Counsel that the sum of expenses spent on driver, ambulance, car-towing charges, car loss suffered to the car and the amounts paid to ICICI bank and the extra amount paid for purchase of car and transportation of expenses be also awarded. In the written calculations furnished by him, the same are claimed. The same cannot be allowed for want of evidence and the petition Rakesh Goel, being the one for the compensation for the injuries sustained by him. Therefore, I am persuaded to grant compensation on the counts claimed by him. Considering the blameworthiness on the part of the petitioner, the claim against the respondents shall be maintained at 50% of the total compensation worked out above which comes to Rs.1,07,610/- (Rupees One Lac Seven Thousand Six Hundred and Ten Only).”

7. It is urged by the learned counsel for the Appellant that the compensation awarded towards pain and suffering is wholly inadequate. No compensation was awarded for engaging a driver. The compensation awarded towards expenses on attendant is insufficient.

8. The injuries suffered by the Appellant were really serious. The Appellant suffered five fractures and his hip joint was also dislocated. The Appellant remained admitted in AIIMS from 01.06.2002 to 18.06.2002. He had to take leave for 51 days for which adequate compensation of Rs.42,500/- was granted to him.

9. It is difficult to measure the pain and suffering in terms of money which has been suffered by the claimant on account of serious injuries caused to him in a motor accident. Since the compensation is required to be paid for pain and suffering an attempt must be made to award compensation which may have some objective relation with the pain and suffering underwent by the victim of a motor accident. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the parts of the body where the injuries were sustained; surgeries (if any) underwent by the victim; confinement in the hospital and the duration of the treatment. Considering that the Appellant was hospitalized for 18 days, had to undergo surgery in AIIMS and had to take rest at home, the compensation of Rs.60,000/- seems to be just and reasonable.

10. The minimum wages of a skilled worker on the date of the accident were Rs.3103/-. The compensation of Rs.14,400/- awarded would be more than sufficient to meet the expenses spent on an attendant for about two to three months.

11. It is urged that some compensation for engaging a driver and ambulance charges should have been granted. As stated above, a consolidated compensation of Rs.30,000/- was awarded which was reasonable to cover the ambulance and car-towing charges. No further compensation was, therefore, required.

12. In the result, I do not find any ground for enhancement of the total compensation of Rs.2,15,220/-. I have held above that the finding reached by the Claims Tribunal apportioning 50% liability on the Appellant was not legal. The Claims Tribunal being bound by the judgment dated 26.04.2005 of the Motor Accident Claims Tribunal, Kurukshetra; the Respondents were liable to pay 70% compensation awarded. Thus, instead of a compensation of Rs.1,07,610/-, the Respondents No.1 to 3 are liable to pay a compensation of Rs.1,50,654/-.

13. The enhanced compensation of Rs.43,044/- shall carry interest @ 7.5% per annum from the date of the filing of the Petition till its deposit with the Claims Tribunal. The Respondent No.3 Insurance Company is directed to deposit the enhanced compensation along with interest in the name of the Appellant in UCO

Bank, Delhi High Court Branch within six weeks, which shall be released to the Appellant on deposit.

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