

Master Shanker and Another Vs. Shri Suresh Kumar and Others

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Court : Delhi

Decided On : May-02-2012

Judge : G.P. Mittal

Appeal No. : MAC. APP. 174 OF 2009 & 196 OF 2012

Appellant : Master Shanker and Another

Respondent : Shri Suresh Kumar and Others

Judgement :

G. P. MITTAL, J.

(ORAL)

1. These two Appeals arise out of a judgment dated 10.10.2008 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs.1,33,000/- was awarded in favour of Master Shanker (the Claimant) who suffered multiple injuries including fracture pelvis-hemoperitoneum in an accident which occurred on 26.11.1997.

2. Immediately after the accident, the Claimant was admitted to Safdarjung Hospital. On the same day, he was shifted to Mata Chanan Devi Hospital where he remained admitted from 26.11.1997 to 03.12.1997. The Appellant underwent surgery in Mata Chanan Devi Hospital. It was claimed that the Appellant spent a sum of Rs.50,000/- towards treatment, and he also suffered in his studies.

3. Respondent No.4 was stated to be the registered owner and financier of the vehicle, Respondent No.5, the owner and Respondent No.3 the Insurer of the vehicle.

4. The Claims Tribunal found that the accident was caused on account of the rash and negligent driving of the Maruti Van No.DL-8C-4651 driven by its driver Suresh Kumar (Respondent No.1) since deleted. He admitted that he did not possess any driving licence on the date of the accident. The Claims Tribunal relied on Section 2 (30) of the Motor Vehicles Act to return a finding that in case of a Hire Purchase Agreement, the person in possession of the vehicle, under that Agreement would be the owner. Thus, the liability to pay the compensation was fastened on Respondent No.5.

5. The compensation awarded by the Tribunal is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Bills	Rs.23,000/-
2.	Pain and Suffering	Rs.70,000/-
3.	Loss of Studies	Rs.25,000/-
4.	Special Diet	Rs.10,000/-
5.	Conveyance	Rs.5,000/-
Total		Rs. 1,33,000/-

6. MAC APP.174/2009 has been filed for enhancement of compensation whereas Cross-Objections being MAC APP.196/2012 has been filed by Respondent No.5 on the ground that the negligence on the part of the driver was not proved; the compensation towards pain and suffering was excessive and exorbitant; compensation of Rs.25,000/- awarded towards loss of studies was not made out as the Appellant's name was struck off from the school on 15.07.1996 much before the date of the accident which occurred on 26.11.1997 and the compensation of Rs.5,000/- awarded towards Conveyance was alleged to be on the higher side. The liability to pay the compensation is also disputed.

NEGLIGENCE:-

7. On the question of negligence, the Claims Tribunal held as under:-

“11. It also stands proved by the statement of PW1 that the offending vehicle was being driven in a very fast speed and negligent manner and hit the petitioner as a result of which he sustained grievous injuries. There is nothing in the cross examination of this witness to hold that the accident had not taken place due to the rash and negligent driving on the part of Respondent No.1. Presence of this witness at the spot also cannot be doubted because FIR Ex.PW-1/1 was recorded on his statement. Respondent No.1 in his WS has not taken up any defence regarding rashness and negligence in driving on his part. His plea simply is that he has been acquitted in the criminal case. It is a settled law that the nature of proof in a criminal case is beyond reasonable doubt while the nature of proof in a civil matter like MACT is by the preponderance of evidence. It is also a settled law that acquittal in a criminal case does not prove the fact that the vehicle was not being driven in a rash and negligent manner. The site plan Ex.PW-1/3 clearly shows that the accident had taken place at point A which is not middle of the road. The negligence on the part of the injured, therefore, cannot be attributed. PW-1 has clearly identified that Respondent No.1 is the driver of the offending vehicle on the date his statement was recorded. The order sheet of the date i.e. 01.10.02 on which date his statement was recorded also shows that Respondent No.1 the driver of the offending vehicle was present in the court as his attendance had been marked in the order sheet. This further proves that the vehicle was being driven by Respondent No.1 at the time of the accident. I thus hold that the accident had taken place due to rash and negligent driving of offending vehicle by respondent No.1.....”

8. The manner of the accident was not seriously challenged in the cross-examination of PW-1 who was an eye witness to the accident. The Claims Tribunal's finding on negligence is well reasoned and logical. There is no ground to interfere with the said findings.

QUANTUM OF COMPENSATION:-

9. At the time of the accident, the Appellant was a student of 7th standard. As stated earlier, immediately after the accident, the Appellant was removed to Safdarjung Hospital where he was diagnosed to have suffered blunt injury in the abdomen, fracture pelvic and fracture right superior and inferior pubic rami (Ex.PW-1/7). Then he was shifted to Mata Chanan Devi Hospital. The Discharge Slip Ex.PW-1/8 issued by Mata Chanan Devi Hospital shows that the Appellant remained admitted in the hospital from 26.11.1997 to 03.12.1997. He underwent surgery in the said hospital. He was discharged with an advice to take almost a dozen medicines as prescribed and to have the dressing changed on every Wednesday and Saturday. The Appellant proved a hospital bill for payment of Rs.18,950/- (Ex.PW-1/10) and the bills (Ex.PW-1/11 to Ex.PW-1/24) regarding purchase of medicines. Ex.PW-1/25 and Ex.PW-1/26 are the OPD cards of Mata Chanan Devi Hospital to show that the Appellant remained under treatment as an Out Door Patient.

10. Compensation of Rs.25,000/- was towards reimbursement of the medical bills including the bill for Rs.18,950/- which was towards surgery and Appellant's stay as an Indoor Patient in Mata Chanan Devi Hospital. The same cannot be disputed.

11. It is difficult to measure in terms of money the pain and suffering 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.

12. Considering the nature of injuries including fracture pelvic; injury on the stomach; surgery underwent; the period of hospitalization and Outdoor treatment, a compensation of Rs.70,000/- on account of pain and suffering cannot be said to be excessive or exorbitant.

13. Similarly, a compensation of Rs.10,000/- towards special diet and Rs.5,000/- towards conveyance is just and reasonable in view of the fact that a person with such injuries takes several months to recover and can travel to the hospital only in a taxi.

14. A very forceful argument has been advanced by the learned counsel for Respondent No.5 on the award of Rs.25,000/- as compensation towards Loss of studies. It is urged by the learned counsel for Respondent No.5 that a perusal of the School Leaving Certificate dated 01.08.2002 would reveal that name of the Appellant was struck off from the school on 15.07.1996, whereas this accident took place on 26.11.1996. Thus, there was no Loss of Studies on account of the injuries suffered by the claimant in the accident. On this aspect, PW-1 Nanak Chand (the Appellant's father) testified that at the time of the accident his son was aged about 12 years and was a student of 7th standard in DAV High Secondary School, Sadar Bazar, Delhi Cantt. Thereafter his son could not continue his studies due to the injuries and subsequently lost his interest in the studies. Although, it is borne out from the School Leaving Certificate, copy of which was also placed on record by the Appellant's father for release of the interim compensation, that the Appellant's name has been struck off from the School on 15.07.1996 i.e. before the accident, however, PW-1's testimony was not challenged in his cross-examination that his son had lost interest in his studies after the accident and therefore could not resume his studies.

15. The Appellant remained under treatment for a period of three months. He was also entitled to be compensated for the Attendant's salary, though no compensation has been awarded for the same. Even if, his family members rendered gratuitous services, the Appellant was entitled to be compensation for the same. (See Delhi Transport Corporation and Anr. v. Lalita AIR 1981 Delhi 558).

16. Thus, in the circumstances, it is established that the Appellant was not studying in DAV School on the date of the accident, yet I would not interfere with the award of Rs.25,000/- which I would take towards gratuitous services rendered to the Appellant as also for Loss of Amenities and Expectations of Life.

17. The compensation of Rs.1,33,000/- awarded is just and reasonable.

LIABILITY:-

18. It is urged by the learned counsel for Respondent No.5 (the Cross-Objector) that Respondent No.5 was neither the registered owner nor the rightful owner of the offending vehicle. Thus, he could not have been fastened with the liability to pay the compensation.

19. The Claims Tribunal relied on the admission made by Respondent No.5 and held that he was the rightful owner of the offending vehicle.

20. It would be appropriate to refer to the written statement filed by Respondent No.5. In Para 2 of the written statement dated 08.08.2007, Respondent No.5 stated that he was the Superdar and the owner of the offending vehicle. He took up the plea that the offending vehicle was fully insured and the Insurance Company was liable to pay the compensation.

21. In the subsequent written statement dated 19.12.2007 in para 4 (i) and Para 6, it was admitted that Respondent No.1 (Respondent No.5 herein) was the owner and as per law, the Financier and the Insurance Company are liable to pay the compensation.

22. Although, the documents with regard to the Hire Purchase Agreement have not been proved on record, but the same loses significance in view of the clear cut admission by Respondent No.5 that he was the Owner and Respondent No.4 was the Financier.

23. The provision of Section 2 (30) of the Act with reference to the term 'owner of the vehicle' where the vehicle is subject to Hire Purchase Agreement was interpreted in Godavari Finance Co. v. Degala Satyanarayana and Ors, AIR 2008 SC 2493 and it was held that the person in possession of the vehicle and not the financier would be liable to pay the damages in a motor accident. Para 13 of the report is extracted hereunder:-

“13. In case of a motor vehicle which is subjected to a hire-purchase agreement, the financier cannot ordinarily be treated to be the owner. The person who is in possession of the vehicle, and not the financier being the owner would be liable to pay damages for the motor accident.”

24. Thus the liability to pay the compensation by Respondent No.5 as owner is established.

25. Unfortunately, Respondent No.1 (before the Claims Tribunal) admitted in his statement that he was not possessing any valid driving licence on the date of the accident i.e. 26.11.1997. Respondent No.5 has not come out with any explanation as to the circumstance under which the vehicle was entrusted or came in the possession of the driver (Respondent No.1 before the Claims Tribunal). Thus, the Claims Tribunal rightly made the Insurance Company liable to pay the compensation because of its statutory liability with an option to recover the same from Respondent No.5 as he was guilty of breach of the terms of the policy condition.

26. The impugned order cannot be faulted on the question of negligence, quantum of compensation and the liability to pay the compensation.

27. Both the Appeals are devoid of any merit; the same are accordingly dismissed.

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