

(1975) 05 DEL CK 0014
In the Delhi High Court
Case No : F.A.O. No. 174 of 1967

Atlantic (East) Ltd. and Another

APPELLANT

Vs

Ram Prakash and Another

RESPONDENT

Date of Decision : 15-05-1975

Acts Referred:

Citation : (1975) ACJ 427

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : H.K.L. Sabharwal and Y.K. Sabharwal, for the Appellant; R.L. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Avadh Behari Rohatgi, J.—These are two appeals against the order of the Motor Accident Claims Tribunal dated May 3, 1967.

2. These are the facts. One Ram Parkash Kapahi was going on a scooter on May 25, 1965. His wife was a pillion passenger with him. He was then building his house. His wife was looking after the construction. He had gone to the site to take her in the evening.

3. Kapahi at the relevant time was a civilian staff officer at the Army Headquarters, New Delhi. He was 47 years old then He was drawing a pay of Rs. 1,165/- per month. He was going from south to north. He was living at Baird Road. In other words he was going from South Delhi to New Delhi proper.

4. A car (DLF 8737) was coming from west to east. It was going on the main road towards New Delhi South Extension part II. The car belonged to Atlantic (East) Limited. It was being driven by Dharambir Singh. It was insured with Norwich Union Fire Insurance Society Limited.

5. The car and the scooter reached a crossing. It was about 6 p.m. There was an accident. Kapahi sustained the following injuries:

1. Two abrasions right elbow 3 mm. in diameter and 2 x 3 mm.
2. Two abrasions left elbow 1 x 3 mm, and 1/2" in diameter.
3. Two abrasions left leg in front 3mm, in diameter.
4. Lacerated wound left ankle, inside 1 inch diameter.
5. Deformity and clinical evidence of fracture of the bones of left leg and swelling around left ankle.
6. He was taken in this very car to the hospital. He remained in plaster for eleven months till March 1967 and thereafter be used crutches. His leg has been shortened. He cannot walk erect. He limps. He has suffered a permanent physical disability.
7. Kapahi made an application to the Motor Accident Claims Tribunal. He claimed Rs. 25,000/- on account of compensation. The Tribunal awarded him Rs. 5,000/ on account of general damages and Rs. 7,419/- on account of loss of leave salary from May 25, 1965 to December 6, 1965 In all award of Rs. 12,419/- was made in his favour.
8. Now there are two appeals to this Court. One is by the owner of the car and the insurance company. This is F.A.O. 174 of 1967. They claim that the Tribunal has wrongly fastened the liability on them of the accident. The other appeal is by Kapahi. He cross appeals on the ground that the damages are too low. This order will govern them both.
9. The Tribunal found that Dharam Bir Singh driver of the car was negligent. The accident was caused by his negligent driving. The scooter driver was not at fault, the Tribunal said.
10. In the appeal of the insurance company the main question to be decided is: who was negligent ? Was it the negligence of the scooter driver or was it the negligence of the motor driver ? Now it is admitted by both the parties that the accident happened at the centre of the crossing. The scooter driver was coming from his right hand side. It was the duty of the motor driver to give way to him as provided by Rule 7 of the 10th schedule of the Motor Vehicles Act. That rule says:

The driver of the motor vehicle shall on entering a road intersection, if the road entered is a main road designated as such, give way to the vehicle proceeding along that road, and in any other case give way to all traffic approaching intersection on his right hand.

The motor driver did not observe this rule. The Tribunal held that he was negligent.
11. That it was the motor driver who was negligent is clearly proved by the medical evidence. The injuries sustained by the scooter driver clearly show that Kapahi was seriously injured in his left leg His left ankle was wounded. His bones

of the left leg were fractured. There two abrasions on the left leg, two abrasions on the left elbow and one abrasion on the left ankle. These injuries clearly indicate that the car struck the scooter driver on his left side and he fell down with a great impact.

12. Kapahi produced two doctors in evidence. They had treated him at the hospital. Both of them supported the theory that it was the car which struck against the scooter.

13. The case of the insurance company and the car owner is that the scooter driver's left leg was entangled in the number plate of the car and the injuries on the left leg were all due to the negligence of the scooter driver himself. This theory was discounted by both the doctors.

14. Dr. Leela Ramachandran (PW. 7) said in cross-examination:

To produce fracture on the left side there must be sufficient force of impact. I would not say that these injuries on the left foot are possible if a person on a stationary scooter falls on his left side and the left foot is entangled with the number plate of car standing on the left side because I think the number plate is Sharpe edged thing and the injuries (are) with a blunt object and secondly there must be some force of impact.

The other doctor N. K. Masand also supported Kapahi's case. He said this:

It is very difficult to say if this injury could be caused by his falling from his scooter with his leg entangled in a number plate of the car in front. It is possible to get this injury in such circumstances if he falls with great force.

15. The medical evidence is disinterested. It can safely be relied upon. What appears to have happened is this. The car struck the scooter and as a result of striking Kapahi got serious injuries on the left leg, left ankle and left elbow. His bones of the left leg were fractured. Two abrasions which were found on the right elbow were the result of his falling down as a result of the impact. This is the version of Kapahi and his wife. This version was accepted by the Tribunal. It appears to be more probable. I am not persuaded to hold that the accident did not happen in this way.

16. The case of the insurance company that the left leg of the scooter driver was entangled in the number plate can straightway be discarded on another ground. The defence of entanglement was never taken by them in the written statement. It was an after thought. The counsel says that the insurance company and the owner were not required to plead evidence in their written statement. I do not agree. This is not evidence.

17. This is the cause of accident. This is their substantial defence. It ought to have been specifically pleaded in the written statement. I, therefore, will not attach any importance to this plea.

18. The medical evidence clearly rules out the possibility of entanglement. The

number plate of the car is a sharp edged thing. Doctors evidence shows that the injuries were caused by a blunt object and were the result of great force or impact. Left mudguard of the scooter was bent. Damage to the scooter also shows that the car struck against the left side of the scooter. If the car had not struck against the scooter ordinarily there was no reason for the scooter to fall on the right side with such a great impact as to cause serious injuries to the driver of the scooter in his left leg, elbow and ankle.

19. The accident happened on a wide road. It was 30" wide. Kapahi says that the driver was driving the car at a break-neck speed. He could not apply the brakes in time so as to avoid the accident. The police examined the two vehicles involved in the accident after the report was lodged. They found that the foot breaks of the car were loose. This must have made it impossible for the car driver to stop the car in time. The result was an impact between the car and the scooter. I agree with the Tribunal that the: car driver was negligent.

20. The second question is about damages. The Tribunal awarded Rs. 5,000/- on account of general damages and Rs. 7,419/- on account of salary.

21. I do not think the sum of Rs. 5,000/- on account of general damages is too high. It is a modest sum for the mental pain and suffering which Kapahi had to undergo. He remained in plaster from toe to loin for 11 months. He had to use crutches. His leg has been shortened. He limps. When he came to give evidence before the Tribunal he was in walking calipers. He was present in court at the hearing before me. He showed me his shortened leg. It is a life long deformity. The doctors said so in their evidence.

22. Kapahi did not spend anything on medical treatment. It was all free for him. He was a member of the Central Government Health Contributory Scheme. Therefore, the Government paid for his treatment in the hospital and afterwards. This is not disputed by Kapahi. The Tribunal, therefore, has not awarded anything on account of medical treatment.

23. The counsel for the insurance company attacked the award of Rs. 7,419-. His argument was this. Kapahi during the period of his illness remained on leave from the Army Headquarters during period of May, 1965 to December, 1965. The Army authorities paid him full salary. Now the counsel says that the Tribunal has awarded him again his salary for these months. There is double payment. It is said that this is illegal. I cannot accept this submission.

It is true that the Army Headquarters paid Kapahi his salary for these months but it cannot be said that he did not suffer any damages. When accident happened Kapahi had applied for leave. He had applied for four months leave for building his house. This was his earned leave. He had worked and toiled for it in the previous years. He had earned his leave. Leave had accumulated to his account. Instead of building his house and enjoying his holidays Kapahi had to remain in hospital. It was no enjoyment. For the loss of his earned leave Kapahi was entitled to compensation. The Tribunal I think was right in awarding damages,

the measure being the salary from May, 1965 to December, 1965.

24. I look at the problem of damages broadly like this. Whether the award is under one head or the other Kapahi in all has got Rs. 12,419/- as damages. This amount is not inordinately high. I cannot agree that it is open to criticism as being over generous. I think the Tribunal made a fair assessment of compensation. I do not consider that this was over generous nor do I think it was mean but about right in all the circumstances.

25. The counsel for Kapahi has referred me to Swaraj Motors Private Ltd., Kottayam Vs. T.R. Raman Pillai and Another, and Madhya Pradesh State Road Transport Corporation Vs. Sudhakar and Another, .

Both these cases relate to injuries to leg. On the analogy of these cases the counsel submits that in this case award should be increased at least to Rs. 20,000/-. I do not agree.

26. In Swaraj Motor Pvt. Limited's case (Supra) the injuries to the claimant were far more serious. There was an apprehension of shortening of life. Rs. 25,000/- were awarded as general damages by the trial court. The award was upheld by the High Court.

27. In Madhya Pradesh State Road Transport Corporation, Bhopal case (supra) again the injuries to the leg were quite serious. The lady was disabled, for the rest of her life it was felt that she will require the attendance of a maid-servant. The trial Judge awarded Rs. 30,000/- as general damages but the High Court reduced it to Rs. 20,000/-

28. Kapahi did not spend anything on medical treatment. Medical expenses are, therefore, not to be taken into account. In all the circumstances, I do not consider that this Court ought to interfere with the award of the Tribunal. The Insurance company asks me to reduce the damages. I would certainly not do this. I would leave it at Rs. 12,419/-.

29. For these reasons I dismiss the appeal and the cross appeal. In the circumstances of the case I leave the parties to bear their own costs.