
(2014) 09 DEL CK 0043

In the Delhi High Court

Case No : First Appeal from Order No. 514 of 2003 and F.A.O. No. 801 of 2003

Babita

APPELLANT

Vs

Ved Prakash

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Evidence Act, 1872 — Section 114

Citation : (2015) 4 ACC 113 : (2015) ACJ 1860 : (2014) 176 PLR 37

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Bhupesh Narula and Ramesh Kumar, Advocate for the Appellant;
Bhupesh Narula, Advocate for the Respondent

Judgement

Jayant Nath, J.—The above two appeals arise out of the Award dated 26.4.2003 passed by the Tribunal. F.A.O. 514/2003 is filed by the claimants seeking enhancement of the compensation amount awarded by the Tribunal.

2. F.A.O. 801/2003 is filed by the Insurance Company seeking directions that the liability of the insurance company is limited only to the sum of Rs. 15,000/-.

3. I will first deal with the submissions of the insurance company in Appeal No. 801/2003.

4. The brief facts leading to the filing of the claim petition are that the injured Ms. Babita the claimant on 8.2.1985 was returning to her house. She boarded the bus from her school, namely, Govt. Girls Senior Secondary School, Prahlad Pur. The bus was under the contract of Directorate of Education, (Delhi Administration) for bringing and dropping students of the school from the respective houses. It is stated that the bus was required to make three trips and for the said purpose it was paid by the Directorate of Education on kilometre basis. On 8.2.1985 the driver of the offending vehicle with a view to cover up two additional trips lifted all the students of the three trips in the bus and as such the bus was heavily over-packed. The driver of the offending vehicle was

driving the bus at a very fast speed recklessly and negligently and applied strong brakes frequently. As a result, the students, including the claimant were getting severe jerks and forceful pushes. The students were colliding amongst themselves due to the rash manner of driving. Despite warning to the driver he did not pay any heed. At Pankhey Wali Kuin Barwala the bus took a sharp turn at a very fast speed. The claimant was thrown out from the left side door of the bus and the rear left side of the vehicle ran over both the legs of the claimant. The bus driver did not stop the bus and continued to drive and took it to a long distance. He was forced to bring the bus back to the spot by the students of the bus and teacher Smt. Krishna. The claimant suffered multiple grievous injuries.

5. Based on the evidence on record the Tribunal held that the claimant suffered injuries in the accident due to the rash and negligent driving of the driver of the offending vehicle.

6. On compensation the Tribunal awarded the following compensation:--

7. On the issue of liability the Tribunal rejected the contention of the Insurance Company that in respect of any one claim or series of claims, the maximum liability is Rs. 15,000/-. The Tribunal noted that the terms and conditions of the insurance policy or the proposal form containing the terms and conditions of the policy in question are not produced. Hence, the Tribunal drew an adverse inference under section 114 of the Indian Evidence Act. The Tribunal held that the insurance company has unlimited liability to pay compensation to the claimants.

8. Learned counsel appearing for the insurance company in F.A.O. 801/2003 has strenuously urged that the directions in the Award that the insurance company has unlimited liability is erroneous. Learned counsel urged that the applicable provisions of the India Motor Tariff for the relevant period the statutory liability was Rs. 15,000/- per passenger. He further submits that in the absence of excess premium, though the insurance company may have to pay a third party, but it would have the recovery rights against the owner and driver of the offending vehicle.

9. In a recent judgment dated 1.9.2014 in F.A.O. No. 177/1994 this Court has already dealt with the similar submissions of an insurance company. In that case also the submission was that under the Motor Vehicles Act, 1939 the third party liability was not unlimited. Counsel for the insurance company in that case had pointed out that under the terms and conditions of the insurance policy the limit of third party liability was fixed at Rs. 50,000/- and that in case the liability was more than the said Rs. 50,000/- it could recover from the insured/owner of the offending vehicle. For the said purpose reliance was placed on the judgment of the Supreme Court in the case of New India Insurance Company Ltd. v. Vimal Devi, 2010 A.C.J. 2878 and of this High Court in the case of Gurcharan Kaur and Another Vs. Raja Ram and Another, . The relevant submissions of the insurance company in F.A.O. 177/1994 in paragraph 3 read as follows:--

"3. Learned counsel appearing for the appellant submits that the present issue pertains to the Motor Vehicles Act of 1939. He submits that at that point of time the third party liability was not unlimited like the present statute. He further points out that as per terms and conditions of the insurance policy the limit of third party liability was fixed at Rs. 50,000/- and the respondent No. 3 Insurance Company had to specify the liability that may arise in favour of a third party. In case the liability was more it could recover the excess amount above Rs. 50,000/- from the insured/owner of the offending vehicle. He relies on the terms and conditions of the insurance policy which are on the record of the Trial court Ex. R-2. He also relies upon the judgment of the Supreme Court in the case of New India Insurance Company Ltd. v. Vimal Devi and others, 2010 A.C.J. 2878 a judgment of this Court following the aforesaid judgment i.e. the case of Gurcharan Kaur and Another Vs. Raja Ram and Another, . Learned counsel for respondent No. 3 has pointed out that before any liability is fastened or any recovery rights are given to respondent No. 3 company, it would be necessary that the owner and driver of the offending vehicle, namely, respondents No. 1, 2 and 4 should also be present."

10. This court in F.A.O. 177/1994 in paragraphs 8, 9 and 10 held as follows:--

"8. The aforesaid clauses had directly come up for consideration before the Supreme Court in New India Insurance Company Ltd. v. Vimal Devi and others (supra). This Court after reproducing the aforesaid clauses of the avoidance policy clause, the Supreme Court in paragraph 7 held as follows:--

"7. The Avoidance Clause in the policy in this case makes all the difference and the direction of the High Court to the Appellant, insurance company to make payment of the full amount of compensation to the claimants and to recover its dues from the owner of the vehicle is directly in accordance with that Clause.

In our view, the submission of Mr. Calla is well founded. The Appellant in this case can derive no benefit from the decision in New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, "

9. Similarly, this Court in the case of Gurcharan Kaur and another v. Raja Ram (supra) in paragraphs para 50 and 51 held as follows:--

"49. On a conspectus of the law laid down by the Supreme Court and on perusal of the Schedule to the insurance policy (Mark "A") and the Standard terms of the India Motor Tariff relied upon by both the parties, I am of the view that the only available conclusion in the present case is that even though the liability of the Insurance Company is limited qua the insured as claimed by it, the liability of the Insurance Company qua "any person" or a third party such as the appellants is not limited. The necessary corollary is that in accordance with the terms of the insurance policy, the appellants are entitled to recover from the Insurance Company the entire amount awarded by the Claims Tribunal as enhanced by this Court.

50. To conclude, the appellants are held entitled to an enhanced amount of compensation of Rs. 1,02,000/- with interest as awarded by the Tribunal. The Insurance Company is directed to pay the entire amount to the appellants after deducting the amount, if any, already paid. The Insurance Company shall be entitled to recover the amount paid by it in excess of its liability from the owner and driver of the vehicle in accordance with law. The appeal is allowed in the above terms. There shall be no order as to costs."

10. Hence, the clauses which are subject matter of the insurance policy of respondent No. 3 Insurance Company have already been duly interpreted by the Supreme Court. A perusal of the said clause and the judgment of the Supreme Court would clearly show that in the facts of the present case the Insurance Company Respondent No. 3 would be liable to pay the award amount and would also thereafter get recovery rights from the owner and driver of the offending vehicle."

11. In F.A.O. 801/2003 none has appeared for respondents No. 2 and 3.

12. Hence, in view of the order of this Court in F.A.O. 177/1994 I accept the contention of learned counsel for the insurance company. I grant recovery rights to the insurance company against the driver and owner of the offending vehicle who are jointly and severally liable, namely, respondents No. 2 and 3.

13. F.A.O. 801/2003 stands disposed of accordingly.

14. I will now deal with F.A.O. 514/2013 filed by the claimant. Learned counsel appearing for the claimant has strenuously urged that the Tribunal has awarded inadequate compensation on account of the permanent disability suffered by the claimant. He submits that a sum of Rs. 1,50,000/- was awarded for permanent disability which reads as follows:--

"Permanent disability, adverse impact on matrimonial prospects and future expenses"

15. He submits that the claimant was a student of Class 10th. She was to appear for the Board examination in March 1985 for which she had received her Roll No. She was an outstanding student and on account of the accident she could not appear in the Annual Board examination. She also could not appear in the next Annual Board examination. She suffered great loss of studies. She was an active participant in sports and has earned certificates of merits and had represented the school in sports like kabaddi and kho kho. As a result of the injury she was unable to participate in the sports. Hence, it is alleged that the compensation awarded is grossly inadequate. He further submits that no compensation has been awarded for attendant charges. He also states that for pain and suffering the Tribunal has awarded inadequate compensation of Rs. 50,000/-.

16. I may look at the relevant evidence on record PW-2 Dr. Anil Dhul gave the permanent disability certificate Ex. PW2/1. He has stated that the permanent disability of the claimant was assessed to be more than 40% for diagnosis of "TB-

HIV with right side malunited fracture of femur with gross shortening". He further stated that this disability Was with respect to the whole body. PW-1 the claimant in her statement has stated that she remained in hospital for three and half months. She further said that she cannot sit properly nor can she walk even now.

17. The evidence shows that the claimant had 40% full body disability. She was a bright student of 10th Class. She has remained in hospital for more than 3 months and has suffered grievously on account of her disability.

18. The Supreme Court passed a recent judgment in the case V. Mekala Vs. M. Malathi and Another, , that was a case of a girl student who was 16 years old and was a student of 11th Class. The incident took place on 11.04.2005. The Supreme Court in the facts and circumstances of the case, awarded compensation of Rs. 30,93,000/-. The Supreme Court keeping in view the past results of the claimant had taken the income as Rs. 10,000/- per month On a notional basis and had applied 50% increase on the principles laid down in the earlier judgment in the case of Santosh Devi Vs. National Insurance Company Ltd. and Others, for future prospects. The functional disability was assessee at 70%. For loss of earning the Supreme Court awarded Rs. 22,68,000/-. For pain and suffering the Supreme Court awarded Rs. 2,00,000/-, for attendant charges the Supreme Court awarded Rs. 2 lacs and for the loss of enjoyment of life and marriage prospects the Supreme Court awarded Rs. 3 lacs.

19. Keeping in view the fact that in the present case the accident took place in the year 1985, in my opinion there is sufficient justification on record to enhance the compensation amount awarded.

20. Hence, the compensation amount as awarded by the Tribunal under the head of permanent disability, adverse impact and matrimonial prospects is increased from Rs. 1,50,000/- to Rs. 4 lacs.

21. The compensation on account of pain and suffering of Rs. 50,000/- is also on the lower side. The claimant was hospitalised for three and half months and had to undergo prolonged medical treatment. Hence, the compensation on account of pain and suffering is enhanced from Rs. 50,000/- to Rs. 1,00,000/-.

22. The Tribunal did not award any amount for attendant charges. Keeping in view the nature of injuries suffered and the date of the accident, the claimant is awarded a sum of Rs. 1 lac for attendant charges.

23. Hence, the compensation would now be read as follows:--

24. The enhanced compensation as directed above would be paid by the Insurance company within six weeks from today alongwith interest @ 6% per annum from the date of filing of the claim petition till deposit in Court. On receipt of the said amount the Registrar General shall release the compensation to the claimants. F.A.O. APP. No. 514/2003 stands disposed of accordingly.