

(2007) 02 DEL CK 0104
In the Delhi High Court
Case No : FAO No. 242 of 1997

Brij Mohan

APPELLANT

Vs

Sunil Kumar Gupta, Sh. Parveen Jain and National Insurance
Co. Ltd., Rajkiya Inter College

RESPONDENT

Date of Decision : 08-02-2007

Acts Referred:

Citation : (2007) 1 ACC 751 : (2008) ACJ 142 : (2007) 138 DLT 217 : (2007) 94 DRJ 145 : (2007) 1 ILR Delhi 92

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Manjeet Chawla, for the Appellant; None, for the Respondent

Judgement

V.B. Gupta, J.—The Appellant has filed the present appeal against the impugned judgment dated 10th May, 1996, passed by Shri Rakesh

Kapoor, Judge, MACT vide which the learned Tribunal awarded a sum of Rs. 1,65,000/- as compensation to the Appellant and also awarded

12% per annum interest on the awarded amount from the date of filing of the petition till realisation.

2. By way of present appeal, appellant wants compensation amount to be enhanced to Rs. 3,00,000/- as claimed by him in the petition.

3. Brief facts of this case are that on 1st July, 1988, at about 8.40 a.m. the appellant was standing in front of shop No. F-755, M/S. Khurana

Provision Store, Ganesh Nagar, Delhi. In the meanwhile, Car No. DEA-5394 came from the side of Patparganj railway crossing being driven

rashly, negligently and at a high speed. Respondent No. 1, the driver of the car, instead of driving the car on its correct side, swerved the car

towards the extreme right corner of the road and knocked down the appellant

who was standing in front of the aforesaid shop. The appellant sustained grievous injuries on leg and abrasions on all parts of the body which later on turned into permanent disability resulting in amputation of the right leg. Appellant filed claim petition claiming compensation of Rs. 3,00,000/-.

4. Respondent No. 1 driver of the car, admitted the factum of accident but took the plea that the appellant might have fallen on the road due to his own negligence and might have been hit by another vehicle.

5. Respondent No. 3, the Insurance Company, admitted that the vehicle in question was insured with it at the time of the accident but stated that the compensation claimed was exorbitant and excessive.

6. Vide impugned judgment, the learned Tribunal awarded compensation of Rs. 1,65,000/-, as follows:

(i) On account of loss of salary ----- Rs. 15,000.00

(ii) On account of loss of income ---- Rs. 1,00,000.00

due to permanent disability.

(iii) On account of pain and agony ----- Rs. 25,000.00

(iv) On account of treatment/ ----- Rs. 15,000.00

purchase of medicines

(v) On account of special diet. ----- Rs. 10,000.00

Total Rs. 1,65,000.00

7. In appeal, respondent No. 1, the driver of said vehicle was served by publication as well as by affixation. Respondent No. 2 Parveen Jain, the

owner of the car was present in person on 1st December, 1997 and sought time for engaging the counsel. Thereafter, he absented and respondent

No. 3 (Insurance Company) was served for 1st December, 1997 but none appeared on behalf of the respondent.

8. On 20th September, 1999 counsel for the appellant was present but none appeared for respondents and accordingly, the appeal was admitted

for hearing.

9. On 2nd February, 2007 none was present and the matter was renotified for 5th February, 2007.

10. On 5th February, 2007, counsel for the appellant was present but none appeared on behalf of the respondents and as such arguments advanced by learned Counsel for the appellant have been heard.

11. It has been argued by learned Counsel for the appellant that the learned Tribunal has assumed the income of the appellant at the time of the accident as Rs. 1,000/- only, whereas the appellant in his evidence has stated that he is earning Rs. 4,000/- to 5,000/- per month. Though, the appellant could not give any documentary proof about his income but the learned Tribunal ought to have assessed his income on the basis of minimum wages payable under the Minimum Wages Act.

12. The learned Tribunal awarded a sum of Rs. 25,000/- only, towards pain and agony without considering the agony of the appellant that his whole life has been crippled and his movement shall be restricted. Further, nobody would like to have marry such like person. No amount was awarded towards the servant which the appellant had engaged to look after himself. So, keeping in view the loss of future prospects, extra expenses to be incurred in the future throughout the life towards conveyance, medicines and treatment etc, the appellant is entitled to a sum of Rs. 3,00,000/- as compensation.

13. First point which arises for consideration is as to what was the income of the appellant at the time of the accident. As per averments made in the petition, It is stated that the appellant was wholesale cloth merchant and was self employed and his monthly income was Rs. 2,000/-. In his evidence, appellant stated that he used to earn about Rs. 4,000/- to 5,000/- and out of which he could save Rs. 2,000/- to 2,500/- for his household expenses.

14. It is well settled that no evidence led beyond pleading can be looked into. Here, the case of appellant is that he was earning Rs. 2,000/- when the present petition was filed. However, at the time of evidence in the Court, appellant states that he used to earn about 4000/- to 5000/-. So, this statement with regard to the income is beyond his own pleading and cannot be looked into. With regard to income of Rs. 2,000/- per month, appellant has not placed any document to show that he was actually running a business of cloth merchant and was earning that amount. Document

Exhibit PW 4/1 relied upon by the appellant shows that M/s Harbans Lal Brij

Mohan was a member of the waste cloth merchant association. It

does not state that this firm was doing business of wholesale cloth merchant. No Books of Accounts have been produced on record to show the

income of the said firm. 15. It has been contended by learned Counsel for the appellant that learned Tribunal ought to have taken minimum wages

into consideration while fixing the income of the appellant.

16. As per Minimum Wages Act, in 1988, Minimum wage prescribed for an unskilled worker was Rs. 562/- while for semi skilled it was Rs.

635/- and for skilled it was Rs. 749/- per month. For matriculate, the minimum wages prescribed were Rs. 760/-.

17. The appellant has not mentioned in the petition about the nature of his job whether it was skilled or unskilled. In any case, it has to be

presumed that appellant was earning less than Rs. 1,000/- per month.

18. The learned Tribunal was quite liberal in assessing the income of appellant at Rs. 1,000/- per month. So, the appellant cannot have any

grievance on this count.

19. Since, appellant was only 22 years at the time of accident and has suffered permanent disability of more than 50%, so applying maximum

multiplier of 16 as laid down by the Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma

Thomas and others, , the Tribunal rightly awarded a sum of Rs. 1,00,000/- as compensation on this ground.

20. The appellant was admitted in the hospital on 1.7.1988 and was discharged on 1.9.1988. The disability certificate was issued on 6.12.1988.

and there is nothing on record to show that the appellant was again treated for injuries. As such appellant must have remained out of job only for a

period of one year or so and the Tribunal awarded him compensation of Rs. 15,000/- on account of loss of income, which is quite reasonable.

21. In his statement, appellant stated that he has spent Rs. 50,000/- on medicines and some of the bills have been lost and Exhibits PW 4/2-65,

Bills amounting to Rs. 7756.65p have been proved. The learned Tribunal awarded a sum of Rs. 15,000/- on account of purchase of medicines.

This amount awarded by the learned Tribunal is quite reasonable keeping in view the fact that the appellant could prove bills worth Rs. 7,700/-

only.

22. On account of pain and agony, Tribunal has granted Rs. 25,000/-, which is also quite reasonable.

23. With regard to special diet, appellant in his statement has stated that the doctor has prescribed a special diet for him costing about Rs. 50 per

day for two years. The learned Tribunal has awarded a sum of Rs. 10,000/- on this account which is also reasonable.

24. With regard to the plea taken up by learned Counsel for the appellant that Tribunal has not considered the fact that appellant had engaged a

servant namely Ram Singh for two years during the illness and was paying him Rs. 500 per month. The best evidence to this effect would have

been that the servant, but the appellant did not produce nor summoned him as witness for reasons best known to him and as such appellant is not

entitled to claim any compensation on this ground.

25. Another contention of learned Counsel for the appellant is that due to this accident, marriage prospects of the appellant had also been

diminished and no compensation on this account has been awarded.

26. It is correct that no compensation has been awarded to the appellant on this account, though appellant in his statement has stated that he is

unmarried and nobody would marry him and he is unfit for his family life.

27. During the course of arguments, it was inquired from learned Counsel for the appellant as to whether the appellant has married or not. The

appellant's counsel replied that she is not aware about it. Nevertheless, it is a case of permanent disability and in such cases, it is not possible to

get suitable and desired match and marriage prospects get certainly diminished. On this account, appellant is entitled for suitable compensation.

Hence, it would be fair enough to award a sum of Rs. 25,000/- as compensation on this count keeping in view the age and financial status of the

appellant.

28. Accordingly, it is held that compensation amount of Rs. 1,65,000/- awarded in this case is quite just and reasonable. However, in addition to

this, appellant is also entitled for compensation amounting to Rs. 25,000/- on account of loss of marriage prospect.

29. Respondents are directed to deposit this additional sum of Rs. 25,000/- with the Trial court within one month from today, failing which they

shall be liable to pay interest @ 6% per annum from today till realisation.

Accordingly, present appeal stands disposed of.