
(2013) 10 DEL CK 0362

In the Delhi High Court

Case No : Regular First Appeal 248 of 2001 and CMs no. 20685 of 2010, 8147 of 2011, 10255 of 2013 (all of the appellant u/o 41 R-27 CPC)

Dharambir Bajaj

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Constitution of India, 1950 — Article 226

Citation : (2013) 10 DEL CK 0362

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Amita Gupta, for the Appellant; Rahul Chopra for Mr. Jagjit Singh, for R-1 and 2, Mr. Rajiv Shukla and Ms. Sneha Mukherjee for R-3, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The appeal impugns the judgment and decree dated 19th February, 2001 of the Court of the Addl. District Judge, Delhi of dismissal of Suit No. 106/1996 filed by the appellant for recovery of Rs. 4,29,000/- as damages from the respondents/defendants. Notice of the appeal was issued. The appeal was on 15th March, 2002 admitted for hearing. The appellant/plaintiff has filed CMs No. 20685/2010, 8147/2011 & 10255/2013, all under Order 41 Rule 27 of the CPC. After some hearing on 21st February, 2011, the respondent/defendant no. 3 Indian Oil Corporation (IOC) was directed to re-consider whether the appellant/plaintiff was entitled to any more compensation than Rs. 10,000/- already paid to him and a suggestion was also mooted for payment of a further sum of Rs. 2 lacs to the appellant/plaintiff towards compensation and the respondent/defendant no. 3 IOC was requested to sympathetically consider the matter. However the appellant/plaintiff addressed a letter to the Court objecting the said proposal of the Court, which was thus aborted.

2. The counsel for the appellant/plaintiff and the counsel for the respondent/

defendant no. 3 IOC have been heard. No arguments have been addressed by the counsel for the respondents/defendants no. 1 & 2 Union of India through the Ministry of Railways.

3. The appellant/plaintiff instituted the suit from which this appeal arises, pleading:-

(a). that he was employed as a Junior Design Assistant with the Ministry of Railways with pay package of Rs. 1,313.90 per month and posted at Lucknow;

(b). that during the course of his employment he was on or about 15th May, 1983 sent on tour to Delhi where he became the victim of sudden fire and explosion at the LPG Bottling Plant at Shakurbasti of the respondent/defendant no. 3 IOC on 15th May, 1983;

(c). that though the appellant/plaintiff was 1.5 to 2 kilometers away from the actual site of fire explosion but he was seriously injured in his legs and was rushed to Hindu Rao Hospital and was operated upon the same day and thereafter again on 27th May, 1983 and was repeatedly put in plaster cast;

(d). that he was during aforesaid term advised to consume highly nutritious non-vegetarian diet for healing of his wounds;

(e). that due to the said injury he suffered acute mental tension and mental torture, separation from his family who were throughout living at Lucknow and in physical pain;

(f). that the wife of the appellant/plaintiff who is also employed with the Railways had to take large number of leaves for attending to the appellant/plaintiff at Delhi;

(g). that the children of the appellant/plaintiff aged 15 years, 12 years and 10 years had to continue staying alone in Lucknow for the sake of continuity of their education and the appellant/plaintiff was thus forced to maintain two establishments, one at Delhi and the other at Lucknow;

(h). that the plaster cast of the appellant/plaintiff was removed only on 21st February, 1984 when he could walk with the help of crutches;

(i). that the appellant/plaintiff at the time of the institution of suit in or about April, 1985 was still expected to undergo more operations;

(j). that the appellant/plaintiff had to spend huge amount on his daily diet, take a house in Delhi at a rent of Rs. 375/- per month and spend on travel of his wife and children to and fro Lucknow;

(k). that the appellant/plaintiff since the date of the accident and till the institution of the suit was spending approximately Rs. 4,000/- per month by borrowing from relatives and friends;

(l). that the Union of India through the Ministry of Railways as well as the IOC

were jointly and severally liable to compensate the appellant/plaintiff;

(m). that the respondent/defendant no. 3 IOC had failed to visualize such an explosion while maintaining such explosive materials in the heart of the city without proper safety arrangements;

(n). the appellant/plaintiff would not have suffered such injuries had the respondents/defendants no. 1 & 2 Ministry of Railways not sent the appellant/plaintiff on tour on the relevant date;

(o). that the injuries aforesaid were thus suffered by the appellant/plaintiff in the course of his employment;

(p). that the respondent/defendant no. 3 IOC vide its letter dated 25th May, 1983 admitted its liability to some extent and showed sympathy with the appellant/plaintiff and sent a cheque for a sum of Rs. 2,500/- as ex gratia payment to the appellant/plaintiff; however the said amount was negligible and inadequate; the wife of the appellant/plaintiff approached the Chairman of the respondent/defendant no. 3 IOC for adequate relief and explaining the sufferings of the appellant/plaintiff and was paid a further sum of Rs. 7,500/- in installments and was told that nothing further would be paid;

(q). that the respondents/defendants no. 1 & 2 Ministry of Railways also provided negligible financial aid of total Rs. 3,000/- only to the appellant/plaintiff; and,

(r). the appellant/plaintiff thus sought further compensation of -

? Rs. 74,000/- towards costs calculated at Rs. 4,000/- per month from 15th May, 1983 till 30th April, 1985 for medical treatment, special diet and miscellaneous damages.

? Rs. 50,000/- towards damages for physical bodily pains, mental torture, mental tension and for separation from the family and children.

? Rs. 5,000/- towards miscellaneous expenses.

? Rs. 1 lac as token damages for loss of pleasure of life, conjugal rights and service to children.

? Rs. 2 lacs towards further increase in expenses due to incapacity or diminished capacity for work.

4. The respondents/defendants no. 1 & 2 Ministry of Railways contested the suit, by filing a written statement, on the grounds:-

(i). denying that the appellant/plaintiff became a victim of accident during the course of employment;

(ii). that the appellant/plaintiff was deputed on tour to Delhi for the period 12th May, 1983 to 19th May, 1983 for participation along with other officers and staff in the meeting of Carriage of Wagon Standards Committee;

(iii). that the entire party was supposed to stay at the New Delhi Railway Station Rest House; that he was also supposed to stay at the Rest House, also to be available to his seniors for necessary directions; however during the weekend i.e. 2nd Saturday (14th May, 1983) and Sunday (15th May, 1983) the appellant/plaintiff left New Delhi Railway Station without intimation, possibly for private work to Shakurbasti and got involved in the accident;

(iv). that as a measure of welfare, the wife of the appellant/plaintiff was transferred from Lucknow and posted at New Delhi from 20th June, 1983 to 9th March, 1984;

(v). that the appellant/plaintiff and his wife were entitled to free Railway passes and he, his wife and children would have availed of the same for travelling to and fro Delhi-Lucknow;

(vi). denying that the appellant/plaintiff had sustained injuries in the course of his employment;

(vii). that the Service Rules did not provide for compensation for loss suffered during a private errand; and,

(viii). that that appellant/plaintiff had been sanctioned Rs. 75/- as Handicapped Allowance.

5. The respondent/defendant no. 3 IOC also contested the suit, by filing written statement, on the grounds that the claim of the appellant/plaintiff was fully discharged on 7th March, 1984 by paying his wife an amount of Rs. 10,000/- towards full and final payment of the claim and denying that the appellant/plaintiff had suffered any other loss.

6. The appellant/plaintiff filed a replication to the written statement of the respondents/defendants no. 1 & 2 Ministry of Railways pleading, that he could not stay at the Railway Station Rest House as there was limited accommodation therein which was occupied by other officers and was not entitled to any charges for hotel accommodation and had thus no option but to seek shelter at the house of his relations at Shakurbasti; that the appellant/plaintiff owing to the accident had to stay in Delhi for ten months and run parallel establishments at Delhi and Lucknow. The appellant/plaintiff also filed a replication to the written statement of the respondent/defendant no. 3 IOC pleading, that his wife was not authorized by him to give any such discharge against receipt of Rs. 10,000/-; that a fraud had been played upon his wife in obtaining her signatures on a document of full discharge against receipt of Rs. 10,000/- without even supplying any copy thereof to her; that the signatures of his wife could not bind him.

7. On the pleadings aforesaid of the parties, the following issues were framed in the suit on 25th November, 1988:-

1. Whether the suit is not maintainable? OPD

2. Whether plaintiff has got any cause of action against defendants in view of the

allegations, made by defendants in the written statement? OPD

3. Whether plaintiff suffered any damages? If so, what amount of damages? OPP

4. Whether plaintiff is entitled to claim damages from defendants? If so, the amount? OPP

5. Relief.

8. The appellant/plaintiff examined himself only. The respondents/defendants no. 1 & 2 Ministry of Railways examined only one of their officers as witness in defence. The respondent/defendant no. 3 IOC failed to produce any evidence despite opportunities.

9. The Addl. District Judge has in the impugned judgment found/held/observed:-

(A). that the appellant/plaintiff had admitted receipt of Rs. 10,000/- by his wife from the respondent/defendant no. 3 IOC towards the claim lodged against the respondent/defendant no. 3 IOC;

(B). that the appellant/plaintiff had admitted the signatures of his wife on the receipt in full and final settlement of the claim against the respondent/defendant no. 3 IOC;

(C). that the appellant/plaintiff had not controverted or questioned his wife as to why she had taken Rs. 10,000/- towards full and final settlement; (D). that the appellant/plaintiff had not prevented his wife from meeting the officers of the respondent/defendant no. 3 IOC nor he disagreed with his wife for having been in touch with the said officers;

(E). the wife of the appellant/plaintiff had not come in the witness box to support the claim of the appellant/plaintiff though was cited as a witness; (F). that the wife of the appellant/plaintiff had in her letter dated 7th March, 1984 written a note in her own hand writing as under:-

This is full and final payment towards total claim against I.O.C. and I will not demand any further payment after recovery of total of Rs. 10,000/- Ten thousand only. Rs. 3500/- already obtained and Rs. 6500/- being given now.

(G). that thus the claim of the appellant/plaintiff against the respondent/defendant no. 3 IOC stood fully satisfied on receipt of Rs. 10,000/- and the suit against the respondent/defendant no. 3 IOC was not maintainable;

(H). that it was an admitted fact that the appellant/plaintiff was supposed to stay at Railway Rest House available at New Delhi Railway Station;

(I). that the appellant/plaintiff in the plaint had not disclosed the name and nature of relationship with the relations with whom he allegedly stayed at Rani Bagh during the period from 12th May, 1983 till he met with the accident; it was for the first time in his examination-in-chief that he deposed that he had stayed at his in-laws house at Rani Bagh;

(J). that the appellant/plaintiff though was at a distance of 1.5 to 2 kilometers from the occurrence of the blast but was hit on his right leg with a broken cylinder;

(K). that the accident had happened on Sunday and the appellant/plaintiff was on a private visit to the vicinity of the site of the accident and his said visit was not in any manner connected with the discharge of his official duties;

(L). that the appellant/plaintiff had thus not suffered any injury in the discharge of his duties or during his employment and the respondents/defendants no. 1 & 2 Ministry of Railways were thus not liable to pay any damages to the appellant/plaintiff;

(M). that the appellant/plaintiff had claimed TA for travel from New Delhi Railway Station to the Office of the Railway Board where the meeting was scheduled and not for travelling from Rani Bagh to the Office of the Railway Board which was also indicative of the appellant/plaintiff being required to stay at New Delhi Railway Station and not at Rani Bagh;

(N). that the plea of the appellant/plaintiff that there was no sufficient accommodation at New Delhi Railway Station is an afterthought;

(O). that the appellant/plaintiff had not even examined his relations or in-laws with whom he claimed to be staying at Rani Bagh/Shakurbasti;

(P). that therefore the appellant/plaintiff could not be deemed to be on official duty on 2nd Saturday/Sunday when he met with the accident and suffered injuries and the respondents/defendants no. 1 & 2 Ministry of Railways could not be held responsible to pay any damages to the appellant/plaintiff;

(Q). that the appellant/plaintiff had admitted in his cross examination that he, his wife and his children were entitled to free Railway passes for travelling from Lucknow to New Delhi; thus the claim for monies spent thereon was not established;

(R). though the appellant/plaintiff had in his examination-in-chief stated that due to his hospitalization his wife had to take leave without pay for attending to him but in cross examination admitted that his wife was temporarily transferred to Delhi on compassionate grounds to remain with him; therefore the claim of the wife having taken leave without pay was negated;

(S). the appellant/plaintiff had in cross examination also admitted that during his treatment he was provided with free medicines from the Railway Hospital and did not spend anything towards traveling expenses; therefore the claim for miscellaneous expenses towards travelling etc. goes unproved;

(T). that the appellant/plaintiff had also admitted that he had taken treatment from Railway Hospital and all these treatments were given free;

(U). that the appellant/plaintiff had not proved any bills which he might have

paid for the expenses claimed to have been incurred;

(V). thus it stood proved that all the expenses incurred by the appellant/plaintiff for his treatment were fully borne by the respondents/defendants no. 1 & 2 Ministry of Railways;

(W). the appellant/plaintiff had not examined any person from whom he claimed to have taken loan;

(X). that though the appellant/plaintiff had relied on a medical certificates but the said certificates had not been proved in evidence;

(Y). that the appellant/plaintiff had not produced any expert witness to prove that he was required to take a special diet or high protein diet for his speedy recovery;

(Z). that thus the claim of having incurred expenses of Rs. 4,000/- per month had not been established;

(AA). that appellant/plaintiff in his cross examination could not state as to how his marital life had got disturbed due to the accident and admitted that he had not suffered any disability with regard to his marital obligations;

(AB). that there was nothing to prove that the children of the appellant/plaintiff had suffered in any manner;

(AC). the appellant/plaintiff had not examined a single person who may have looked after the children of the appellant/plaintiff during his hospitalization;

(AD). that the appellant/plaintiff had not led any evidence to prove any future increase in expenses;

(AE). the appellant/plaintiff admitted in cross examination that his service conditions as well as service benefits had not been reduced in any manner due to the accident and was rather receiving Rs. 75/- per month towards his disability;

(AF). thus the claim of the appellant/plaintiff for future increase in expenses due to diminished capacity was not established;

(AG). that there was no evidence to indicate that the appellant/plaintiff had to hire domestic help to take care of his children;

(AH). the appellant/plaintiff had not adduced any evidence to prove that he had to rent out accommodation at Delhi;

(AI). that in the absence of any proof of physical pain, mental torture, mental tension and separation from family, no damages on that account could be awarded;

(AJ). that the appellant/plaintiff had been sufficiently compensated by the respondents/defendants no. 1 & 2 Ministry of Railways as well as respondent/defendant no. 3 IOC for the physical bodily pain, mental torture, mental tension,

separation from family etc.; and,

(AK). the appellant/plaintiff had not suffered any damages. Accordingly the suit was dismissed.

10. I have perused the Trial Court record. The appellant/plaintiff though initially had along with the suit filed an application for permission to sue as an indigent person but the said application was subsequently withdrawn and the requisite Court Fees filed. I have also perused the testimony of the appellant/plaintiff and do not find any flaw in the findings returned by the learned Addl. District Judge on the basis thereof. The counsel for the appellant/plaintiff also has been unable to point out any part of the evidence which the learned Addl. District Judge may have ignored or on the basis whereof the learned Addl. District Judge may have drawn erroneous conclusion except for stating that the learned Addl. District Judge was unduly swayed by the travelling of the appellant/plaintiff and his family to and fro Lucknow being free and has not considered the expenses incurred on conveyance to and fro Railway Station at both the places. However upon being asked to show the basis for such an argument in the evidence, nothing could be shown. The counsel for the appellant/plaintiff also argued that the appellant/plaintiff had taken accommodation at Delhi on rent of Rs. 375/- per month. However neither is there any proof of the same nor could the counsel inform as to where the rented accommodation was, whether close to the Railway Station or far away. In fact it was enquired from the counsel for the appellant/plaintiff whether the appellant/plaintiff or his wife were drawing HRA during the said time. All that was informed was that there was nothing on record with respect thereto and it was tentatively suggested that they were staying in a railway accommodation at Lucknow. However on further enquiry whether the wife of the appellant/plaintiff on temporary transfer to Delhi was drawing HRA, no information could be given. I however find on record some rent receipts filed by the appellant/plaintiff of an accommodation in Rani Bagh but the same have not been proved.

11. I also do not find on record any document showing the extent of the injuries suffered by the appellant/plaintiff save for a certificate issued by the Hindu Rao Hospital, Delhi which too also has not been proved, to the effect that the appellant/plaintiff had suffered 50% partial permanent disability of multiple fractures of the femur bone.

12. The counsel for the respondent/defendant no. 3 IOC of course contends that the appellant/plaintiff is bound by the receipt of full and final settlement issued by his wife.

13. The counsel for the appellant/plaintiff responds by contending that the appellant/plaintiff is not bound by the signatures of his wife.

14. I have invited attention of the counsel for the appellant/plaintiff to National Insurance Co. Ltd. Vs. Boghara Polyfab Pvt. Ltd., I have enquired from the counsel for the appellant/plaintiff whether the appellant/plaintiff at any time after

signing of the said receipt by his wife issued any letter of protest to the respondent/defendant no. 3 IOC and how was the payment received whether in cash or by cheque.

15. It is informed that no such protest was lodged and the payment received of Rs. 10,000/- was in cash.

16. I have enquired from the counsel for the appellant/plaintiff whether not the wife of the appellant/plaintiff was at the relevant time his agent and whether not the appellant/plaintiff had received the benefit of the said sum of Rs. 10,000/-.

17. No reply has been forthcoming.

18. The counsel for the appellant/plaintiff contends that the amount of Rs. 10,000/- was very meager.

19. The counsel for the respondent/defendant no. 3 IOC has contended that the said amount of Rs. 10,000/- is not to be seen as per today's value of money but as per value of money 30 years ago in the year 1983.

20. I agree with the aforesaid. It cannot be lost sight of that the monthly salary of the appellant/plaintiff then was about Rs. 1,300/- and the appellant/plaintiff claims to have taken a house on rent of Rs. 375/- per month. The compensation received by the appellant/plaintiff of Rs. 10,000/- has to be compared with the said figures. Moreover in the absence of appellant/plaintiff establishing that he was not bound by his wife's action, this Court cannot go into the question of sufficiency or insufficiency of the compensation.

21. That brings me to the three applications under Order 41 Rule 27 of the CPC filed by the appellant/plaintiff in this appeal.

22. The appellant/plaintiff, as along with CM No. 20685/2010, has inter alia filed (i) a certificate of the Divisional Medical Officer, RDSO Poly Clinic, Lucknow inter alia to the effect that the appellant/plaintiff in the incident aforesaid had sustained fracture of the upper part of the right femoral shaft bone resulting in 2 1/2 inches shortening of the lower limb and advising use of 2 1/2 inches raised shoe and use of crutches and light duty; (ii) medical certificate of Hindu Rao Hospital, Delhi advising knee ankle transplant and use of calipers; (iii) OPD cards of the Eastern Railway Orthopedic Clinic also advising the appellant/plaintiff to wear calipers, raised shoe, and noticing 2/3 inches shortening, to walk with the help of a stick; (iv) photographs of his limb showing a deep suture on the thigh; (v) Disability Certificate issued by the Rehabilitation & Artificial Limb Centre to the effect that the appellant/plaintiff is a case of DFTC Malinated Shaft Femur right with shortening lower limb and that he is an orthopedically handicapped; and, (vi) certificate issued by the Additional Chief Medical Officer, Lucknow to the effect that the appellant/plaintiff is a case of a Crushed injury to the right thigh.

23. The appellant/plaintiff has in CM No. 8147/2011 pleaded that due to the injury sustained in the incident aforesaid, he has been suffering fractures at

various parts of the body due to imbalance of his body; that on 8th July, 1997, there was a Crock Fracture of Proximal and Femur; that on 13th April, 2002, he fractured his knee cap and was advised surgery for non-union of patella; that he continues to suffer from Old Fracture Shaft Femur i.e. non-union of fracture patella; that he again fell down while walking on 3rd March, 2011 and fractured his arm; that it is only now that he has realized the sufferings owing to his shortened leg. The appellant/plaintiff has along with the said application filed documents of the said injuries, though none of the said documents co-relate the reason of the injuries to the injuries suffered in the incident aforesaid.

24. The appellant/plaintiff in CM No. 10255/2013 has pleaded that he, while walking again fell down on 7th October, 2012 and fractured his right leg and was admitted in Lucknow Hospital and has filed documents in proof thereof including his photograph and which still shows the deep gash and suture on the thigh owing to the injury in the incident aforesaid.

25. The counsel for the appellant/plaintiff has contended that the matter be remanded to enable the appellant/plaintiff to lead fresh evidence including of the subsequent injuries aforesaid.

26. The counsel for the respondent/defendant No. 3 IOC has argued that no ground for additional evidence is even pleaded lest made out.

27. I have considered the rival contentions.

28. The factum of the appellant/plaintiff suffering injury owing to being in the vicinity of the LPG Depot of the respondent/defendant No. 3 IOC where an explosion took place is not in dispute. The said incident is of 15th May, 1983. The last installment of payment of Rs. 10,000/- in full and final settlement of the claims of the appellant/plaintiff against the respondent/defendant No. 3 IOC was received on 7th March, 1984 i.e. within about 10 months of the incident. The appellant/plaintiff instituted the suit on or about 30th April, 1985 claiming compensation of Rs. 4,29,000/- under various heads but not mentioning the factum of shortening of leg by 2 1/2 inches. What further emerges is that the factum of such permanent shortening of his right leg was, on the date of institution of the suit, not known to the appellant/plaintiff as the medical treatment of the appellant/plaintiff was then still underway. However, when the appellant/plaintiff appeared in evidence, he in his examination-in-chief recorded on 6th January, 1997 unequivocally deposed that his leg had been reduced in size by 2 1/2 inches. I have carefully perused the cross-examination of the appellant/plaintiff by the counsel for the respondents/defendants No. 1 & 2 Railways as well as the cross-examination by the counsel for the respondent/defendant No. 3 IOC. I do not find the said factum of shortening of the leg by 2 1/2 inches to have been controverted in either of the two sets of cross-examinations. The reason therefor is obvious. The appellant/plaintiff was before the counsels cross-examining the appellant/plaintiff on behalf of the respondents/defendants No. 1 & 2 Railways and on behalf of the respondent/defendant No. 3

IOC and the shortening of the leg would be apparent to even a layperson and for which reason only the said fact remained uncontroverted.

Thus, though the appellant/plaintiff perhaps owing to the negligence of his Advocate had not proved any document of shortening of the leg by 2 1/2 inches but the said fact stands proved. The witness of the respondents/defendants No. 1 & 2 Railways also in his cross-examination admitted that the appellant/plaintiff had suffered a right leg upper portion injury leading to cutting and rejoining of the leg resulting in shortening of the leg size. The said witness was not cross-examined by the counsel for the respondent/defendant No. 3 IOC. The respondent/defendant no. 3 IOC did not lead any evidence of its own. The said finding of shortening by 2 1/2 inches of the leg of the appellant/plaintiff owing to the explosion at the LPG Bottling Plant of the respondent/defendant No. 3 IOC is thus binding on the respondent/defendant No. 3 IOC and which seems to have escaped the attention of the learned ADJ, perhaps for the reason of being not part of pleadings.

29. The rule of no evidence beyond pleadings being looked into would not apply to the case in hand where the appellant/plaintiff was under medical treatment even at the time of filing the suit. The full and final discharge given by the appellant/plaintiff through his wife on 7th March, 1984 cannot possibly cover the damage/loss owing to such shortening of the right leg, the claim even for which had not accrued on that date.

30. The consequence flowing from such shortening by 2 1/2 inches of the right leg though chronicled by the appellant/plaintiff in these applications under Order 41 Rule 27 of the CPC, can even otherwise be well imagined. The medical reports filed by the appellant/plaintiff along with his applications do indeed show the appellant/plaintiff to have had more than the normal share of fractures.

Again, though I have noticed that the documents do not attribute it to the earlier injury, as indeed they cannot, but there is weight in the plea of the appellant/plaintiff of the said injuries being attributable to the shortening of his leg and resultant in bodily imbalance.

31. I have wondered whether to remand the case for additional evidence but have decided against the said course of action. The appellant/plaintiff who was 54 years of age at the time of recording of his examination-in-chief on 6th January, 1997 would now be of 70 years of age and is stationed at Lucknow. All his medical records also pertain to Doctors/treatment at Lucknow/Railway Hospital, Calcutta. Proof thereof would entail summoning of witnesses i.e. Medical Practitioners from far and requiring the appellant/plaintiff to travel to Delhi. The appellant/plaintiff has already been embroiled in this litigation for the last 28 years. I am of the view that giving an opportunity to the appellant/plaintiff to lead further evidence would cause more suffering than any benefit to the appellant/plaintiff.

32. Shortening by 2 1/2 inches of the right leg when the appellant/plaintiff was

about 42 years of age does indeed invite award of compensation. I am not inclined to allow insufficient legal assistance to come in the way of the entitlement of the appellant/plaintiff thereto. The same is directly attributable to the respondent/defendant No. 3 IOC. The respondent/defendant No. 3 IOC while maintaining an LPG Bottling Plant at Shakurbasti surrounded by residential and commercial places ought to be held strictly liable to ensure that no loss is caused to any person from its hazardous activities being carried therein. The explosion which occurred at the said LPG Bottling Plant of the respondent/defendant No. 3 IOC speaks res ipsa loquitor of the negligence of the respondent/defendant No. 3 IOC and for which negligence it ought to compensate the appellant/plaintiff.

33. I am conscious of the limitations in exercise of jurisdiction circumscribed by the CPC and the law of evidence. However, I have wondered that when in exercise of powers under Article 226 of the Constitution of India, the Court can grant compensation for injury, whether I should restrain myself merely because, though the appellant/plaintiff on the basis of the pleadings and documents on record has a claim for compensation, was advised to file a suit instead of writ petition. My conscience does not allow deprivation of the appellant/plaintiff of the relief which is due to him for the reason of the choice made by the Advocate engaged by him. I would be failing in my duty to do justice to the appellant/plaintiff, if by getting bogged down by legal and procedural laws, deprive him of the relief to which the record shows him to be entitled to.

34. I have during the hearing enquired from the respondent/defendant No. 3 IOC whether any rethinking was done in pursuance to the order dated 21st February, 2011 (supra) in this appeal. The counsel for respondent/defendant No. 3 IOC informs that the matter was considered and it was felt that if any relief is granted to the appellant/plaintiff, the same may make the respondent/defendant No. 3 IOC liable for other claims. I have enquired whether there are any pending claims of the said incident. The answer is in the negative. If that is so, the question of grant of relief to the appellant/plaintiff exposing the respondent/defendant No. 3 IOC to other claims does not arise.

35. The respondent/defendant No. 3 IOC is a Fortune 500 company; even the Legislature is now proposing to bring the concept of "Corporate Social Responsibility". When the appellant/plaintiff is found to have suffered owing to the failure of the respondent/defendant No. 3 IOC to maintain the safety standards which it ought to have maintained, I see no reason to not burden the respondent/defendant No. 3 IOC with the said liability.

36. No doubt the entire medical treatment of the appellant/plaintiff has been at the cost of the respondents/defendants No. 1 & 2 Railways. However, such medical treatment as a term of employment of the appellant/plaintiff cannot deprive the appellant/plaintiff of compensation for shortening of his leg. The compensation awarded by the respondents/defendants No. 1 & 2 of Rs. 75/- per month is not found to be sufficient and in any case is statutory compensation and which would not mitigate the liability of the respondent/defendant No. 3 IOC.

37. The next question which arises is as to the quantum of compensation. The appellant/plaintiff has already lived with a shortened leg for the last about 30 years i.e. during the prime of his life. Though, no strict formula is available but considering the fight which the appellant/plaintiff has had to wage for the last 28 years, the legal and other expenses which the appellant/plaintiff would have incurred therein and the sheer agony of this long litigation, I am inclined to grant a lump-sum amount of Rs. 4 lakhs as compensation to the appellant/plaintiff. The said amount would incur interest only if not paid by the respondent/defendant No. 3 IOC within three months hereof. The appeal thus succeeds; the judgment and decree dated 19th February, 2001 impugned in the appeal are set aside. The suit of the appellant/plaintiff is decreed awarding compensation to the appellant/plaintiff in the sum of Rs. 4 lakhs against the respondent/defendant No. 3 IOC. The respondent/defendant No. 3 IOC is directed to pay the said amount to the appellant/plaintiff within three months, failing which the same shall incur interest at the rate of 12% per annum.

The appellant/plaintiff is also awarded costs of the suit and this appeal assessed at Rs. 25,000/- payable along with the compensation aforesaid. Decree sheet be drawn up.