

(2003) 07 DEL CK 0016

In the Delhi High Court

Case No : FAO No. 734 of 2002 and CMs 1458 of 2002 and 722 of 2003

Gauri Shankar

APPELLANT

Vs

Sehryan

RESPONDENT

Date of Decision : 30-07-2003

Acts Referred:

Citation : (2004) 2 ACC 179 : (2003) 5 AD 610 : (2003) 106 DLT 303 : (2003) 71 DRJ 743 : (2003) 135 PLR 50

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : Manish Garg, for the Appellant; Mani Mishra, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mahajan, J.—This order will dispose of the appeal filed by the owner of the offending vehicle challenging the award of the Motor Accident Claims Tribunal whereby a sum of Rs.42,000/- was awarded as compensation to the respondent for the injuries suffered by him in an accident alleged to have been caused by the rash and negligent driving of the aforesaid vehicle by its driver. A few facts relevant for deciding this appeal are:-

2. The respondent was working as a loader in the truck, belonging to the appellant, at the Food Corporation of India at its Naraina Depot, New Delhi; that on 21.3.1985, after loading the bags of wheat, rice and sugar etc. from the FCI Depot, the truck was going to the fair price shop at Najafgarh for delivery; that the respondent Along with three other paledars was sitting in the said truck for unloading the bags. It was further the case of the respondent that the truck was being driven in a rash and negligent manner by its driver and when the truck reached opposite Nangloi Dairy, it turned on the left side on the kacha road with a view to give side to a DTC bus which was coming from the back; that when the DTC bus came parallel to the truck, the truck driver tried to come back to the pakka road and again turned to the kacha road and in the process lost control of the truck which turned upside down on the slope of the road. The respondent

who was sitting at the back side of the truck is alleged to have come under the over-turned truck as a result of which his left leg was broken below the knee. The truck driver immediately ran away from the scene of the accident as he had not received any injuries and the petitioner after being extracted from under the truck by the passengers of another DTC bus, which had come at the spot, was taken to the hospital where his left leg was amputated from above the knee. The petitioner at that time, as already mentioned above, was working as a loader and his monthly income was stated to be between Rs.1000-1200. Claiming that the accident was caused due to the rash and negligent driving of the driver of the truck, the respondent filed an application claiming compensation of Rs.4,56,000/- before the Motor Accident Claims Tribunal.

3. In the written statement, the respondent did not deny the ownership of the truck or that the truck was not involved in the accident. It was stated that proper remedy for the respondent was to approach the Commissioner, Workmen's Compensation. It was also stated that the respondent was neither an employee engaged by the respondent nor had he any concern with the respondent nor was he traveling in the aforesaid truck nor did he receive any injury while traveling in the truck and as such he was not entitled to any compensation from the appellant. On the pleadings of the parties the Tribunal framed the following issues:-

"1. Whether the driver Shiv Om was rash and negligent in driving vehicle No.DHL-4819 on the date, time and place alleged in the petition? - OPP

2. Whether the petitioner sustained injuries in the accident as alleged in the petition? - OPP

3. Whether the respondent is not liable to pay compensation as alleged in the WS? - OPP

4. To what amount of compensation is the petitioner entitled and from whom? OPP

5. Relief."

4. The respondent examined himself as PW-1. The appellant did not produce any evidence except that he appeared as his own witness as RW-1. On the evidence and the documents on record, the Tribunal came to a finding that the accident was caused due to the rash and negligent driving of the truck by its driver and the respondent received injuries in the said accident. The Tribunal after taking into consideration the fact that the respondent was working as a daily labourer and did not have stable monthly income took his income to be the minimum wages payable in respect of unskilled worker as on the date of the accident. Taking his income as Rs.354/- and taking into consideration the fact that the respondent at the time of the accident was 23 years of age and had 60% disability, as per the certificate issued by the hospital, the Tribunal awarded a sum of Rs.35,000/- in lump sum to the respondent for the loss of future income.

A sum of Rs.2,000/- was awarded towards purchase of medicine etc. and awarding another sum of Rs.5,000/- for pain and suffering a total sum of Rs.42,000/- was awarded as compensation in favor of the respondent. As mentioned above, this award has now been challenged by filing the present appeal by the owner of the truck.

5. The contention of learned counsel for the appellant is that the respondent was not employed with him at the relevant time nor the accident was caused due to the rash and negligent driving of the truck and in any case the respondent was not injured in the said accident and as such he was not entitled for any compensation. I have heard learned counsel for the parties and have also gone through the material placed on record, but I have not been able to persuade myself to agree with the submissions made by learned counsel for the appellant.

6. The respondent has placed on record the FIR registered immediately after the accident which clearly show that the accident was caused due to the rash and negligent driving of the truck by its driver and that the respondent was injured in the said accident. After the accident, respondent was taken to the Primary Health Centre at Najafgarh where he was given first aid. He remained in the health centre for 1-1/2 hours and thereafter was moved to the hospital where his left leg above the knee was amputated. The respondent remained admitted in the RML hospital for about 3-1/2 months and in Safdarjung Hospital for about one month. As per the medical certificate, the respondent had sustained 60% permanent disability in relation to his left leg. The respondent was cross-examined at length by the appellant but nothing could come out in the said cross-examination to hold that the accident was not caused due to the rash and negligent driving of the truck by its driver or that the respondent had not suffered injuries in the said accident. Surprisingly the driver of the truck was not even produced as a witness to explain as to how the accident took place. In the absence of any evidence contradicting the statement of the respondent the Tribunal has rightly believed the respondent. No illegality or infirmity has been pointed out in the findings of the Tribunal that the accident was caused due to the rash and negligent driving of the truck by its driver. Even otherwise, on the basis of the material on record, I am satisfied that it was due to the rash and negligent driving of the truck by its driver that the accident had taken place and the respondent was injured in the said accident and he received injuries as a result of which his left leg above the knee was amputated and he sustained 60% disability in relation to the left leg.

7. Though, it is the contention of learned counsel for the appellant that the respondent was not employed with him at the relevant time, however, there is sufficient material on record to show that on that particular date the respondent was engaged to work as a paledar for loading of bags in the aforesaid truck and he was sitting in the truck so as to unload the bags at the fair price shop. It is not explained as to why the respondent was sitting in the truck if he was not engaged for loading and unloading of the bags. Since the respondent was

engaged for loading and unloading of the bags and was sitting in the truck at the relevant time for the discharge of his duty so as to unload the bags at the fair price shop, I have no hesitation to hold that the owner of the truck would be liable to pay compensation to the respondent for the injuries sustained by him in the accident caused by the rash and negligent driving of the truck by its driver.

8. The respondent was 23 years of age at the time of the accident and as per the disability certificate, he would have 60% disability throughout his life, a sum of Rs.35,000/- was awarded by the Tribunal towards loss of future income. Nothing much has been argued by learned counsel for the appellant on the quantum of compensation. The respondent was permanently disabled because of the amputation of his leg from above the knee and as a result of which he has suffered permanent disability and which naturally resulted in his loss of future income. The Tribunal, in my view was, Therefore, fully justified in awarding a sum of Rs.35,000/- as compensation to the respondent for sustaining 60% permanent disability and loss of future income. A small sum of Rs.2000/- has been awarded for purchase of medicine and another sum of Rs.5000/- as compensation for pain and agony suffered by the respondent and I do not find any reason to interfere with the same.

9. In view of the above, I do not find any merits in this appeal and the same is, accordingly, dismissed with no order as to costs. The interim order passed earlier stands vacated. The amount deposited in this Court be paid to the respondent.