
(2010) 07 RAJ CK 0075
In the Rajasthan High Court

Gopal Giri	Vs	APPELLANT
Abdul Mazid and Others		RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2010) 07 RAJ CK 0075

Hon'ble Judges : C.M. Totla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

C.M. Totla, J.—On 25.08.2000, in early morning, at about 5.00 a.m., motor vehicle truck No. GJ-7-X-5464 at public road in district Panchmahal, struck a tree and as a result of injuries caused, driver died and appellant sustained grievous injuries.

2. Claiming compensation Rs. 30,83,000/-, appellant injured respectively were employed as driver by the owner, injured appellant being second driver on wages Rs. 4500/- per month. Describing that loading goods from Chittorgarh in the vehicle on 23.8.00, they headed for Mumbai and, on 25.08.2008, at about 5 O'clock in morning near Kalol district Panchmahal, driver Bhanwarlal, driving truck very fast, and in a rash and negligent manner, losing control, struck a tree, so vehicle fell in a sewerage line and Bhanwar Lal instantly died of the injuries, whereas appellant, permanently gravely injured disabled and for the incident, FIR No. 183/2000 was registered. Stated that appellant sustained many grievous injuries and his right leg at knee had to be amputated during treatment and so far Rs. 1,00,000/- expenses incurred and other lacks likely to be incurred. Stating theft and damages worth Rs. 7,000/- and he, little above 21 years earning Rs. 4500/- per month deprived of, anticipating earning upto age of 65 years. Estimated loss of earning about Rs. 23 lacs and Rs. 5 lacs for pain, mental agony and deprivation of worldly pleasure and Rs. 2 lacs of treatment expenses, claimed Rs. 30,83,000/-.

3. Appellant insurer, denying any liability, stated that driver was neither second driver on vehicle, nor employed in any way on the truck and he simply was a passenger and the accident only act of God, so insurance company not under any liability. Also stated person driving, did not possess valid license the expenses highly exaggerated and other claims being imaginary.

4. No reply by the owners. Appellant claimant examined himself. Presented and exhibited are copies of the FIR and other documents and also some treatment and expenses documents.

5. Learned tribunal, inferring that the accident occurred due to negligence of the then driver Bhanwarlal and the appellant, 21 years of age, having sustained 60% disability, lost 60% of his monthly income of Rs. 1500/-, awarded total Rs1,62,000/- for loss on income, 26 thousand for expenses etc. and twenty five thousand for pain, agony etc. totalling Rs. 2,13,000/-.

6. Preferring this appeal, appellant requests that quantum of compensation grossly under estimated, be suitably increased.

7. Learned Counsel for the appellant arguing that the appellant was in employment of owner R1 - was earning Rs. 4500/- per month - had a valid driving license for heavy goods vehicle - little above 21 years of age - right leg at knee amputated, so incapacitated not only of his job of driving but for other jobs also. Argued that the injury, which consequence of the accident, not only resulted in total depriving of earning, but additional expenditure, therefore, loss of earning ought to be computed applying appropriate multiplier for not only whatever he actually earning but likely increased earnings. Submits that it is not a case where 50 or 60% earning loss is to be taken or for any deduction for self expenses etc. In support of arguments, cited are K. Janardan v. U.I.I. Ltd. and Anr. 2008 (2) ACTC 952; Manju v. Mahavir Prasad Jain and Anr. 2002 (1) T.A.C. 830 (Raj.); Laxman Ram v. Dewar Ram and Ors. ACTC 2009 (1) 281; Mali Ram v. Ganga Ram and Anr. MACD 2008 (1) (Raj.) 132; Smt. Kaushnuma Begum and Ors. v. The New India Assurance Co. Ltd. and Ors. 2001 WLC (SC) 116; Javid v. Lalji Yadav and Anr. 2002 (1) T.A.C.835; and Chandra Prakash v. Mangal Singh and Ors. 2002 (1) T.A.C. 763 (Raj.).

8. Learned Counsel for the respondent insurer states that owner, not being examined in evidence, highly doubtful is if appellant was his employee as second driver or for any other work - amputation and injury grievous was below knee, therefore, at best, is a case of amputation below knee - for such injuries, even under workmen's compensation act, taking 50% disability, compensation is to be. Submitted that vehicle per provisions of the MV Act and in relation to employee driver insured only upto the extent of liability under workmen's compensation act. Also argued that though perhaps, amputation being so incapacitated for driving, but not that appellant deprived of and unable for any work or earning. Stated that age described being 21 years - in age of learning had every opportunity and years to learn and do other appropriate work and

earning.

9. Had a careful look at the evidence produced and judgment assailed.

10. Though owner of the vehicle under whose employment appellant asserts himself to be, is not examined but certificate stating appellant being employee and salary at Rs. 4500/- per month, is on record and exhibited. Also on record is appellant's valid driving license for transport vehicle and document, that of school showing that the appellant born in June, 1979, at the time of incident, was little above 21 years, at the relevant time. There is no reason to not to believe on evidence of appellant who states himself to be second driver of the vehicle involved. As such, is established that appellant a employee of the owner, was in vehicle as and in capacity of second driver, being a truck and transport vehicle, cannot be said that a person normally, cannot be in the vehicle in such capacity.

11. Copy of certificate of insurance is on record and per it, appears that the same is insured for employee also. Per Section 147, insurance, mandatorily for employee is upto the extent payable under workmen compensation's act. Though insurance may to this extent, but if higher the compensation, still payable by owner. Vehicle being driven on Highway, with and no other relevant happening going on extreme side, went down in some nala, resulting in death of driver itself very relevant and tend to show that accident occurred perhaps only due to fault of the driver. Copies of the FIR and other documents are also on record.

12. Now considering quantum, as age was 21 years, taking all relevant elements together for estimating actual earning loss, here multiplier 17 or 18 is to be used.

13. Incident is of August, 2000 - appellant obtained license only a month or two prior to it, as such very little experience - vehicle per claim petition itself going to a long distant destination - not disclosed is earning of other driver who was first driver and driving the vehicle. Given the facts barely on the basis of certificate produced, in August, 08 salary earnings Rs. 4500/- per months becomes highly doubtful. In the opinion of the Court, given the age, experience, minimum wages and other factors etc. and as was second almost afresh driver, emoluments are to be taken to the extent of Rs. 2500/-. Per provisions of workmen's compensation act, for such a amputation for person of such age and such amputation for 50% of the earing factor of 220 - 225 is applicable and according to it, compensation comes out to be 1250×220 which is around Rs. 2,67,000/-.

14. As above, appellant 21years, was engaged in driving only for few months. Given the age and span, one who which employed in such a work on given facts reasonably well is and exists possibility of doing other productive work and of having earnings. Definitely, still appellant shall not be earning that much had he not mentioned this injury but shall earn a part to the extent of 50 - 60% higher to earning. Therefore, in totality of all circumstances, earning cannot be compensation for loss of earning, is not assessable at cent percent of the

earning. Appropriate is to assume about 60% and just compensation in this head shall be 1400×220 - i.e., Rs. 3, 08,000/-.

15. For treatment expenses, mental agony, deprivation of family etc. learned tribunal has assessed Rs. 51,000/-. Appellant admits that ration card mentions of his wife, in the opinion of the Court and as amputation is there, in head of agony and pain continuing which to subsist, this awarded Rs. 51,000/- is to be enhanced to Rs. 1,00,000/-.

16. Therefore and as above, just and appropriate compensation comes out to be Rs. 3,10,000/- plus Rs. 1,00,000/-, i.e. Rs. 4,10,000/- (Rupees four lacs only), so awarded compensation Rs. 2,13,000/- is to be enhanced by Rs. 2 lacs.-. For the enhanced Rs. 2,00,000/-, interest at the rate of 6% from January 1, 2001, i.e. soon after filing of claim shall be payable. Our this payable amount, 40% shall be in Fixed Deposit for a period of 61 months and 40% for a period of 85 months interest payable quarterly.

17. Allowing the appeal, total compensation payable to appellant, is increased to Rs. 4,10,000/-. For enhanced amount, (2 Lacs) interest at the rate of 6% shall be payable from January 1, 2001 till payment and 40% of the payable in fixed deposit for 61 months and 40% for 85 months, interest payable every quarterly. The amount to be paid within a month.

18. Appeal allowed as above.