
(1977) 08 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 2 of 1972

Hanuman Dass

APPELLANT

Vs

Usha Rani and Another

RESPONDENT

Date of Decision : 10-08-1977

Acts Referred:

Citation : AIR 1978 P&H 177 : (1977) 79 PLR 628

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Judgement

1. Usha Rani, appellant in F. A. O. No. 15 of 1972, and respondent in F. A. O. No. 2 of 1972(hereinafter referred to as the claimant) met with an accident on March 13, 1969 with truck No. HRH 7218 driven by Hanuman Dass, appellant in F. A. O. No. 2 of 1972 and respondent in F. A. N. No. 15 of 1972. As a result of the said accident, her right collar bone was fractured, right arm was amputated near the shoulder and three fingers of right foot were chopped off. She remained indoor patient in Civil Hospital in the General Ward from 13th March, 1969 to 11th May, 1969. She claimed compensation to the tune of rupees one lac, but the Court awarded only a sum of Rs. 15,000/-, which comprised of Rs. 5,000/-for pain and suffering, Rs. 5,000/-for permanent deformity and Rs. 5,000/-for medical expenses, loss of studies and general charges. Dissatisfied with the aforesaid award the claimant as also Hanuman Dass who apart from being the unlicensed driver of the said truck, also happens to be its owner, challenged the said award in the two separate appeals already mentioned.

2. Mr. Dhingra, learned counsel for the appellant, in F. A. O. No. 2 of 1972 has challenged the finding of the Tribunal, under the issue of negligence and also the quantum of compensation.

3. Dealing first with the question of negligence, Mr. Dhingra laid stress on the fact that the Tribunal erred in laying onus of proof regarding the issue of negligence on the driver, Hanuman Dass. He also argued that in any case from the material on the record, the Tribunal could not have come to the conclusion

that the accident had been caused by rash and negligent driving of the truck by its driver.

4. I do not think, there is any merit in the contention advanced by Mr. Dhingra. It is an admitted fact that the truck against an electric pole standing on the corner of the terrace in front of the house of Rameshwar Dayal, upon which Usha Rani, in order to escape injury, had mounted. A vehicle has to be driven on the path, and in the course of normal driving, there is no question of its leaving the path and striking against the platform and the electric pole abutting the path unless the driver happened to be negligent or there were circumstances which left him no choice but to take the vehicle to a point where it struck the electric pole. To the facts of the present case, the doctrine of *res ipsa loquitur* is straightway attracted, which means that the facts speak for themselves for the negligence of the driver, unless he placed on the record the circumstances which left him no choice but to take the truck in the direction of the electric pole. No such explanation is forthcoming in this case. In the circumstances of this case, by virtue of the application of the aforesaid doctrine the initial onus had to be on the driver to prove that he had not been negligent. If he fails to discharge that onus, then the issue of negligence has to be concluded against him. In the present case the driver examined six witnesses, out of whom, 5 had deposed to the actual happening of the accident. The Tribunal, and in my opinion rightly, did not place reliance on their evidence as they were found to be got up witnesses and five out of them had not been summoned by the Police. Although the driver has faced a criminal trial, yet if the witnesses are to be believed, they in order to prove the innocence of the driver, did not make themselves available to the police nor were they cited as able to the police nor were they cited as witnesses in the criminal case. What is more, the driver himself made confessional statement in the criminal Court which was proved and placed on the record of this Court, copy of which is Exhibit A. W. II/1. While confronted with that statement, the driver who appeared as R. W. 7 admitted that he had made the confessional statement, in which he had admitted that the accident occurred as a result of his own rash and negligent driving. He, however, sought to explain that he made the said confessional statement in order to suffer lesser punishment. The explanation offered by him for making confessional statement is hardly convincing.

5. In his case, the negligence appears to be writ large. He had not denied that he did not know driving well and that at no time he had possessed a driving licence and yet he was rash enough to take to driving in the streets of a town. In view the reasons stated above and the evidence of Usha Rani. I can clearly say that the truck was coming at a high speed. I am, therefore, of the opinion that the Tribunal was right in holding that the accident occurred as a result of the rash and negligent driving of the truck by Hanuman Dass, driver--cum--owner of the truck.

6. Regarding the quantum of compensation, Mr. Dhingra has argued that the

Tribunal seriously erred in awarding Rs. 5,000/-towards medical expenses, loss of studies and general charges and also in not taking into consideration Rupees 2,000.-which had been awarded by the criminal Court as compensation to the claimant. Mr. G. C. Mittal, appearing for Usha Rani has on the other hand contended that the Tribunal had awarded shockingly inadequate compensation for pain and suffering and for permanent deformity.

7. There is no doubt about the fact that the father of the girl stated in his statement that he had spent Rs. 5,000/-on the treatment of Usha Rani, but he adduced no documentary proof of the expenditure incurred by him in this regard apart from adducing two vouchers, the amount mentioned wherein is only wherein is only Rupees 147/50. The Tribunal in this regard has been rather vague and had not specified as to how much out of Rs. 5,000/-was for medical expenditure, how much for general charges and how much for loss of studies. In fact. The Tribunal had stated that there was not much loss of studies because when the accident occurred, she was in 6th class and when her statement was taken, she was studying in 9th class. I am myself unable to judge as to what the Tribunal had meant by general charges. It appears that under this head, the compensation awarded by the Tribunal is certainly excessive, but it is a case of gaining on the swing and losing on the round--abouts, for the Tribunal, in my opinion, had awarded a very meagre compensation for pain and suffering and for permanent deformity, and, therefore, what the claimant loses under medical expenses etc., is likely to more than make up under the other two heads as would be presently, shown.

8. To be fair to Mr. Dhingra, it may be mentioned that he cited a catena of decisions in an effort to show that under the two heads also the damages awarded by the Tribunal are not inadequate much less being grossly inadequate. These decisions are (i) S.K. Devi Vs. Uttam Bhoi and Another, , wherein a boy, aged 7 years, met with a truck accident and received fracture of the right thigh. There was some permanent disability and the damages awarded were Rs. 10,530/-(ii) The Phoenix Assurance Co. Ltd. v. Kalpna Rajput, 1974 ACJ 470 : AIR 1975 Gau 20; wherein a girl, aged 6 years, met with a motor accident and her right leg was fractured. There was some permanent disability and she was awarded Rupees 5,500/-as damages; (iii) Rani Hemant Kumari v. New India Assurance Co. Ltd. 1974 ACJ 284 (Madh Pra); in this case, there was a fracture of 1st, 4th and 6th ribs and the damages awarded were Rs. 2,000/-; (iv) Subhash Chander Vs. Ram Singh and Others, ; in this case, there was a compound lacerated wound on the leg and loss of tissues of the heel, while toe was amputated and the damages awarded were Rs. 4090/-; (v) Brij Mohan sahani v. Mohinder Kumar 1966 ACJ 83 ; in this case there was a fracture of left thumb and the damages awarded were Rs. 5,000/-; (vi) Kumari Deepti Tiwari Vs. Banwarilal and Others, , in this case a girl, aged 15 years, got fracture of spine resulting in permanent deformity of vertebra and the damages awarded were Rs. 4,000/-(vii) Rajinder Kaur v. Puran Chand 1966 ACJ 207; in this case, there was a fracture of both the bones of right leg resulting in permanent deformity and

limping and the damages awarded were Rs. 10,400/-(viii) Ayesha Begum v. G. Veerappan, 1966 ACJ 101; in this case, there was dislocation of pelvic bone and fracture and dislocation of sacroiliac joint resulting in permanent disability for child-bearing and the damages awarded were Rs. 15,000/-; (ix) A. L. Tandon v. Gulab Singh, 1973 ACJ 265 ; in this case, there was fracture and dislocation of right shoulder and the damages awarded were Rs. 4,463.83 paise; (x) Ganga Sugar Corporation Ltd. and Others Vs. Sukhbir Singh and Another, ; in this case, the left arm was crushed and the damages awarded were Rs. 10,400/-; and lastly (xi) Sydney Victor and Another Vs. Janab S. Kader Sheriff and Others, ; in this case, there was severance of thumb and fracture of head frontal bone. Damages for severance of thumb were reduced from Rs. 8,000/-to Rs. 5,000/-; and damages for fracture of head frontal bone were reduced from R. 25,000/-to Rupees 15,000/-.

9. Mr. G. C. Mittal, on the other hand, greatly relied on a single Bench decision of Delhi High Court in Virendra Kumar v. Gyani Ram 1975 ACJ 122. In that case, a boy, who was studying in 10th Class, had met with an accident, as a result whereof, his arm was amputated just above the elbow. The Tribunal had awarded a sum of Rs. 7,000/-. Anand, J. who decided the case, enhanced the compensation from Rs. 7,000/-to Rs. 20,000/-.

10. As would be clear from the perusal of the nature of the injuries and disability, for which the Court in the case that have been relied upon by Mr. Dhingra, had to assess the damages, these cases would be of no help in making even a near estimate of the damages that should be awarded to the claimant in the present case for pain and suffering and for permanent deformity. The facts of the present case place this case at a higher footing than even the facts of Virendra Kumar's case, 1975 ACJ 122, (supra). While in Virendra Kumar's case (supra), there was only the loss of arm which was amputated above the elbow and in Mrs. Sydney Victor's case AIR 1974 Mad 334(supra) there was severance of thumb and fracture of head frontal bone, in the present case, there was a fracture of right collar bone, amputation of the right arm near the shoulder and chopping off of three fingers of the right foot. The pain and suffering in the case of a victim of such an accident must have been unimaginably intense. She had suffered for almost two long months when she remained indoor patient in the hospital. The sum of Rs. 5,000/-awarded under this head, in my opinion, is grossly inadequate. I therefore, increase the same from Rs. 5,000/-to Rs. 8,000/-.

11. As for the compensation for permanent deformity as a result of the loss of power of the arm and the three fingers of the right foot the compensation awarded is, in my opinion, glaringly inadequate. What a price for loss of full arm and three fingers of the right foot for a girl? She has not only been deprived of her limb, but on her has been inflicted a permanent complex for life, on account of which she would think herself a non-entity and useless creature. The deformity of the above kind has not only reduced the larger field that would have been available to her for entering into service, but has almost for certain reduced

her chances of marrying in a good family. I, therefore, increase the amount of compensation under this head from Rs. 5,000/-to Rs. 10,000/-.

12. As regards the compensation under the head of medical expenses, loss of studies and general charges, I am of the opinion, that if a patient has to be looked after in a hospital continuously for two months, that would certainly have entailed expenditure in travelling from home to the hospital at least twice a day. It must also have entailed some extra expenditure in giving her proper extra diet in order to make up for her weakness. But even then, I consider Rupees 5,000/- as excessive. I think a sum of Rs. 3,000/-under this head would be adequate.

13. Since the claimant had already been awarded a sum of Rs. 2,000/-by the Criminal Court as compensation for the expenditure in question, that amount too ought to be taken into consideration. Reducing the said amount of Rs. 2,000/-from the total compensation awarded by me, the net amount of compensation comes to Rupees 19,000/-, to which the claimant shall be entitled with interest from the date of the application and not from the date of the order as had been ordered by the Tribunal.

14. That the interest ought to be made payable on the compensation amount from the date of application, finds support from three decisions of three separate High Courts in (i) K. G. Bhaskaran v. K. A. Thankamma 1973 ACJ 538, (ii) A. Harsha V. Rai v. Dr. K. V. Karna 1973 ACJ 57 : AIR 1973 Mys 162, and (iii) Sabitri, Kumari Das v. State of Orissa 1976 ACJ 341. I respectfully concur in the view that has been taken in the aforesaid decisions and hold that the claimant is entitled to interest on the amount of compensation from the date of application to the date of payment at the rate of 6% as fixed by the Tribunal.

15. With the above observations. Appeal No. (FAO 15 of 1972) is allowed to the extent already indicated. Appeal No. (F. A. O. 2 of 1972) is disposed of accordingly. The parties are to bear their own costs.

16. Order accordingly.