
(1993) 10 DEL CK 0054

In the Delhi High Court

Case No : First Appeal No. 156 of 1980

Jagdish Kumar Sharma

APPELLANT

Vs

Delhi Transport Corporation and Others

RESPONDENT

Date of Decision : 07-10-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1993) 52 DLT 452

Hon'ble Judges : C.L. Choudhary, J

Bench : Single Bench

Advocate : O.P. Goyal, H.S. Dhir and B.R. Sabharwal, for the Appellant;

Judgement

C.L. Chaudhry, J.

(1) This appeal is directed against the award made by the Accident Claims Tribunal dated 29th August, 1979 by which the appellant was allowed compensation to the tune of Rs. 20,000.00. The appellant was involved in an accident and suffered injuries. He filed a petition u/Section 110-A of the Motor Vehicle Act claiming compensation to the tune of Rs. 65,000.00. The facts as disclosed in the petition are that on 19/09/1968 at about 9.30 p.m. he was going in a three-wheeler scooter No. Dlr 6238 which was being driven by the respondent Brij Lal. When three-wheeler scooter reached in the midst of the crossing at Chhata Railway Bridge from Red Fort towards Kashmere Gate main road, a DTC bus No. Dlp 334 driven by Chander Bhan, respondent which was coming from railway station side and was going towards Jamuna Bridge, dashed in just in the midst of the crossing and caused the accident thereby seriously injuring the appellant. He was immediately taken in a taxi to Irwin hospital and was admitted in the emergency ward. He was treated by the various doctors under the charge of Dr. Mrs. Sita Gupta of the Orthopedic Deptt. of the hospital. He remained in the emergency ward for about four days and after having been X-rayed operated upon. Having regained consciousness, he was removed to the Orthopedic ward and he was discharged from the hospital on 29/09/1968. He was confined

to bed and was not in a position to move. It is further alleged that the petitioner after graduation passed Stenographer Examination from UPSC. The accident had shaken up the whole bodily structure of the petitioner and reduced his life expectancy besides causing mental shock and agony. He had to undergo operations many a times. The petitioner wanted to pursue further competitive examination but because of the accident all hopes had been dashed.

(2) The petition was contested on behalf of the respondents. The following issues are framed :

1. Whether the accident arose due to the rash and negligent driving of vehicle No. Dlr 6238 and/or Dlp 334 as alleged ?
2. Whether the petitioners in the respective petitions suffered any injuries arising out of the said accident as alleged ?
3. To what amount of compensation are the petitioners entitled in this petition and from which of the respondents ?
4. Whether the accident arose due to the contributory negligence of the petitioner or any one of them and its effect ?
5. Relief.

(3) ISSUES. Nos 1,2 and 4 were decided in favor of the appellant, so as the amount of compensation is concerned he was awarded a sum of Rs. 20,000.00 i.e. Rs. 13,000.00 by way of special damages and Rs. 7,000.00 general damages. The petitioner being dissatisfied with the amount of compensation awarded by the Tribunal has approached this Court by way of this appeal.

(4) Mr. Goel contented that the award of the Tribunal is meagre and is not just and reasonable in the facts and circumstances of this case. The appellant remained on leave for eleven and a half months but the Tribunal ignored to award the salary of the leave period with all allowances. The Tribunal while deciding the case has not awarded any amount as compensation on account of permanent disability suffered by the appellant on account of shortage of the left leg by 2". The Tribunal had not taken into account the age of the appellant who was 34 years old on the date of accident. The disability would persist for whole of his life. The appellant was operated upon on 1/04/1970 by Dr. P.S. Maini, Professor Medical College, Rohtak. Dr. Maini took out a bone from his right hip and grafted it in his left leg which was a very painful operation and the appellant had been undergoing a lot of writhing pains and sufferings.

(5) On the other hand, the Counsel for the respondent contended that the compensation was rightly assessed by the Tribunal.

(6) I have considered the relevant contentions of the parties. In my opinion, the amount of Rs. 13,000.00 awarded to the appellant on account of the special damages seems to be just and reasonable. However, the compensation on account of the general damages to the extent of Rs. 7,000.00 seems to be on the

lower side. The lower portion of his leg was crushed. He was getting treatment from Irwin Hospital between the period 11th September, 1968/04/1969. In April 1970, he consulted Dr. Chakraborty who advised him bone grafting operation. He was again admitted on 16/09/1969 in the Tirath Ram Hospital for wound grafting operation by Dr. Chakraborty. He was operated on 17th September, 1969/03/1970, it was found that the bone had not been united. Dr. Chakraborty advised him another operation. Thereafter he consulted Dr. Maini, Professor Medical College, Rohtak. He was operated by Dr. Maini on 1/04/1970. He took out a bone from his right hip and grafted it in his left leg. The treatment took about six months. Later on it was found that the left leg had become short by 2" ". The fact is that the appellant remained in agony from 19/09/1968 to the end of April, 1970. He had undergone three operations.

(7) In my opinion, the amount of Rs. 7,000.00 awarded on account of general damages is on the lower side. It will be just and reasonable if the amount of general damages is increased from Rs. 7,000.00 to Rs. 20,000.00. In -ill the amount is increased from Rs. 20,000.00 to Rs. 33,000.00. The Tribunal has awarded interest @ 3% p.a. from the date of filing the petition till expiry of two months from the date of award i.e. 29/08/1979 and 6% interest after 29th of October, 1969, till payment. The interest @ 3% has been awarded for the reasons that the disposal of the petition was held for one or another fault of the petitioner. I am not inclined to agree with this reasoning of the Tribunal. Taking into consideration the facts and circumstances of this case I hold that the appellant is entitled to interest @ 12% from the date of filing the petition till realisation.

(8) The appeal of the appellant is partly allowed and the award of the Tribunal is modified to the extent that the appellant is entitled to compensation of Rs. 33,000/- along with interest @ 12% from the date of filing of the petition till realisation. Any amount received by the appellant would be adjusted from the amount awarded to the appellant by this Court.

(9) The appeal is disposed of.