(2007) 04 DEL CK 0130

In the Delhi High Court

Kamal Kishore APPELLANT

Vs

Charanjit Singh and Others RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:

Citation : (2007) 2 ACC 353 : (2007) 95 DRJ 648

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—Kamal Kishore, aged 44 years was injured in a road accident on 28.2.1991.

2. He filed a claim petition under Sections 140 and 166 of the Motor Vehicles Act, 1938 claiming compensation in sum of Rs. 7,00,000 on account of the injuries suffered by him in the said road accident. Later, by way of the amendment he enhanced the claim to Rs. 20,00,000.

3. Vide award dated 8.2.2001, learned Tribunal awarded a sum of Rs. 4,23,701 to him. Break-up of the compensation awarded by the Tribunal is as follows:

(i) Dressing Charges ... Rs. 7,000 (ii) Physiotherapy Charges ... Rs. 3,420 (iii) Attendant Charges ... Rs. 11,102 (iv) Treatment Expenses ... Rs. 13,792 (v) Medicinal Charges ... Rs. 22,387 (vi) Special Diet ... Rs. 9,000 (vii) Conveyance Charges ... Rs. 3,400 (viii) Special Shoes ... Rs. 3,600 (viii) Loss of Income ... Rs. 1,50,000 (ix) Pain and Suffering ... Rs. 50,000 (x) Permanent Disability ... Rs. 1,50,000 ------------ Total Rs. 4,23,701 ------------ 4. Aggrieved by the compensation awarded by the Tribunal, injured/appellant has filed the present appeal praying for enhancement of compensation.

5. Since fairness of the compensation assessed is the only matter which was debated by the learned Counsel for the parties, I need to note only such facts as are relevant for determination of the said issue.

6. Date of accident is 28.2.1991. Age of the appellant as on the dale of the accident is 44 years. He claimed to be selling sarees from a small shop under the name of Kamal Deep Sarees. He claimed an income of Rs. 5,000 per month at the time of the accident.

7. Period of treatment spreads over different dates, spanning around 20 months. He was admitted in LNJP Hospital on the date of the accident and was discharged in the last week of April, 91. Thereafter, he was treated by three doctors, namely, Dr. Shekhar Aggarwal, Dr. H.U. Nagar and Dr. Mukesh Jain. Appellant claimed to have undergone six operations.

8. Details of injuries suffered by the appellant are as follows:

(i) Crush injury on left thigh and foot.

(ii) Compound fracture of left ankle and left foot,

(iii) Closed fracture of right femur and right tibia,

(iv) Lacerated wound on left ankle and joint.

9. As a result of the said injuries, right leg of the injured was shortened by one inch and he has suffered a permanent disability of 55%.

10. Since appellant is aggrieved by the amount of compensation awarded by the Tribunal under various heads, I shall deal with each head separately.

11. Before proceeding with the compensation assessed by the Tribunal under each of the heads, 1 note that most of the bills, prescriptions, etc. are exhibited as PW1. PW1 is Ram Phal, Head Constable who has proved the copy of FIR. (The testimony of PW1 is at page 63 of the record of the Tribunal). I fail to understand as to how the bills, prescriptions etc are exhibited as PW1.

Dressing Charges

12. Tribunal has awarded a sum of Rs. 7,000 as against Rs. 20,000 claimed by the appellant.

13. Relating to dressing charges, appellant (PW-3) had deposed as under (page 67):

A person namely Dr. Narinder and Mohd. Ali used to come for a period up to the December 1992. They used to charge Rs. 50 per dressing and I incurred sum of Rs. 20,000 (twenty thousand).

14. Appellant has also placed on record four bills amounting to Rs. 16,000 issued by Dr. Narinder Nath and Mohd. Ali respectively. The same are Ex. PW1/C-86 (page No. 735), Ex. PW1/C-88 (page No. 739), Ex. PWI/C-89 (page No. 741) and Ex. PW1/C-91 (page No. 745).

15. But, testimony of appellant and bills on record cannot be treated as gospel truth. The correctness of same has to be determined taking into consideration

other evidence and attendant circumstances.

16. Bills of medicines purchased by the appellant will give a clue as to the period of dressing. A perusal of bills show that appellant had purchased following quantity of antiseptic lotion, cotton, bandage, etc:

-- S. Description of Item Date of Exhibit No. Page No. No. Purchase -- 1 1 bottle Betadin (500 ml) 8.3.1991 PW1/C-8 171 2 1 bottle Betadin (500 ml) 22.3.1991 PW1/C-11 177 3 1 bottle Betadin (500 ml) 27.3.1991 PW1/C-12 179 4 1 bandage 24.4.1991 PW1/C-15 191 5 1 bottle Betadin (500 ml) 24.4.1991 PW1/C-16 193 6 1 cotton (500 gm) 13.5.1991 PW1/C-17 195 7 1 bottle Betadin (100 ml) 13.5.1991 PW1/C-17 195 8 4 rolls of bandage 4.10.1991 PW1/C-37 237 9 1 cotton (500 gm) 4.10.1991 PW1/C-37 237 10 1 bottom Savlon (75 ml) 8.10.1991 PW1/C-38 239 11 1 dozen bandage 8.10.1991 PW1/C-38 239 12 1 cotton (500 gm) 8.10.1991 PW1/C-38 239 13 1 cotton (500 gm) 17.11.2001 PW1/C-47 257 14 1 cotton (500 gm) 4.12.1991 PW1/C-49 261 15 4 rolls of bandage 4.12.1991 PW1/C-49 261 16 2 cotton (500 gm) 23.12.1991 PW1/C-53 269 17 1 dozen bandage 31.12.1991 PW1/C-56 275 18 1 cotton (500 gm) 31.12.1991 PW1/C-56 275 19 1 bottle ether 6.1.1992 PW3/6 281 20 1 bottle Betadin 6.1.1992 PW3/6 281 21 1 cotton (250 gm) 9.1.1992 PW3/9 287 22 1 cotton (500 gm) 14.2.1992 PW1/C-61 303 23 1 bottle Betadin (100 ml) 4.5.1992 PW1/C-64 315 24 1 cotton (500 gm) 15.5.1992 PW1/C-67 321 25 1 dozen bandage 16.6.1992 PW1/C-68 323 -- 17. The afore-noted bills clearly establish that the appellant used to get his wounds dressed from March 91 to June, 92 (Appellant has purchased 1 dozen of bandage in June, 92, thus it could reasonably be expected that he used to get his wounds dressed even after June, 92, but I am taking the period of dressing from March, 91 to June, 92).

18. Appellant had further deposed that he used to pay Rs. 50 per day for dressing. This statement of appellant cannot be believed. In year, 1991, minimum wages of unskilled labourer was Rs. 845 per month, i.e. Rs. 28 per day. Considering that appellant himself provided antiseptic lotion, cotton and other material used for dressing, the dressing charges @ Rs. 50 per day claimed by appellant are exaggerated.

19. Noting that the dresser used to come at the residence of the appellant for dressing, I allow dressing charges @ Rs. 35 per day for a period of 15 months. The same comes to Rs. 15,750. Thus, I award a sum of Rs. 15,750 to the appellant under the head "dressing charges".

20. Tribunal has awarded a sum of Rs. 7,000 under the head "dressing charges". Thus, compensation under the head "dressing charges" is enhanced by a further sum of Rs. 8,750.

Physiotherapy Charges

21. Tribunal has awarded a sum of Rs. 3,420 as against Rs. 17,100 claimed by the appellant.

22. In relation to physiotherapy exercises, appellant had deposed as under (page 67):

I have to take physiotherapy exercises and I have been paying Rs. 100 per sitting to Saxena. The bills issued by Dr. Saxena are filed on record.

23. Appellant had tried to substantiate his claim by filing two bills issued by Saxena Prosthetic and Orthotic Clinic totalling Rs. 17,100. The same are exhibited as Ex. PW1/C-89 (Page 737) and Ex. PW1/C-90 (page 743).

24. Bills relied upon the appellant merely contains the stamp of Saxena clinic. The person who has issued the said bills has not stepped into the witness-box. In fact, the name of the person who has issued the afore-noted bills is neither discernible from bills nor from the testimony of the appellant.

25. Further, no details pertaining to physiotherapy exercises (for example, person who used give said exercises, types of exercises, etc.) are mentioned in the said bills. No receipt has been filed evidencing payment pursuant to the bills.

26. For the above reasons, neither testimony of appellant nor afore-noted bills clearly establish that appellant has incurred a sum of Rs. 17,100 for physiotherapy exercises. Thus, I do not interfere with award made by the Tribunal under the head "Physiotherapy Charges".

Expenditure incurred on Services of Attendant

27. Tribunal has awarded a sum of Rs. 11,102 as against Rs. 35,095 claimed by the appellant.

28. In relation to expenditure incurred on services of attendant, appellant had deposed as under:

I have to employ one servant namely Ramu @ Ram Prasad during the course of my hospitalization. I used to pay Rs. 110 per day to Ramu. He remained in employment for 53 days. After discharge from the hospital I had to employ servants for about 1? days to look after me and to help me. I was paying Rs. 70 or 75 per day to the servant. I had to employ the servant 1? years and incurred Rs. 35,000 (thirty five thousand) on them.

29. To further substantiate his claim, appellant has filed seven bills for the period 2.3.1991 to 10.4.1992 (13 months) totaling to Rs. 35,095. Amount claimed ranges between Rs. 70 per day to Rs. 110 per day. The bills are exhibited as Ex. PW1/C-1 to Ex. PW1/C-6 (Page 721 to 731).

30. Noting the afore-noted bills, Tribunal has believed that appellant had engaged attendant for a period of 13 months but has disbelieved that he was

paying Rs. 70 to Rs. 110 per day to the attendant for their services.

31. Taking minimum wages notified under the Minimum Wages Act, 1948 as the guiding principle, Tribunal has awarded the compensation, In the year 1991, minimum wages payable to unskilled labourer was Rs. 854 per month, thus Tribunal has awarded a sum of Rs. 11,102 (854 x 13 = 11,102) under the said head.

32. There is no evidence wherefrom it could be inferred as to for how many hours in a day appellant required the services of the attendant.

33. In absence of clear and cogent evidence, I find no infirmity in Tribunal''s decision in assessing compensation under this head on the basis of minimum wages.

34. I uphold the award of Rs. 11,102 made by the Tribunal under the head "expenditure incurred on services of attendant".

Medical Expenses

35. Tribunal has awarded a sum of Rs. 22,387 as against Rs. 56,151.24 claimed by the appellant.

36. Appellant claimed to have filed 51 bills totaling to Rs. 56,151.24. Tribunal has allowed 34 bills. Details of bills which according to appellant have been wrongly disallowed by the Tribunal are as follows:

--- S. Description of Amount of Date of Exhibit No. Page No. No. Bill Bill Purchase -- 1 - 20,000 - - - 2 Medicine 6,654 28.2.91 PW1/C-13 181 3 Medicine 250 22.5.91 PW1/C-74 197 4 Medicine 380 20.6.91 - - 5 Medicine 2,400 22.6.91 - - 6 X-Ray 100 10.6.91 - - 7 Surgical Appliances 2,400 20.6.91 - - 8 Medicine 350 _.7.91 - - 9 X-Ray 130 _.7.91 - - 10 X-Ray 100 _.7.91 - - 11 Medicine 100 _.9.91 - - 12 X-Ray 100 _.9.91 - - 13 X-Ray 160 24.12.91 - - 14 Medicine 448 03.03.92 PW3/22 305 15 Medicine 507 06.09.92 PW3/14 339 16 Medicine 115 15.09.92 - - 17 Medicine 75 15.9.92 - - --- 37. A perusal of the above table shows that appellant had only filed 38 bills and not 51 as claimed by him. Thus, Tribunal has disallowed four bills.

38. Bill at Serial No. 2 is a handwritten bill and is signed by one Sh. D.K. Singhal. Except the said bill, all other bills are issued by the medical stores. In all the bills except one bill (Amount of bill marked Ex. PW1/C-43, Pg. No. 649 is for Rs. 6,000), the amount of medicines purchased by the appellant is less than Rs. 1,000. This fact makes the bill at Serial No. 2 highly exaggerated one. In my opinion, Tribunal has rightly disallowed the bill at Serial No. 2 as the same does not appear to be a genuine bill. Bill at Serial No. 3 is an incomplete bill and thus rightly disallowed the Tribunal.

40. I agree with the learned Counsel for the appellant that bills at Serial Nos. 14

and 15 have been wrongly disallowed by the Tribunal. I allow the said bills and award a sum of Rs. 955 (rounded off to Rs. 1,000) under the head "Medicinal Expenses".

Expenses incurred on Treatment

41. Tribunal has allowed a sum of Rs. 13,792 as against Rs. 35,795 claimed by the appellant.

42. Tribunal has disallowed 12 bills. Details of bills disallowed by the Tribunal are as follows:

-- S. Amount of Bill Date of Bill Exhibit No. Page No. No. -- 1 265 25.5.1991 PW1/C-81 649 2 265 2.6.1991 PW1/C-82 651 3 265 10.6.1991 PW1/C-76 653 4 265 18.6.1991 PW1/C-75 655 5 236 2.8.1991 PW1/C-77 673 6 238 4.9.1991 PW4/22 679 7 278 17.12.1991 PW1/C-78 703 8 135 04.6.1992 PW1/C-79 713 9 2682 26.9.1991 PW4/26 679 10 10,000 24.12.1991 PW4/1 401 11 13,600 19.1.1992 PW4/4 705 12 2,800 14.9.1992 PW4/16 717 -- 43. Bills at Serial Nos. 1 to 8 are handwritten receipts containing an acknowledgement that a sum of money is paid to Dr. H.U. Nagar. The said receipts are not signed by Dr. Nagar but by another person whose signatures cannot be identified.

44. Tribunal has disallowed the bills at Serial Nos. 1 to 8 for the reason said bills/ receipts are not certified/proved by the person who has issued them. I agree with the decision of the Tribunal.

45. Bill at Serial No. 9 is for the expenses incurred by the appellant on account of his having undergone an operation at Orthonova Hospital in September, 1991.

46. No reasons have been given by the Tribunal for disallowing the said bill.

47. The fact that appellant was operated upon stands corroborated by the testimony of the Dr. H.U. Nagar and appellant.

48. Dr. H.U. Nagar stepped into the witness-box as PW-4 and deposed that he had operated appellant for fusion and curettage of his infected left ankle in September, 91 at Orthonova Hospital.

49. Appellant had also testified that he was operated upon by H.U. Nagar for removal of pus from his left ankle in September 1991 at Orthonova Hospital.

50. In view of testimony of Dr. H.U. Nagar and appellant, I allow the bill at Serial No. 9.

Bills at Serial Nos. 10, 11 and 12 are for expenses incurred by the appellant on account of his having undergone two operations at Vardhman Trauma Centre in January and September, 1992.

52. Bill at Serial No. 10 is a prescription by Dr. Mukesh Jain. The said prescription/ bill merely contains an entry of Rs. 10,000. The same does not show that a sum of Rs. 10,000 was paid by the appellant. Thus, I disallow the bill/prescription at Serial No. 10.

53. In relation to bills at Serial No. 11 and 12, Dr. Mukesh Jain stepped into the witness as PW-4 and deposed that he had twice operated appellant in January and September, 1992 respectively at Vardhman Trauma Centre.

54. But, the afore-noted bills and testimony of Dr. Mukesh Jain are not corroborated by the testimony of the appellant.

55. In his testimony, appellant had testified that he was operated upon four times. He further deposed that the first two operations were conducted at LNJP Hospital on 28.2.1991 and last week of April, 91 respectively. He deposed that third and fourth operations were conducted at Batra and Orthonova Hospital in June and September, 1991 respectively.

56. The fact that appellant was operated upon twice by Dr. Mukesh Jain in month of January and September, 1992 at Vardhman Trauma Centre does not find a mention in the testimony of appellant. No Explanation is forthcoming as to why appellant has not mentioned about the said two operations in his testimony.

57. Noting the testimony of the appellant, I disallow the bills at Serial Nos. 11 and 12.

58. The net effect is that I award a sum of Rs. 2,682 to the appellant under the head "expenses incurred on treatment".

Conveyance Charges

59. Tribunal has allowed a sum of Rs. 3,400 as against Rs. 36,247 claimed by the appellant.

60. Appellant had stated that he was being treated by Dr. Mukesh Jain who was practicing at Vardhman Trauma Centre, Muzaffar Nagar, U.P. and thus claimed conveyance charges for traveling from Delhi to Muzaffar Nagar but the same were disallowed by the Tribunal on the premise that Delhi has better medical facilities than Muzaffar''Nagar.

61. In my opinion, Tribunal has wrongly disallowed the same for the reason testimony of Dr. Mukesh Jain and appellant, prescriptions issued by Dr. Mukesh Jain and bills of medicines purchased by the appellant clearly establish that appellant was being treated by Dr. Mukesh Jain.

62. I consider it reasonable to allow a further sum of Rs. 2,500 to the appellant under the head "conveyance charges".

Loss of Income

63. Tribunal has awarded a sum of Rs. 1,50,000 as against Rs. 2,50,000 claimed

by the appellant.

64. Appellant had deposed that his monthly income was Rs. 5,000 at the time of the accident and he could not attend to his business for a period of 214 years on account of the injuries suffered in the accident. Relying on the testimony of the appellant, a sum of Rs. 1,50,000 has been awarded by the Tribunal. (5,000 x 30 months = Rs. 1,50,000).

65. It is not clear as on what basis appellant had claimed a sum of Rs. 2,50,000 under the head "loss of income". In fact, the award of the Tribunal is on the higher side as the evidence on record suggests that appellant was undergoing treatment for a period of 20 months and not 30 months as claimed by the appellant. More so when income was from a shop and it could be presumed that during period of treatment somebody was running the shop.

66. I maintain the award of Rs. 1,50,000 made by the Tribunal under the head "loss of income".

Future Loss

67. Tribunal has awarded a sum of Rs. 1,50,000 under this head.

68. As per disability certificate (Ex. PW1/D, Pg. 899) appellant has suffered a permanent disability of 55%. Tribunal has assessed functional disability suffered by the appellant as 40% and on this basis awarded a compensation of Rs. 1,50,000 to the appellant.

69. Learned Counsel for the appellant contends that while determining compensation under this head Tribunal has not taken into account the fact that the appellant will have to incur expenses on his future treatment.

70. Tribunal has not specified as on what basis it has arrived at a compensation of Rs. 1,50,000. It appears taking monthly income of the appellant at the time of the accident as Rs. 5,000 and applying multiplier of 6, Tribunal has awarded a sum of Rs. 1,50,000 to the appellant. (Rs. 5,000 x 12 X 6 x 40% = Rs. 1,44,000; rounded off to Rs. 1,50,000).

71. On the future loss, noting that the appellant was running a Sarees Shop, I do not think that any meaningful future loss has surfaced. The nature of permanent disability, in my opinion, is not of a kind which would affect the avocation of the appellant. In my opinion, a sum of Rs. 1,50,000 awarded by the Tribunal is adequate.

Non-pecuniary Damages

72. Tribunal has awarded a sum of Rs. 50,000 under the head "non-pecuniary damages". Tribunal has awarded Rs. 50,000 for pain and suffering. No amount has been awarded towards loss of amenities of life.

73. No amount of money can recompense a person the loss of enjoyment of pleasures of life.

74. Every disability takes away some pleasure of life or the other. There cannot be an absolute measure to compensate a non pecuniary loss. But, some guidance can be had from the extent of injury and the period of hospitalization coupled with the disability suffered.

75. I look at various judicial trends which are as under:

(1) Amar Singh Vs. Ishwar and Others, , Supreme Court awarded compensation of Rs. 1,00,000 under the head ''pain, shock and suffering'' to an injured who suffered 30% permanent disability and remained in hospital for a period of more than 3 years though intermittently on account of injuries sustained by him in a road accident.

(2) Dr K.R. Tandon (Mrs) Vs. Om Prakash and Another, , Supreme Court awarded a compensation of Rs. 1,00,000 under the head ''non-pecuniary loss'' to an injured who sustained injuries of ribs, spine and hip-joint in a road accident.

(3) Ahmedabad Municipal Transort Service Vs. Hansaben Natwarlal Dabgar, due to accident which took place on 13.9.1991 Hansaben, a cook sustained a fracture in her right leg. The fracture mal-united resulting in shortening of right lower limb and thus she suffered permanent partial disablement to the extent of 38%. She was hospitalized for a period of 10 days. The Division Bench of Gujarat High Court awarded a compensation of Rs. 50,000 to the injured under the head ''pain, shock and suffering''.

(4) Miss Ragini Raju and Ors. 2002 (2) TAC 710 on 25.10.1995, a girl aged 13 years sustained serious injuries in a road accident while crossing the road. On account of injuries sustained in the accident, her left lower limb was shortened by 3 cm and her left hip was also deformed. She also sustained a fracture of her left femur, tibia and fibula. She remained in hospital for a period of 41/2 months. A learned Single Judge of this Court awarded a sum of Rs. 50,000 to the injured under the head ''pain and suffering''.

(5) R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , on account of accident which took place on 20.5.1980, appellant aged 52 years suffered serious injuries resulting in 100% disability and a paraplegia below the waist, Supreme Court awarded a sum of Rs. 6,00,000 under the heads ''pain and suffering'' and ''loss of amenities of life''.

76. In the instant case, I have before me the evidence that the appellant was operated upon four times. I also have evidence that appellant was under treatment for a period of 20 months.

77. I also have before me the evidence that the right leg of the appellant was shortened by one inch and that he has suffered a permanent disability of 55%.

78. From the judicial trends it is evident that in the instant case there is inadequacy in the compensation awarded towards non-pecuniary damages.

79. On account of loss amenities and loss of the pleasures of the life, noting the

permanent disability suffered by the appellant, 1 award him compensation in sum of Rs. 35,000.

Enhanced Compensation

80. Net effect is that the compensation stands enhanced by a sum of Rs. 49,432 (rounded off to Rs. 50,000). Break-up of the enhanced compensation is as follows:

(i) Dressing Charges ... Rs. 8,750 (ii) Medicinal Expenses ... Rs. 1,000 (iii) Treatment Expenses ... Rs. 2,682 (iv) Conveyance Charges ... Rs. 2,500 (v) Loss of amenities of life ... Rs. 35,000 ------------ Total Rs. 49,932 ------------ 81. The appeal accordingly stands disposed of enhancing the compensation by sum of Rs. 50,000.

82. The enhanced compensation in sum of Rs. 50,000 shall be paid to the appellant together with interest @ 6% per annum from date of claim petition till date of payment.

83. No costs.

84. LCR be returned.

