

(2013) 02 RAJ CK 0131

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 212 of 2000

Kumari Tulika Tandon

APPELLANT

Vs

Hajari Lal and Others

RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Citation : (2013) 1 WLN 593

Hon'ble Judges : V.K. Mathur, J

Bench : Single Bench

Advocate : Rajesh Panwar, for the Appellant; Sanjay Paliwal for Mr. Anil Bachhawat, Advocates for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mathur, J.—The appellant has filed present appeal against judgment and award dt. 21.12.1999 passed by the Judge, Motor Accident Claims Tribunal, Barmer in Civil Misc. (Claims) Case No. 12/1998, for enhancement of the award amount. As per facts of the case, on 26.06.1996 the appellant-claimant along with her family boarded Bus No. RJ14-P-4511 of the Rajasthan State Road Transport Corporation from Jaipur for Bikaner. In the night at about 11:45 PM when this bus reached Rasidpura near Sikar then respondent No. 1 - Hajari Lal, who was driving Truck No. RJI-3095 rashly and negligently, hit the bus from front side. In that collision, few passengers died on the spot while the appellant-claimant also got seriously injured. The appellant-claimant sustained various injuries including fracture of femur bone in her right leg. After the accident, the appellant-claimant was moved to Government Hospital, Sikar and thereafter she was admitted in Santokbha Durlabhji Hospital, Jaipur where she remained under treatment for long time and also underwent various operations.

2. A claim petition was filed by the appellant-claimant before learned Motor Accident Claims Tribunal, Barmer claiming compensation under various heads for a sum of Rs. 6,07,000/- on account of injuries sustained in the aforesaid accident. It was claimed that Rs. 1,07,000/- have been spent on her treatment

and Rs. 1 Lac more are likely to be spent. It was contended that a steel rod has been fitted in her right thigh, now appellant-claimant is unable to bend her right knee and thereby has been rendered to permanent disablement. The appellant-claimant submitted on record various documents regarding her treatment & operation as also conveyance expenses incurred in the course of her treatment.

3. The appellant-claimant also claimed Rs. 50,000/- for pain and suffering, Rs. 50,000/- towards compensation being unable to appear in her B.Sc. Final examination, Rs. 50,000/- towards future treatment expenses and Rs. 3,00,000/- towards income from her future career as dancer. The respondents No. 2 and 3 were impleaded being owner of the vehicle and respondent No. 4 was impleaded as insurer of the vehicle.

4. Similar claim petition was also filed by an other injured - Smt. Ranjana Tandon. The respondents filed written statement. Since both the claim petitions arose out of same accident, therefore, learned Tribunal consolidated and decided both the claim petitions by common judgment.

5. The learned Tribunal came to conclusion that the ill-fated accident took place solely on account of rash and negligent act of Driver of the offending vehicle and therefore, decided issues No. 1, 3 and 4 in favour of appellant-claimant. Issue No. 2, which relates to assessment of quantum of compensation was decided in favour of appellant. The learned Tribunal awarded Rs. 90,000/- towards expenses incurred for treatment and Rs. 75,000/- towards lump-sum compensation and in this manner, passed award for sum of Rs. 1,65,000/-.

6. Learned counsel for the appellant averred that the appellant-claimant sustained various injuries on her person including fracture of femur bone on right leg. The appellant also sustained injuries on other parts of body including head, face. It was further averred that she remained admitted for considerable long time and she was also taken to various places for treatment. During the period of hospitalization, the appellant-claimant underwent various operations. Her right leg was plastered. In all, the appellant-claimant remained under treatment for more than two years continuously. It was further averred that at the relevant time, the appellant-claimant was student of B.Sc. Final and on account of injuries sustained in the accident, she could not take the examination and as such, she sustained loss of a year in the study career. It was also averred that fracture could not be united properly and ultimately it has resulted in permanent disablement. It has also been averred that on account of injuries on face, the appellant incurred huge expenses for plastic surgery.

7. It is submitted that the amount of compensation assessed and awarded by the learned Tribunal is too low, highly unreasonable and against well settled law governing assessment of quantum of compensation. Learned counsel for the appellant-claimant submitted that learned Tribunal seriously erred in not awarding adequate compensation for the injuries and fracture sustained by her. Huge expenses were incurred on treatment, conveyance charges etc. Learned

Tribunal seriously erred in not appreciating evidence in right perspective while computing amount of compensation in this respect and submitted that the amount of compensation be enhanced.

8. On the other hand, learned counsel for the respondent No. 4 supported the judgment and award passed by learned Tribunal and stated that the amount of compensation awarded is just and proper and vehemently contended that the appeal of appellant-claimant for enhancement has no substance and the same is liable to be dismissed.

9. I have heard contentions of both sides and perused the impugned judgment and award as well as material on record.

10. As per injury report Ex. 8 and x-ray report Ex. 9 the appellant-claimant sustained in all 6 injuries, out of which injuries No. 1, 2, 4, 5 and 6 are simple in nature and injury No. 3 was found to be fracture of shaft femur of right thigh as per x-ray report. Learned Tribunal awarded Rs. 90,000/- towards expenses for treatment and lump-sum compensation of Rs. 75,000/-, thus, total sum of Rs. 1,65,000/-.

11. The main contention of appellant-claimant in present appeal for enhancement of compensation is that the learned Tribunal has not considered future loss being incurred to her due to injuries sustained in the accident. Having considered the judgment of learned Tribunal vis-a-vis material on the record, in the totality of facts and circumstances, ends of justice would be met if amount of lump-sum compensation is enhanced to Rs. 1,00,000/- instead of Rs. 75,000/-. In my considered opinion, the amount of Rs. 90,000/- awarded by learned Tribunal against expenses for treatment expenses cannot be unjust and need not be interfered with.

12. Hence, the appeal of the appellant-claimant is accepted in the manner that the appellant-claimant will be entitled to Rs. 1,00,000/- towards lump-sum compensation and hence, now in all she is entitled to a total compensation of Rs. 1,90,000/-. The claimant is entitled to enhanced compensation of Rs. 25,000/- which shall carry interest at the rate of 7% per annum from the date of filing of claim petition till the date of deposit of the same before the Tribunal. The respondent No. 4 - Insurance company is directed to deposit the enhanced compensation of Rs. 25,000/- with interest as above before the Tribunal within a period of 30 days from the date of this order. Consequently, the appeal is allowed to the extent indicated above. In the facts and circumstances of the case, there shall be no order as to costs.