

(2006) 05 DEL CK 0107
In the Delhi High Court
Case No : FAO No. 437 of 2000

Mahavir Parshad Gupta

APPELLANT

Vs

Harish Kumar and Others

RESPONDENT

Date of Decision : 04-05-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2006) 05 DEL CK 0107

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Col. Digamber Singh, for the Appellant; R.V. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The present Appeal u/s 173 of the Motor Vehicles Act, 1988 has been filed by Mr. Mahavir Prasad Gupta, the appellant for enhancement of compensation.

2. The appellant had suffered injuries in a road accident on 10th July, 1991 and by the impugned judgment/award dated 29th July, 2000 has been awarded compensation of Rs. 2 lakhs as per details given below:

- (i) Rs. 75,000/- towards medical expenses, hospitalization and services of physiotherapist;
- (ii) Rs. 25,000/- for loss of income;
- (iii) Rs. 50,000/- for pain and suffering, and
- (iv) Rs. 50,000/- for loss of amenities and expectation including future loss of income.

3. By way of present Appeal, the appellant has made the following claims:

- (a) Towards cost of medicines Rs. 14,926/-

- (b) Towards servant charges @ Rs. 1200/- p.m. for six months Rs. 7,200/-.
- (c) Towards consultation fee for 23 visits paid in Batra hospital @ Rs. 40/- per visit (23 x 40) = Rs. 920/-
- (d) Towards conveyance charges for follow up treatment @ Rs. 450/- per visit for 23 visits (450 x 23) = Rs. 10,350/-.
- (e) Towards physiotherapy exercise @ Rs. 100/- per day in an average of 30 days in a month for 28 months (100 x 30 x 28) = Rs. 84,000/-. Learned Tribunal has already awarded Rs. 56,000/- on this head and appellant claims balance of Rs. 28,000/- in this Appeal.
- (f) Towards loss of income from 10.7.91 to 31.12.91 @ Rs. 12,300/- p.m. (Rs.12,300/- x 6) = Rs. 73,800/-. Learned Tribunal has already awarded Rs. 25,000/- and the appellant claims balance Rs. 48,800/- in this Appeal.
- (g) Towards future expenses for treatment and operation for removal of screws which existed in the body = Rs. 25,000/-
- (h) Towards loss of income for three weeks rest for future treatment = Rs. 9000/-
- (i) Towards salary of the driver for the period from 1.1.92 to 28.2.94 @ Rs. 2000/- p.m. and from 1.3.94 to 29.7.2000 @ Rs. 3000/- p.m. = Rs. 2,80,000/-.
- (j) Towards future salary of driver @ Rs. 3000/- p.m. for eight years (Rs.3000/- x 12 x 8) = Rs. 2,88,000/-
- (k) Towards loss of earning capacity Rs. 7,48,800/.
- (l) Towards pain and suffering Rs. 5,00,000/- out of which Rs. 50,000/- has been awarded by the learned Tribunal. Appellant claims balance Rs. 4,50,000/- in this Appeal.
- (m) Towards mental loss and agony = Rs. 5,00,000/-.

Total amount is Rs. 24,10,996/-.

However, the appellant has restricted his claim to Rs. 16,43,000/- i.e. the claim before the tribunal.

4. I have heard the learned Counsel for the parties and also perused the Trial Court record.

5. The appellant after the accident had remained in hospital from 10th July, 1991 to 17th July, 1991. In the Claim Petition, the appellant had stated that he had incurred an expenditure of Rs. 60,000/- on hospitalisation. However, as per the hospital bill placed on record, the appellant had incurred expenditure of Rs. 18,085/- only. Similarly, bills for purchase of medicines are concerned, the appellant himself admits that bills for Rs. 19,010/- were exhibited. Even in the written submissions filed before the learned Trial Court, the appellant had admitted that bills/vouchers for purchase of medicines of Rs. 19,010/- were

exhibited and proved. This amount, Therefore, has to be allowed and awarded. There is no reason and cause to award any additional amount for purchase of medicines and hospitalization.

6. Dr.H.U. Nagar, Orthopedic Consultant attached to Batra Hospital, New Delhi, in his statement had stated the appellant had suffered dislocation of the left hip with fractured acetabulum (hip bone), complete nerve palsy, fracture of left patella and exterior tendon rupture of left, middle and ring fingers. The left hip was plated and the hip and the knee joint screwed and the tendons of the fingers were repaired. The appellant had suffered nerve injury and this as per the statement of Dr. H.U. Nagar would have taken 18-24 months to recover and the recovery was almost 90%. Dr. H.U. Nagar had further stated that the screws and plates were required to be removed by an operation and this would cost Rs. 25,000/-. The said Doctor also certified that physiotherapy was required by the appellant. As per statement of Dr. H.U. Nagar the appellant was required to take bed rest for about five months.

7. Statement of PW-5, Sub.Ram Kishan, physiotherapist was also recorded before the Tribunal. Sub.Ram Kishan admitted going to the resident of the appellant for physiotherapy and the said exercises had continued up to December, 1993. Sub.Ram Kishan claimed that Rs. 100/- per sitting was charged by him. However, in the cross-examination he admitted that no receipt was given for the said payments to the appellant and he had not maintained any accounts.

8. It is clear from the evidence of Dr. H.U. Nagar and the documents placed on record, that that appellant had suffered several injuries including fracture of his left hip and leg for which he was operated upon and plates and screws were fixed. The OPD cards show that the appellant had been visiting Batra Hospital till at least July, 1992. The appellant had to also undergo physiotherapy exercises.

9. The appellant specifically had kept with him receipts/bills for purchase of medicines, OPD cards etc.. The claim petition was filed before the Tribunal on 10th October, 1991. If the physiotherapy exercises had continued every day till Dec.,1993 as claimed and the appellant was making payment of Rs. 100/- per visit to PW-5 for the said exercises, he would have certainly kept receipts/record for having made the said payments. No vouchers/bills were produced and filed. It, Therefore, appears that the claim that the appellant was paying Rs. 100/- per sitting to the physiotherapist and the said exercises had continued on virtually every day till December, 1993 is highly exaggerated and cannot be believed. Keeping in view the total bill of the hospital, I feel it will be reasonable to award a lumpsum payment of Rs. 10,000/- to the appellant towards physiotherapy exercises, in addition, Rs. 18,085/- towards hospitalization and Rs. 19,010/- for purchase of medicines.

10. The appellant had also claimed that he had incurred expenditure of Rs. 2000/- per month on driver and Rs. 1200/- per month on a servant after the said accident. It was stated that the appellant made 23 visits to Batra Hospital and he

should be paid Rs. 450/- per visit towards conveyance charges and Rs. 40/- per visit towards consultation fee. As far as consultancy fee payable to the doctors on 23 visits is concerned, the total amount works out to Rs. 920/- and in view of the OPD cards, I feel the said amount should be allowed. However, conveyance charges as claimed @ Rs. 450/- per visit are abnormally high. The accident had occurred in the year 1991, I feel payment of Rs. 2300/- @ Rs. 100/- per visit can be allowed to the appellant. PW-3-Dr. H.U. Nagar had also stated that the appellant would be required to incur further expenditure of Rs. 25,000/- on an operation to remove the plates and screws. This amount too, Therefore, should be allowed to the appellant. The total of the above amounts works out to Rs. 75,375/- which is almost the same as awarded by the learned Tribunal. I, Therefore, see no reason to interfere with the amount awarded by the learned Tribunal on medical expenses, etc.

11. Similarly, the claim made by the appellant towards payment of salary to the driver has not been established and proved. Mr. Sanjay Goel was produced as a witness. He had stated that he had started working as a driver with the appellant only in March 1994. However, as per the driving license produced by him, he was authorised only to drive heavy motor vehicles. He further stated that he did not know the residential address of the appellant and whenever he received payment, he was asked to sign the vouchers. No voucher was produced or filed. The said statement of Mr. Sanjay Goel-PW2 was rightly rejected, as he did not even know the residential address of the appellant. Had Mr. Sanjay Goel worked with the appellant as his driver, he would have at least known his residential address.

12. Regarding loss of income, the appellant had in his statement claimed that he was an Income Tax payee. The papers/documents filed on record by the appellant show that he had filed his Income Tax returns for the first time only after the accident. Assessment order for the Assessment Year 1992-93 (year ending 31st March, 1992) placed on record by the appellant shows that his net income from the profession was Rs. 1,23,243/-. Addition of Rs. 20,000/- was made to this amount and his total income was assessed at Rs. 1,47,625/-. The appellant, however, did not place on record copy of the profit and loss account and the balance-sheet to establish his income before the accident and after the accident and increase in expenditure incurred by him on petrol, car maintenance, driver etc. These claims made Therefore cannot be verified. The appellant has not filed copy of his return for the year ending 1990, in which the accident had taken place. In all probability the income for the said year would have been much lower. The onus was on the appellant to show drop in income as a result of the accident by filing documents including copies of Income Tax returns for the year 1990-91, 1992-93, etc. These documents and returns have been withheld and not filed. Keeping in view the nature of evidence produced by the appellant, type of injuries suffered and the evidence of the doctor, I feel compensation of Rs. 25,000/- for the loss of past income and Rs. 50,000/- on account of loss of amenities and future income is just, fair and reasonable. No enhancement on this

account is called for. I may mention here that the appellant in the claim petition filed before the Tribunal had stated that he was 45 years old at the time of the accident. The material placed on record clearly shows that the appellant was 54 years old at the time of the accident. Keeping in view the age of the appellant the amount of Rs. 75,000/- awarded by the learned Tribunal cannot be said to be inappropriate or abnormally low. The appellant had remained in the hospital only for seven days and thereafter may not have been able to attend the work properly for some time. In view of the age of the appellant, the income and the nature of disability, compensation of Rs. 75,000/- as awarded on account of loss of past and future income is justified.

13. It may also be mentioned that the learned Tribunal has also awarded Rs. 50,000/- towards pain and suffering and had directed that the appellant would be entitled to interest @ 12% per annum from the date of filing of the petition till realisation.

14. Keeping in view the above facts, I do not see any merit in the present Appeal for enhancement of compensation and the same is accordingly dismissed.

15. However, in the facts and circumstances of the case, there will be no order as to costs.