
(2009) 04 RAJ CK 0069
In the Rajasthan High Court

Maresh Sharma

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1
Railways Act, 1989 — Section 82A

Citation : (2009) 04 RAJ CK 0069

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narendra Kumar Jain, J.—The plaintiff-appellant has preferred this regular appeal against impugned judgment and decree dated 19th October, 1991 passed by the Additional District & Sessions Judge No. 2, Jaipur City in Civil Suit No. 24/1990 for enhancement of the amount of compensation in respect of injuries sustained by him in railway accident took place on 18th July, 1981.

2. The plaintiff filed a civil suit for compensation initially for a sum of Rs. 2,50,000/-. The suit was amended and total compensation was claimed as Rs. 3,75,000/-. The trial court awarded total compensation of Rs. 1,13,000/- as under:

Sr. No. Amount Heads

1 28,000/- Towards medical bills 2 Rs. 70,000/- For 43.03% permanent disability 3 Rs. 10,000/- For physical pain and mental agony 4 Rs. 5,000/- For loss of consortium

3. The trial court also awarded interest @ 12% per annum from the date of filing of the suit.

4. The suit was filed under Order 33 Rule 1 CPC as an indigent person and appellant was allowed to file the suit as an indigent person, therefore, it was also

directed that as per Order 33 Rule 10 CPC, a sum of Rs. 5750/- will be paid towards court fee.

5. The learned Counsel for the appellant contended that amount of compensation awarded in the present case is a meager amount and cannot be said to be reasonable compensation in the facts and circumstances of the present case. He contended that the medical bills were submitted for Rs. 28,000/-, but in fact more amount was incurred on medical treatment and medicines, for which the bills and receipts could not be collected, therefore, at-least a sum of Rs. 60,000/- should be awarded under this head. He further contended that trial court committed an illegality in awarding Rs. 70,000/- towards permanent disability, whereas a sum of Rs. 1,50,000/- should have been awarded under this head. He also contended that plaintiff is also entitled to interest on the enhanced amount of compensation, if it is enhanced by this Court. He, therefore, contended that the impugned judgment passed by the trial court be modified and amount of compensation be enhanced reasonably.

6. The learned Counsel for the respondents contended that this is a case, wherein the accident took place in the year 1981 and suit was filed in the year 1982, therefore, amount of compensation awarded in the present case is just and reasonable and cannot be said to be a meager amount, as contended by learned Counsel for the appellant. He, therefore, contended that the judgment passed by the trial court is absolutely justified and no interference in it is called for.

7. I have considered the submissions of learned Counsel for both the parties and examined the impugned judgment as well as the record of the trial court.

8. It is relevant to mention that the present suit for compensation was filed in the trial court on 17th July, 1982 and after coming into force the Railways Act, 1989 and constitution of the Railway Claims Tribunal, the suit was transferred for disposal to the Railway Claims Tribunal vide order dated 26th February, 1990 and when the matter was placed before the Railway Claims Tribunal, then the Tribunal vide its order dated 9th March, 1990 held that it is not an application u/s 82A of the Railways Act, 1989, but suit of plaintiff is based on tortious liability and in these circumstances, the Tribunal has no jurisdiction to entertain and decide the suit of the plaintiff and consequently retransferred the suit for disposal to the Civil Court. The order passed by the Tribunal was not challenged by any of the parties, therefore, the suit was decided by civil court in the manner as indicated above.

9. The factum of accident and negligence on the part of the respondents are not in dispute as respondents have not challenged the finding of the trial court in this regard. The only dispute in the present case is about the amount of compensation. According to appellant, the amount of compensation awarded is a meager amount whereas as per the respondents the amount of compensation awarded by the trial court is just and reasonable. Both the parties led oral and

documentary evidence in support of their respective submissions. The learned Counsel for the respondents read the statement of PW-1 and other witnesses also. PW-1, in his statement, stated that his yearly income was Rs. 12000/- to 13,000/-; he remained confined to bed for about two and a half year. He had invested Rs. 25,000/- to 30,000/- in his business i.e. loom and due to this accident, he suffered loss in his business, as such suffered the entire invested amount i.e. Rs. 25,000/- to 30,000/-. He also stated that he spent Rs. 1,00,000/- on medical expenses. He underwent 11 operations during the period of two and half year. Dr. M.K. Mathur was examined as PW-2, who proved Ex. 4, certificate of permanent disablement, wherein 43.03% permanent disability was mentioned. PW-3 Dr. Pareek proved Ex. 570 to 573.

10. The defendants examined DW-1 to DW-6, but they were examined only on the question of negligence, but as already stated above, the finding of negligence which was decided in favour of the plaintiff has not been challenged by the defendants by way of cross-appeal or cross-objection, therefore, statement of defendants' witnesses are not relevant for the purpose of quantum of compensation. From the plaintiff's evidence, it is clear that he was earning Rs. 12,000/- to Rs. 13,000/- per year and his leg has been shortened by one inch and he suffered 43.03% permanent disability. He was about 28 years of age on the date of accident as he stated to be 33 years of age on the date of his statement which was recorded in the year 1987. After considering all the facts and circumstances of the case, I am of the view that the amount of compensation awarded by the trial court is not a just and reasonable compensation and the same is liable to be enhanced. The yearly income of the appellant was Rs. 12,000/- per year and he was 28 years of age on the date of accident. I adopt the multiplier of 18 looking to the age of the injured appellant and determine his yearly income as Rs. 12,000/-, therefore, the said amount comes to Rs. 2,16,000/- and if it is divided by 43%, then the said amount comes to Rs. 92,880/-. The appellant remained confined to bed for two and half year, therefore, for the said period, a sum of Rs. 30,000/- is awarded towards loss of income @ 12,000/- per year. The appellant had invested Rs. 25,000/- to 30,000/- in his business, which he suffered, therefore, a sum of Rs. 25,000/- is also awarded under this head. The appellant has submitted the medical bills of Rs. 28,000/- and the said amount is also awarded under this head. Therefore, the total amount of compensation is awarded as under:

Sr. No. Amount Head

- 1 Rs. 92,880/- Towards permanent disability of 43% and mental agony
- 2 Rs. 30,000/- For loss of income for two and half year when the appellant remained confined to bed
- 3 Rs. 25,000/- For loss of investment made in the business
- 4 Rs. 28,000/- Towards medical bills

Total Rs.1,75,880/-

11. The trial court has awarded Rs. 1,13,000/-. The appellant will now be paid the difference of amount i.e. Rs. 62,880/- with interest @ 6% per annum.

12. In view of above discussions, the appeal is allowed. The impugned judgment and decree passed by the trial court is modified. The amount of compensation is enhanced from Rs. 1,13,000/- to Rs. 1,75,880/-. The amount of Rs. 1,13,000/- already paid to appellant as per the judgment of the trial court will be deducted, thus, the respondents will now pay the remaining amount of compensation of Rs. 62,880/- with interest @ 6% per annum from the date of filing of the suit till the date of realization.

13. Cost is made easy.