
(1987) 12 AHC CK 0025
In the Allahabad High Court

Oriental Fire and General Insurance Co. Ltd. and Others	APPELLANT
Vs	
Roshan Lal	RESPONDENT

Date of Decision : 10-12-1987

Acts Referred:

Citation : (1988) 2 ACC 130

Hon'ble Judges : N.N. Mithal, J

Bench : Single Bench

Judgement

N.N. Mithal, J.—In an accident which occurred at about 11-30 A.M. on 12-7-1973 on the Agra-Kanpur National Highway near Chhalesar Nursery, the claimant-respondent was severely injured resulting in ultimate amputation of his right leg and severe fracture injuries to his other leg apart from other injuries. The accident took place when Roshan Lal injured, who is an ice candy hawker, was going with historically on the road when he was hit from behind by Car No. UPU 9932. It is alleged that the driver of the car did not blow the horn and even after hitting the injured the car could be stopped only several paces ahead and immediately thereafter the driver escaped along with the car. The occurrence was witnessed by one M.S. Kapoor who was coming on the scooter and he also informed the relations of the injured. Thereafter the injured was taken to the Hospital where he remained hospitalised for one and half months. A F.I.R. was also lodged. He remained under the treatment of Dr. Vyas from 12-7-1973 to 25-8-1973 incurring an expenditure of Rs. 1200/-. Against a claim of Rs. 50,000/-, Rs. 23,000/- has been awarded including the medical expenses and compensation for pain and suffering.

2. Dhani Ram is the driver and his wife Smt. Kalawati is the owner of the car. They have filed a joint written statement contesting the claim and according to them the Car was not being driven rashly and negligently but the accident occurred as the claimant suddenly came in the middle of the road and despite honking the horn, he did not move away. When the brakes were applied, they failed and despite best efforts the accident took place.

3. The Insurance Company also filed a written statement and admitted that the vehicle was insured with it.

4. On the evidence led by the parties, the Claims Tribunal came to the conclusion that the accident was caused on account of rash and negligent driving by Dhani Ram and that all the three the owner, the driver and the insurer were liable for payment of compensation. On the question of compensation, the Tribunal was of the opinion that the Claimant was earning Rs. 300/- per month from his ice candy business which was a seasonal one and, therefore, on an average his earning capacity was determined at Rs. 150/- p.m. Since he was aged 35 years at the time of the accident, the Tribunal fixed the compensation amount at Rs. 20,000/- for loss of earnings. He was also awarded Rs. 1200/- spent over his medical treatment and a sum of Rs. 1800/- was awarded for mental agony. Thus a total sum of Rs. 23,000/- has been awarded by way of compensation.

5. After bearing the learned Counsel for the parties and on the perusal of the award of the Tribunal, it is quite evident that all the materials and facts have been properly considered by it in arriving at the conclusion that the accident had taken place due to negligent and rash driving by driver Dhani Ram. The Court has rightly pointed out that there was no contributory negligence on the part of the claimant. Despite vigorous efforts by the learned Counsel for the appellant, I do not find any material that may persuade me to take a different view than the view taken by the Tribunal. It is accordingly held that the accident took place on account of the negligence and rashness on the part of the driver.

6. On the question of quantum also, I do not find that there is any merit in so far as the appeal of the Insurance Company is concerned. There is cross objection by the claimant and he has prayed that full amount of Rs 50,000/- ought to have been awarded to him. It has been urged on behalf of the claimant that at the young age of 35 years he has been deprived of his one leg and his other leg was also badly impaired In view of the nature of the injuries sustained by him, he can not undertaken any work and can not do hawking of ice candies or any similar work. At the time of the accident he had two minor daughters and one minor son The daughters had now come of age and have to be married. According to the learned Counsel, the amount of compensation awarded for pain and suffering was much too low. It is also contended that the reduction of monthly income to Rs 150/- was also not justified. It is urged although ice candy business is a seasonal one but it does not cease completely during the winters. It is now quite common that ice candy is sold all through the year.

7. Although there is some substance in what the learned Counsel has submitted but one can not lose sight of the fact that though the sales during the winters are comparatively much less than what they are during the summers and there is always a difference in degree of sales in various seasons. It, therefore, can not be said that the claimant would have been earning Rs. 300/- per month throughout the year and some deduction was inevitable on account of reduction in sales during the seasons other than summer. However, the slashing of the

monthly income by 50% also does not appear to be wholly justified. In my opinion, if an average is taken, he would have been earning at least Rs. 175/- per month or Rs. 2100/- per year. Taking the active period in a persons" life at 60, he would have earned for another 25 years. The total amount earned by him would have been Rs. 52,500/-. However, a deduction for lump sum payment has to be made. Making a reduction from this, in my opinion the fair amount of compensation in this case would be Rs. 30,000/- including the amount spent on medical expenses and for pain and suffering.

8. In view of the above, the award is modified accordingly and instead of Rs. 23,000/- the claimant-respondent would be entitled to Rs. 30,000/- in all. The enhanced amount of Rs. 7000/- will now be deposited with the Claims Tribunal within a period of two months from today and will not carry any interest thereon.

9. In the result, the appeal fails and is accordingly dismissed. However, the cross objection partly succeeds and the amount of compensation is enhanced to Rs. 30,000/-. The additional sum of Rs. 7000/- would be deposited by the appellant before the Claims Tribunal within two months from today on which the claimant would not be entitled to any interest. The parties are left to bear their own costs of this Court, both in appeal and in cross-object ion. The stay order, if any, shall stand vacated.