

(1988) 09 AHC CK 0048

In the Allahabad High Court

Case No : F.A.F.O. No's. 407 with 581 of 1979 and 728 of 1982

Oriental Fire and General Insurance Co. Ltd., New Delhi and
Another

APPELLANT

Vs

Lalta Prasad Srivastava and Another

RESPONDENT

Date of Decision : 08-09-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B, 95

Citation : AIR 1989 All 80 : (1989) AWC 164

Hon'ble Judges : K.K. Birla, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : A.B. Saran, for the Appellant; K.B. Mathur and I.S. Zahid, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agrawal, J.—These three connected appeals arise from the judgment of the Motor Accidents Claims Tribunal, Fatehpur, dated 21-2-1979, deciding Claim Petition No. 1 of 1977. The Tribunal partly awarded the claim of Lalta Prasad Srivastava against Rohtas Chandra Gupta, Rama Shanker Sharma, and M/s. Oriental Fire and General Insurance Company Limited, New Delhi. Against the aforesaid award, the three parties felt aggrieved and have filed three appeals in this Court. The details of these three appeals are being given below :

1. F?A?F?O? No. 407 of 1979, Oriental Fire F General Insurance Co. Ltd v. Lalta Prasad Srivastava; 2. F?A?F?O? No. 581 of 1979, Lalta Prasad Srivastava v. Rohtas Chandra Gupta; 3. F?A?F?O? No. 728 of 1982, Rohtas Gupta v. Lalta Prasad Srivastava.

2. Lalta Prasad Srivastava was the Principal of Chandra Bhan Intermediate College, Damapur, Fatehpur. He was receiving a monthly salary of Rs. 1300/- in Feb. 1977, when the accident occurred. He was 39 years of age at that time and had seven dependants.

3. According to Lalta Prasad Srivastava, when he was going on a cycle and was on his left near Police Chauki Hariharganj, Truck No. U.S.F. 7229 belonging to Rohtas Chandra Gupta, insured with Oriental Fire and General Insurance Company Limited, Asaf Ali Road, New Delhi, struck him from behind. The truck was being driven by Rama Shanker Sharma alias Ram Sajiwan. It was loaded with iron saria and was being carelessly and negligently driven. Without any horn, the truck came from behind Lalta Prasad Srivastava and struck him. The people of the locality stopped the truck, but Rama Shanker Sharma managed to escape by jumping from the moving vehicle in a manner that he could not be caught. Lalta Prasad Srivastava was crushed, having come under the wheels of the truck. He was taken to Swarup Rani Nehru Medical College, Allahabad, by an ambulance van where he was kept as an indoor patient initially. As a result of the accident, Lalta Prasad Srivastava suffered serious injuries, on account of which he was permanently disabled. He claimed a sum of Rs. 1,60,000/- as compensation as against the opposite parties, mentioned above.

4. The application was contested by Rohtash Chandra Gupta, defendant 1, Rama Shanker Sharma, defendant 2, and Oriental Fire and General Insurance Company Ltd., defendant 3. Rohtash Chandra Gupta denied that the accident occurred due to the negligent driving of the truck by Rama Shanker Sharma, and further alleged that on account of Shiv Ratri day there was huge crowd on the road, and that Lalta Prasad Srivastava lost his bananas and came before the truck. In his written statement, Rohtash Chandra Gupta claimed that Lalta Prasad Srivastava was responsible for contributory negligence to the accident and also contended that the amount claimed was excessive and exaggerated.

5. Another written statement was filed by M/s. Oriental Fire and General Insurance Company Ltd. stating that the accident had not occurred due to rash and negligent driving of the vehicle by its driver.

6. On the pleadings of the parties, the Tribunal framed several issues. Out of these, issues Nos. 1 to 3 are important for deciding these appeals. On Issue No. 1, the Tribunal held that the accident occurred due to the negligence of the driver and it was wrong to allege that Lalta Prasad Srivastava came under the truck despite the fact that the driver tried to stop it by using its brakes.

7. The Tribunal believed Lalta Prasad Srivastava who appeared as P.W. 1 and his witness Ram Bishal P.W. 2 and came to the conclusion that the brakes of the truck were out of order and it was on account of the defect in the brakes that "Rama Shanker Sharma could not stop the truck and the accident resulted. The Tribunal found that the brake pipe had not been replaced for a long time, and that there had been its intensive user. The Tribunal concluded that the accident took place as a result of negligence, carelessness and rashness of defendant 2 Rama Shanker Sharma. In this way Issue No. 1 was decided in favour of the claimant and against defendants 1 to 3.

8. Out of the claim for Rs. 1,50,000/-, the Tribunal awarded Rs. 69,000/- to Lalta

Prasad Srivastava. The details of Rs. 69,000/- were worked out as below :

1. Treatment Rs. 19,000.00

2. Loss of agricultural business Rs. 4,000.00

3. Mental agony arising out of the accident. Rs. 10,000.00

4. Need for looking after Lalta Prasad by two persons. Rs. 3,600.00

5. Disability compensation. Rs. 32,400.00

9. Against the award of the Tribunal, as stated above, the three parties have filed the aforesaid three appeals.

10. Before us, the argument advanced on behalf of M/s. Oriental Fire and General Insurance Company Limited was that the award was too excessive and, as such, was liable to be quashed. Section 110-C(2A), gives the grounds on which an Insurance Company can defend a case in the course of any enquiry. Under the sub-sec. (2A), the Claims Tribunal can direct the claimant to implead the insurer and, upon being impleaded, the insurer shall thereupon have the right to contest a claim on all or any one of the grounds that are available to a person against whom the claim has been made. In the present case, there was neither any case nor finding that the person as against whom the claim was made was in collusion with the claimant.

11. u/s 110-D of the Motor Vehicles Act, an appeal can be filed by a person aggrieved. When the pleas on which an appeal can be contested by an insurer are limited, the right of the insurer in the appeal would be confined only to those grounds. In other words, it will not be entitled to contend that the accident did not result on account of the negligence of the truck driver or the insured, but due to carelessness of the person receiving injury or killed.

12. In the instant case before us, the aforesaid controversy is not directly of any consequence inasmuch as the appeal has been preferred by the truck owner also, who is entitled under the law to contend that, the award proceeds on illegal grounds or is not substantiated by the evidence on record. The first thing to be noticed by us is whether rashness of the driver, which has been found by the Tribunal, was established from the evidence or not. For establishing rashness, Lalta Prasad Srivastava himself came in the witness box. He was P.W. 1. Ram Bishal P.W. 2, who was present at the spot, had witnessed the accident. He deposed that Lalta Prasad was struck by the truck and the truck passed off after crushing the cycle and Lalta Prasad Srivastava. His statement has been believed by the Tribunal. We have gone through the two statements and having found nothing to discredit their testimony, agree with the view of the Tribunal. Lalta Prasad Srivastava received serious injuries and remained in the hospital for several months for treatment. To us it appears that the Tribunal was right in recording the finding that physical pain and mental agony caused to him in the accident in question would certainly shorten his life by nearly ten years. He had

become permanently disabled throughout the rest of his life. He could not walk and stand on his feet.

13. From the side of the defendants, Rama Shanker Sharma had been produced. The Tribunal found him to be unreliable and that is our view as well. He contradicted himself and gave a statement which is not believable, that the brake of the truck in question had become defective, as it is clear from the fact that the truck did not stop at the place where the brake was applied. The truck stopped a few paces ahead. We, therefore, find in agreement with the Tribunal that the accident resulted due to the negligence of the driver.

14. In this case, the Tribunal has awarded general and special damages. Special damages require specific pleading and the defendant is to be put on notice of the details. The general damages are presumed to flow from the injuries and the defendant cannot claim any special notice. Loss of earnings, loss of expenses, money spent for treatment are to be specifically pleaded as special damages. On the other hand, claim towards pain and suffering and loss of amenities (non-pecuniary loss) and also prospective loss of earnings fall under the category of general damages.

15. In *British Transport Commission v. Gourley* (1956) AC 185, it was stated by Lord Goddard as follows :

"In an action for personal injuries; the damages are always divided into two main parts. First, there is what is referred to as special damages which have to be specifically pleaded and proved. This consists of out of pocket expenses and loss of earnings incurred down to the date of trial, and so generally capable of substantially exact calculation. Secondly, there is general damages which the law implies and which is not specially pleaded. This includes compensation for pain and suffering and the like and if the injuries are such as to lead to continuing or permanent disability compensation for loss of earning power."

16. In the present case, the claimant has established the special damages which have been awarded to him by the Tribunal. We are in agreement with the view of the Tribunal that medical expenses and loss incurred in agriculture are the two items covered by the same. For general damages, evidence has been led by the claimant about his physical condition. The Tribunal had also an occasion to see him when he appeared as a witness. As a result of the accident, the injuries received by Lalta Prasad Srivastava were such that the same caused permanent disability, and on account of the same the Tribunal has awarded Rs. 32,400/- under the said head.

17. Before us, arguments were advanced on behalf of Lalta Prasad Srivastava that the Tribunal committed an error in refusing to award compensation for two items which consisted as his claim of Rs. 50,000/- as future loss from agency of Life Insurance Corporation and Rs. 4,000/- as future loss of remuneration which he was receiving as an examiner of the Board of High School and I Intermediate Education, U. P., Allahabad. Both of these items were speculative in nature and

there was no evidence on record to prove the lame. We have also not been shown any such evidence on the basis of which the appellant Lalta Prasad Srivastava could claim the two items.

18. There is no merit in the claim of M/s. Oriental Fire and General Insurance Company Limited for deduction of 33 percent out of lump sum awarded to the claimant. It is only from the amount awarded to the dependants that a percentage is deducted out of the lump sum on the ground that the dependants would not have been entitled to get the same benefit immediately as the same could have been obtained during the entire span of life of the deceased. That is not the case here. To special damage"s, this deduction does not clearly apply. General damages have been also awarded to the person who received injuries. Consequently, the claim for deduction is unfounded.

19. The next argument on behalf of the Insurance Company was that its liability could not be beyond Rs. 50,000/- which was the statutory amount, and, as such, for the total amount of Rs. 69,000/- awarded, there could not be joint and several liability. This part of the award is required to be modified by confining it to Rs. 50,000/- payable by the Insurance Company and the rest Rs. 19,000/- would be recoverable from defendants 1 and 2. We find substance in this submission. The liability as against the Insurance Company would be confined to Rs. 50,000/- plus interest and costs payable thereon. For the amount of damages over and above Rs. 50,000/-, M/s. Oriental Fire and General Insurance Company Limited could not be held liable. But, as stated above, the liability of payment of interest and costs on this Rs. 50,000/- would have to be borne by it.

20. There is substance in the argument of Rohtash Chandra Gupta that the amount of Rs. 3,600/- awarded as special damages for nursing Lalta Prasad Srivastava errs (sic) on the side of excessiveness. While awarding such a claim, the Tribunal is required to look into the family status and background of the person who is making a demand for the same. Keeping in view that Lalta Prasad Srivastava was a teacher and that he had family members, including his wife, to us it appears that awarding of such a sum was not justified. But, to us, it further appears that under the head of mental agony and shock Lalta Prasad Srivastava was entitled to get more than Rs. 10,000/- awarded by the tribunal, as against which he has filed F.A.F.O. No. 581 of 1979. We would shift the amount awarded under this head to one of mental agony and shock. This shifting would not be of any material consequence. Consequently, we refuse to set aside the award on that count.

21. The law as to the general nature of j damages has been stated to be the ascertainment of the considerations which will make good to the sufferer, as far as money can do, the loss which he has suffered as the natural result of the wrong done to him. If the original position cannot be restored -- as indeed in personal injury or fatal accident cases it can obviously be -- the law must endeavour to give a fair equivalent in money, so far as money can be an equivalent and so make good the damage. The two main elements in personal

injury actions are : (1) personal loss and (2) pecuniary loss. Damages in personal injury actions are not punitive, still less a reward. They are simply compensation. Damages must be full and adequate and as Field, J. said in *Phillips v. South Western Railway Co.* (1879) 4 QBP 406 :

"You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. (The plaintiff) can never sue again for it. You have, therefore, now to give him compensation, once and for all. He has done no wrong; he has suffered a wrong at the hands of the defendants, and you must take care to give him full and fair compensation for that which he has suffered."

22. The difficulties and uncertainties that attended the task of assessment should not preclude an assessment as best as can, in the circumstances be made. In the *Mediana* (1900) AC 113, Lord Halsbury said :

"Of course, the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary cases : how is anybody to measure pain and suffering in money counted. Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident.....But, nevertheless, the law recognises that as a topic upon which damages may be given."

23. For the reasons given above, Appeal No. 407 of 1979 filed by M/s. Oriental Fire and General Insurance Company Limited is allowed in part, and the award of the Motor Accidents Claims Tribunal, Fatehpur, dated 21-2-1979 is modified to this extent that the liability for payment as against M/s. Oriental Fire and General Insurance Company Limited is confined to Rs. 50,000/- plus costs and interest payable thereon. In other respects, the award of the Tribunal is maintained. Appeal 581 of 1979 and Appeal No. 728 of 1982 are dismissed. There shall be no order as to costs.