

(2012) 12 AHC CK 0028
In the Allahabad High Court
Case No : F.A.F.O. No. 1138 of 2012

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Vijayee and Others		RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 171, 173

Citation : (2013) 3 AWC 2822

Hon'ble Judges : Saeed-Uz-Zaman Siddiqi, J

Bench : Single Bench

Advocate : U.P.S. Kushwaha, for the Appellant;

Final Decision : Dismissed

Judgement

Saeed-Uz-Zaman Siddiqi, J.—This appeal has been preferred u/s 173 of Motor Vehicles Act, 1988 against the judgment and award dated 29.8.2012, passed by the Motor Accident Claims Tribunal (First Additional District Judge), Gonda in M.A.C.P. No. 97 of 2007, Vijayee and another v. Vimaldev Mani and others, by which a compensation of Rs. 80,000 has been awarded together with interest at the rate of 12% per annum. Heard learned counsel for the appellant and gone through the records.

2. The appellant has challenged the award on the ground that the amount is excessive; interest has been awarded in violation of Section 171 of Motor Vehicles Act; that the learned Tribunal has wrongly relied upon the affidavit; that the learned Tribunal has erred in drawing adverse inference against the U.P.S.R.T.C. for non-filing of the route permit : that the award is non speaking and vague; that the learned Tribunal has erred in not considering the fact that the U.P.S.R.T.C. had colluded with the claimants.

3. I have perused the award. This was the case of claims petition on account of the death of a three years" old child Vikky who was hit by the offending lorry, and relating to Vijay, which resulted in fracture on left hand and right hip which

was operated upon. The claimants filed affidavit and the witnesses were not cross-examined. The claim petition was filed against all the persons concerned, including the insurance company, owner, driver and U.P.S.R.T.C. as parties. All the documents were filed before the learned Tribunal as is evident from the award. There is perversity in the discussions made and conclusions arrived at by the learned Tribunal.

4. Learned counsel for the appellant relied upon the law in *Kripal Singh and Another Vs. Mst. Kaila and Others*, . This law does not help the appellant as it was the case of the old Act. Under Rule 212 of U.P. Motor Vehicles Rules, 1998, the Claims Tribunal is not obliged to record the submission of witnesses. What is required by this Rule is that the Tribunal has to make a brief memorandum of substance of what is deposed. The evidence, in the form of affidavit, is much stronger than a memorandum of evidence. By the amending Act sub-rule (4) of Rule 19 has been added in the Code of Civil Procedure, which prescribes the only mode of recording of evidence, in which examination-in-chief of a witness shall be on affidavit. It was open for the appellant to have cross-examined the witnesses, but neither the appellant nor any of the opposite parties before the learned Tribunal availed this opportunity and, as such, it does not lie in the mouth of the insurance company to challenge the award on this score. On the next score the rate of interest, as fixed by the learned Tribunal, does not show any arbitrariness.

5. In either case, the compensation is neither excessive nor exorbitant. The compensation has been considered by this Court in view of law laid down by the Hon''ble Apex Court in *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, , wherein it was held that the amount of compensation for non-pecuniary loss is not easy to determine but award must reflect that different circumstances have been taken into consideration. In this case the Hon''ble Apex Court has relied upon the *Halsbury's Laws of England*, 4th Edn., Vol. 12 regarding non-pecuniary loss at page 446 it has been said:

Non-pecuniary loss: the pattern.--Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus, there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award.

The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases.

6. Reliance was also placed by the Hon''ble Apex Court in the case of *Ward v.*

James-I, (1965) 1 All ER 563, wherein it was said:

Although you cannot give a man so gravely injured much for his "lost years", you can, however, compensate him for his loss during his shortened span, that is, during his expected "years of survival". You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money.

7. It was further held that the Hon"ble Apex Court has earlier held in the case of C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, , in connection with the Fatal Accidents Act has observed:

In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable.

8. This is a case of death of a child and grievous injuries caused to another person. The learned Tribunal has rightly relied upon the law laid down by the Hon"ble Apex Court in Oriental Insurance Co. Ltd. Vs. Syed Ibrahim and Others, . The appeal has no force and the same is accordingly dismissed.