
(2001) 02 RAJ CK 0094

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 11 of 1995

Priti

APPELLANT

Vs

Chairman, U.P. State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 23-02-2001

Acts Referred:

Citation : (2003) ACJ 289

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Abhay Chaturvedi, for the Appellant; M.S. Choudhary, for the Respondent

Final Decision : Allowed

Judgement

J.C. Verma, J.—The present misc. appeal has been filed by Priti against the defendants challenging the award of the Motor Accidents Claims Tribunal, Bharatpur in M.A.C. No. 51 of 1992 dated 7.9.94 whereby the award of Rs. 99,000 had been granted. Appeal has been filed for enhancement.

2. The facts as stated are that due to rash and negligent driving of bus No. UP 80-9094 driven by respondent No. 2 Kanhaiya Lal belonging to respondent No. 1 on 1.3.92, the claimant was hit. The claimant had sustained injuries on head and both hands and due to excessive bleeding, it is stated that she had become unconscious and her both legs were crushed and fractured. She was taken to the General Hospital, Bharatpur and again referred to SMS Hospital, Jaipur, but because of the reason that hospital at Agra was near as compared to Jaipur, she was admitted to the hospital in Agra. She became permanently disabled in one leg. The necessary issues were framed. It was found by the Tribunal that the driver of the bus in question was negligent. For the reasons that the appeal has been filed for enhancement, there is hardly any necessity to go into any other aspect of the matter except the point of compensation.

3. The Tribunal had also held that the appellant had also contributed to 40 per

cent negligence and, therefore, out of compensation so awarded, the appellant was paid only 60 per cent of compensation. The award is being challenged on the following points:

(1) that the compensation as awarded is not adequate; (2) that there was no contributory negligence; (3) the actual medical expenses for treatment were not adequately compensated as out of Rs. 70,000 claimed only Rs. 30,000 has been awarded; (4) that very meagre amount of Rs. 20,000 has been given for physical and mental pain; (5) that the leg of the appellant was shortened by two inches and there was 44 per cent permanent disablement due to this accident; (6) that she would definitely be handicapped in getting good match in marriage and the future was in frustration and disappointment.

4. Record was called for.

5. The defendant No. 1 had taken up the plea in the written statement that the accident had not been caused because of the negligence of the driver of the bus but because of the reason that the claimant and another girl were not properly walking on the road and she had come to the road running and because of another truck coming from the other side, the driver of the bus had taken his bus to the left side and the bus had fallen in the pit causing accident to the girl.

6. The claimant Priti who was 12 years of age had appeared as witness who stated that she was going to her house from her field and was walking on kacha road of the left side of pucca road, when she looked back, she found that one bus was coming towards her and she climbed the heap, a risen place of height, but still the bus struck her. She became unconscious. She came into consciousness in Bharatpur hospital. She had stated that she was plastered and both legs were fractured and left leg has not joined; she is unable to stand on either of the leg. AW 2 Jai Singh, father of the claimant, has been produced. The claimant was studying in class VI. He stated that both the legs of the girl were crushed apart from the injuries on the head; the girl remained admitted in Bharatpur hospital up to 27.3.1992 and then she was taken to Agra hospital. According to him he had spent about Rs. 6,000 at Bharatpur and Rs. 70,000-80,000 at Agra which included the theatre charges, dressing, operation, blood transfusion, grafting on the legs, etc. Grafting itself had cost him Rs. 25,000. Ten operations have already been done on the legs of the girl. The doctors giving anaesthesia had charged separately. He had done more than 25 trips to Agra in the taxi because of the reason that the girl could not be moved otherwise on bus and had spent about Rs. 15,000 on taxis. According to him the girl was disabled permanently; she cannot move nor she can stand and all her needs are met by the family members by helping her; even she is sent to school by lifting. According to him the death of the girl is preferable to her life. He had spent about Rs. 1,50,000 on her treatment. The girl who was otherwise very brilliant in the class had lost interest in the studies. He had stated that he has not received any reimbursement for the treatment which had been meted out at Agra. He had admitted in the cross-examination that after 5.6.93 no medicines

were purchased by him, that shows that in any case the girl was under treatment for about 15 months.

7. Witness Rajjan Singh, AW 3, is an eyewitness about the accident and had also deposed about the pitiable condition of the girl.

8. Kanhaiya Lal, driver, had been produced by the respondent who has stated that two girls were walking on the road. There was a truck in front of the bus and after passing of the truck, one of the girls tried to cross the road and he turned the bus towards the left side of the road and the girl had struck on the right back side of the bus. According to the driver after the accident the girl was walking. He has even denied that the girl had been crushed. However, he has admitted that the accident had been caused at the left side of the road.

9. The claimant attached documents, Exhs. 27 to 65, vouchers of purchase of medicines on different dates.

10. Apart from above, the original record of the Nursing Home of Agra had been placed on record showing the treatment chart, etc. Original receipts in the shape of Exhs. 10 to 26 of different amounts have been placed on record. Report of the Government Medical Board consisting of three doctors as forwarded vide letter dated 28.11.1994 has also been placed on record where it is mentioned that in clinical examination two inch shortening of left limb and disablement is 44 per cent which was considered to be temporary at that time. The patient was still advised operation. Photographs C-32/2, C-32/3 and C-32/4 have also been placed on record showing the condition of the claimant right from knee downwards on both the legs.

11. From the above said evidence which somehow has not been discussed by the Tribunal, nor has been referred in the award in detail, it is clear that the young girl of 12/13 years had suffered permanent disability. Photographs are not denied. The father has appeared in the witness-box to say that two inches leg has been shortened. It is not only of shortening of the leg but disfigurement of both the legs has occurred. Even though somehow there is no production of medical officer, but going through the report of the Medical Board and also the medical chart and photographs and the statement of the father and small girl, the court can take notice of the fact that the girl had suffered manifestly. There is no contrary evidence produced by the respondents and as such the evidence of the father is to be believed in this regard and the award of the Tribunal requires to be modified.

12. Coming to the point of negligence and in view of the statement of girl, immediately after the accident, she had become unconscious and when she opened her eyes she was in the hospital and some bottle of liquid was being injected to her. Statement of the driver cannot be believed to the effect that after hitting the girl he had come out and had seen the girl walking away. There is no reason to disbelieve the girl that she had seen the bus coming towards her and to save herself she had climbed on a high heap of sand but still the bus had

struck her. Even if the driver's story is believed to the extent that because of the truck he had to go to the left side where the accident had been caused, it cannot be said that this claimant was at fault or any contributory negligence can be attributed to her. May be, if other girl might have crossed the road suddenly, in such a situation, it cannot be said that the present claimant injured was at fault. The story as put by the driver is not believable. The police report was made immediately wherein fault had been placed on the driver of the bus. Eyewitness had been produced by the claimant in regard to accident where the respondent had produced only one witness, i.e., the driver of the bus who was definitely interested person in his own favour. There is no basis whatsoever for the Tribunal to have reached to the finding to the extent of contributory negligence on the part of injured girl. If a bus strikes a pedestrian, either there is no negligence on the part of the driver or driver is totally negligent. There are very rare chances of any contributory negligence of pedestrian. If the pedestrian is at fault, the driver is acquitted and if the driver is at fault pedestrian cannot be said to have contributed towards the accident. Here in the case, where the girl was standing on high heap of sand and as such striking of the bus at that place on the girl cannot be said to be contributory negligence of the girl. The Tribunal has erred in giving the finding on contributory negligence and put the blame on the girl to the extent of 40 per cent.

13. Now coming to part of compensation, admittedly the claimant minor girl had suffered and she has to suffer throughout her life. There is two inch shortening of leg which is bound to be permanent and it is a permanent disability. May be a girl belongs to the rural background and area, but still limping itself is a disqualification for a girl throughout her life. The claimant girl would live with frustration and disappointment all throughout her life. She had suffered agony, suffering, has been operated upon, medical bills up to about Rs. 30,000 have been placed on record. It cannot be said that apart from the medical bills of medicines, there was no other expenditure. To say that for about 15 months the father of the claimant might have spent Rs". 70,000 cannot be said to be too excessive which quantifies the admission, medicines, operations and many misc. expenditures. The statement of the father can be believed to the effect that for taking the girl to the hospital, he had to spend on taxis and for that if an amount of Rs. 15,000 has been claimed, it cannot be said to be excessive. For special diet and other care and help from other persons, an amount of Rs. 20,000 is considered to be justified amount.

14. Now coming to the non-pecuniary damage done to the girl, for the reasons that the girl has to suffer for whole life because of shortening of leg, which is supposed to be permanent disablement and seeing the age of the girl, in my opinion, the minimum compensation which could have been given in such a case could not be less than Rs. 3,00,000 as was held by Punjab & Haryana High Court in Swatantra Kumar Lamba and Another Vs. Sheila Didi and Another, For the injuries, pain and agony, in my opinion another amount of Rs. 50,000 is required to be added.

15. For the above said discussions and the reasons, the award is enhanced to Rs. 4,55,000 which shall bear the interest at the rate given by the Tribunal. The difference of amount after adjustment of the amount already paid shall be deposited in the FDRs and in the name of the claimant herself, who has by now become major, in one of the scheduled/nationalised bank initially for a period of three years. However, the interest can be withdrawn by the parties for meeting day-to-day expenses if so required.

The misc. appeal is allowed and disposed of accordingly. The record of the trial court be sent back immediately.