(2008) 09 DEL CK 0100

In the Delhi High Court

Case No : FAO. No. 267 of 1999

Ramwati APPELLANT

Vs

Sh. Rajinder Singh, Sh. Suresh Pradhan and That New India Assurance Co. Ltd. RESPONDENT

Date of Decision : 29-09-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2008) 09 DEL CK 0100

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : J.S. Kanwar, for the Appellant; None, for the Respondent

Judgement

V.B. Gupta, J.—Appellant, who is an injured, has filed present appeal u/s 173 of Motor Vehicles Act, 1988 (for short as ?Act?) seeking enhancement of the award amount passed in this case.

2. Brief facts of this case are that on 14th August, 1989, at about 10.45 p.m., appellant along with one Smt. Savita and her husband Madan Lal were returning from G.T.B. Hospital, Shahdara, to their house by three wheeler scooter No. DBR-1876.

3. When they reached at 100 ft. road, Durga Puri, Loni Road crossing, they were hit by a jeep No. DNA-6677, which was being driven rashly and negligently at a very high speed by respondent No. 1.

4. The offending vehicle came from the side of Loni Road, Rathi Mill and struck their three wheeler scooter from left side. Due to the impact, the three wheeler overturned and the appellant received injuries in this accident.

5. The offending vehicle is owned by respondent No. 2 and insured with respondent No. 3.

6. The appellant filed a claim petition claiming compensation amounting Rs.3 lacs

against the respondents.

7. Respondents No. 1 and 2 filed their written statement in the trial court but later on they absented and, thus, were proceeded ex-parte and the claim petition was finally contested by respondent No. 3/Insurance Company.

8. Respondents No. 1 and 2, in their written statement have denied the factum of accident and the manner in which the accident has taken place. Their defence is that the driver of three wheeler scooter has lost control over the vehicle and due to mistake and rash and negligent driving of the three wheeler scooter, appellant and her companion received injuries. The offending vehicle driven by respondent No. 1 never touched the three wheeler scooter nor it struck against it.

9. Respondent No. 3/Insurance Company in its written statement has admitted that the vehicle in question No. DNA-6677 was insured with it at the time of accident and unless and until it is proved that the driver of the offending vehicle was holding a valid driving licence, the Insurance Company is not liable to pay any compensation.

10. Videjudgmentdated25thFebruary,1999 passed by Sh. S.L. Bhayana, J. (the then Judge, MACT), an award in the sum of Rs. 85,140/- along with interest @ 12% p.a. from 5th February, 1990 to 27th September, 1993 and from 28th July, 1988 till realization, was passed in favour of the appellant and against the respondents.

11. Being aggrieved with the inadequacy of the award amount, the appellant has filed the present appeal.

12. Notice of this appeal was issued to all the respondents.

13. All the respondents were duly served for 18th February, 2008 but there was no appearance on behalf of respondents at that date. On that date, trial court record was ordered to be requisitioned and the matter was listed for 30th April, 2008.After receiving trial court record, the matter was listed before this Court.

14. On 16th September, 2008 when the matter was listed for hearing, none appeared on behalf of respondents.

15. Since, none was appearing on behalf of respondents for last so many dates, arguments advance by learned Counsel for the appellant have been heard.

16. It has been contended by learned Counsel for the appellant that appellant has spent Rs. 50,000/- for purchase of medicines and treatment as well as special diet, but no amount on this account has been awarded.

17. The next contention raised by learned Counsel for the appellant is that no amount on account of pain, suffering and for loss of amenities, have been awarded and the Tribunal has wrongly deducted interest for the period 28th September, 1993 to 27th July, 1998, though there is no delay on the part of the appellant.

18. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately, as pecuniary damages and non-pecuniary damages.

19. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money. Pecuniary damages are easy to determine as a Tribunal would have some empirical data before it.

20. Pecuniary damages includes the following:

(i) Special damages or pre-trial pecuniary loss.

(ii) Prospective loss of earnings and profits.

(iii) Medicinal expenses.

(iv) Cost of future care and other expenses.

21. As regards to the contention of medical expenses and special diet, the appellant as PW1 deposed that she sustained fracture on her both hips joints and was advised for operation. She had to go on crutches for about three months. She sustained permanent injuries and still cannot walk and work properly.

22. In this regard, she produced the photocopy of the permanent disability certificate Ex. PW1/A.

23. The disability certificate Ex. PW1/A shows that, the appellant received permanent partial disability to the tune of 60% in relation to both lower limbs.

24. In her cross examination, she has stated that she does not have any bills towards expenses which she had incurred as she has not preserved them.

25. The Tribunal in this regard held that;

I have gone through the evidence of PW1 Smt. Ram Wati and she has stated before the court that she received fracture on both hip joints. She received permanent disability to the tune of 60% in relation to both lower limbs as is clear from the disability certificate Ex.PW1/A. She has further stated before the court that she spent about Rs. 50,000/- on her treatment, conveyance etc. but she has failed to place on record any medical bill to substantiate her claim. Further she has admitted that she received the medical treatment from GTB Hospital and Wellington hospital. Both these hospitals are government hospitals and they did not charge anything from the patient for getting treatment from the hospital so the contention of the Ld. Counsel for the petitioner that she has spent about Rs. 50,000/- on the treatment is without any basis.

26. It is not expected that an injured should meticulously retain all the bills pertaining to his medical treatment, special diet and conveyance etc. Since, the injured suffered crush injury and permanent disability and also remained admitted in Hospital, there is strong presumption that she must have taken special diet such as fruits, juices, milk etc. and must have spent some amount on

her conveyance for visiting Hospital or Doctors.

27. Thus, keeping in view of the nature of injuries suffered by appellant, a sum of Rs. 25,000/-for medical treatment, conveyance and special diet etc. is awarded to the appellant.

28. Now, coming to the question with regard to compensation on account of pain and suffering etc., like pecuniary damages, non-pecuniary damages are incapable of being assessed by arithmetical calculations.

29. Non-pecuniary damages includes the following:

(i) Pain and suffering.

(ii) Damages for mental and physical shock.

(iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.

(iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.

(v) Disfigurement.

(vi) Discomfort or inconvenience, hardship, disappointment, frustration and mental stress in life.

30. Compensation payable on account of pain and sufferings compensates victim for the physical and mental discomfort caused by the injuries. Pain is physical; suffering is emotional. While pain is the physiological response to certain stimuli, suffering is psychological or emotional response to pain.

31. The Apex Court in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , has laid down the broad principles as under;

Broadly speaking, while fixing the amount of compensation payable to a victim of an accident the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant:(i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

32. Thus, keeping in view of the above principles of law, the appellant is awarded compensation of Rs. 25,000/- on account of pain and sufferings etc.

33. As regards to non-granting of interest for certain period, the Tribunal in the impugned Judgment has held that;

The issues in this case were framed on 28.9.93 while the petitioner examined herself only on 3.6.98 and her examination-in-chief was deferred as she had not brought the original documents and her examination and cross-examination was concluded on 27.7.98. She took large number of dates to examine herself and no other witness was examined except the petitioner herself. All the adjournments are unjustified and the petitioner will not get any interest from 28.9.93 to 27.7.98. However, the petitioner will get interest from the date of filing of the petition i.e. from 5.2.90 to 27.9.93 and from 28.7.98 till realization.

34. It is clear from the facts of the case that, the appellant took five years to examine only one witness. Thus, the Tribunal rightly did not award any interest from 28.9.93 to 27.7.98.

35. In view of the above discussion, the award given by the Tribunal is modified to the extent that appellant is entitled to enhanced compensation as under:

1. Compensation for medical expenses and special diet etc. Rs. 25,000/-

2. Compensation on account of pain and Sufferings etc. Rs.25,000/- -------------------- Total Rs.50,000/- -------------------

36. Appellant shall also be entitled to interest @ 8% per annum from the date of judgment of the Trial Court (i.e., w.e.f. 25th February, 1999) till realization on this enhanced compensation only.

37. Accordingly, the present appeal stands allowed to the above extent, with costs.

38. Trial court record be sent back.

