
(2003) 07 CAL CK 0008
In the Calcutta High Court
Case No : F.M.A. No. 1575 of 2000

Samim Akhtar

APPELLANT

Vs

Taulib Enterprises and Another

RESPONDENT

Date of Decision : 09-07-2003

Acts Referred:

Citation : (2004) 2 ACC 158 : (2004) ACJ 466

Hon'ble Judges : Sadhan Kumar Gupta, J;Aloke Chakrabarty, J

Bench : Division Bench

Advocate : Soumendra Nath Ganguly, for the Appellant; Parimal Kumar Pahari, for the Respondent

Final Decision : Allowed

Judgement

Sadhan Kumar Gupta, J.—This appeal has been preferred by the claimant against the judgment/award passed by the 14th M.A.C. Tribunal, Alipur, on 12.11.1998. The case of petitioner is that on 3.10.1996 at about 10.30 p.m. he was waiting in the bus stand near the crossing of A.I.C. Bose Road and Alimuddin Street, At that time a trailer bearing No. N 01-A 0794 came at a high speed and in a rash and negligent manner and knocked down the petitioner. The said vehicle also dashed against two other taxis in the process. As a result of that, the victim sustained severe injuries on his person and he was immediately removed to N.R.S. Hospital where he was admitted and treated up to 3.12.1996, operation was done on the left leg of the petitioner and his right leg was completely plastered. The victim at the material time was working as a tailor in the tailoring shop styled as Alpha Tailors situated at 19A, Mirza Galib Street and he used to earn Rs. 500 to Rs. 550 per week. As a result of that he suffered permanent partial disablement. So the petitioner has claimed compensation to the extent of Rs. 4,00,000 against the opposite parties for the injuries sustained by him. The case was contested by the opposite party insurance company who has denied the claim of the petitioner on the material points.

2. The learned Tribunal considered the materials on record and thereafter he was

of the opinion that the petitioner has been able to prove the accident and that the said accident was caused due to rash and negligent driving of the driver of the offending vehicle. The learned Tribunal was also of the opinion that the petitioner sustained partial permanent disablement to the extent of 30 per cent. He was also of the opinion that the petitioner has been able to prove that his monthly income was Rs. 2,000. As the petitioner was aged about 19/20 years, so the multiplier of 16 was taken and after necessary calculation the learned Tribunal came to the conclusion that the petitioner was entitled to the extent of Rs. 1,15,200 as compensation for the injury sustained by him. In addition to that learned Tribunal awarded a further sum of Rs. 5,000 for pain and suffering sustained by the petitioner. Thus total amount of Rs. 1,20,200 was awarded in favour of the petitioner towards compensation. Being aggrieved and dissatisfied with the said finding of the learned Tribunal, petitioner has preferred the present appeal on the ground that the learned Tribunal was not at all justified in holding that the petitioner sustained partial permanent disablement to the extent of 30 per cent whereas the doctor has opined that the petitioner sustained hundred per cent permanent disablement. That apart the award has been challenged on the ground that no compensation was awarded for the stay of the petitioner in the hospital and on other grounds. The appellant has further claimed that the amount towards pain and suffering should be more than that of the amount which has been awarded in favour of the petitioner by the learned Tribunal.

3. It is practically the admitted position that there was an accident caused by the offending vehicle and as a result of that the petitioner sustained severe injuries on his person. That the petitioner has suffered partial permanent disablement due to the accident has already been established, as the petitioner has been awarded interim compensation to the extent of Rs. 25,000. So main thing that is now to be looked into is, whether the amount of compensation, as awarded by the learned Tribunal in favour of the petitioner is just and reasonable. It has transpired from the evidence on record that the petitioner used to earn Rs. 500 to Rs. 550 per week. Naturally the learned Tribunal was perfectly justified in holding that petitioner's income at the relevant time was Rs. 2,000 per month. Consequently his annual income was rightly decided to be Rs. 24,000. Now the main contention of the petitioner is that the learned Tribunal was not at all justified in coming to the conclusion that the petitioner suffered 30 per cent disablement due to the injury sustained by him. According to the learned advocate, the doctor, who has been examined in this case as PW 2, has opined that the petitioner sustained 100 per cent disablement due to the injury. So the learned advocate argued that there was no justification on the part of the learned Tribunal to ignore the finding of the doctor and to come to an arbitrary conclusion that the petitioner sustained 30 per cent disablement for the injury. As such the learned advocate for the claimant argued that the learned Tribunal was not at all justified in awarding compensation only to the extent of Rs. 1,20,200 in favour of the petitioner.

4. We have already pointed out that it is the case of claimant that the accident

was caused due to negligence of the offending vehicle and as a result of that he sustained partial permanent disablement. The claimant has claimed that due to this injury he suffered permanent disablement to the extent of 100 per cent. In support of this claim the claimant has examined PW 5 Dr. M.N. Parbat. This doctor, in his certificate as well as in his evidence has stated that claimant sustained 100 per cent disablement due to the injury sustained by him as a result of that accident. But it appears that this doctor is not a qualified M.B.B.S. doctor and as such we are of opinion that the learned Tribunal was perfectly justified in not placing any reliance on his opinion. But at the same time it appears from the record that petitioner has filed copy of the discharge certificate issued from N.R.S. Medical College Hospital which shows that the petitioner was in the hospital from 3.10.1996 to 3.12.1996 and he had fracture on his left tibia. It further appears from the said medical paper that there was complete plaster on the right leg of the petitioner. So, it is clear that the injury of the claimant was serious in nature and for that he had to remain in hospital for more than two months. Although, it would have been better for the claimant to examine a competent medical officer of the hospital in question in order to prove the intensity of the injury sustained by him as a result of the accident, but at the same time simply because the petitioner has failed to examine any such doctor from the said hospital it cannot be said that the petitioner-claimant is not entitled to get any compensation. In absence of clear-cut material on this point, we are of opinion that it would not be improper on the part of this court to take help of some reasonable guesswork in ascertaining the amount of compensation that should be awarded in favour of claimant. In this respect the evidence of the claimant is very much relevant. He in his evidence has stated that both his legs were fractured due to the accident and still he is suffering from pain. He has also stated in his evidence to the effect, "I cannot squat and consequently I use bedpan for my nature-call. I cannot move without the help of crutch. I cannot perform my job". The evidence of this PW 2 has remained unshaken even in cross-examination. Only one suggestion has been given that still after the accident the claimant was in a position to perform the job of a tailor. But when the claimant himself has stated on oath that he is not in a position to perform the said work due to the accident, we find nothing to disbelieve such claim. The statement of this PW 2 has been to some extent corroborated by the evidence of PW 4, the owner of the tailoring shop. The learned Tribunal at the time of hearing had opportunity of seeing the claimant in court and thereafter considering all those relevant facts came to the conclusion that the claimant possibly sustained 30 per cent permanent disablement. But we have already pointed out the nature of the injuries sustained by the claimant and in absence of any clear expert evidence on this point, we are of the opinion that the claimant at least suffered 50 per cent permanent disablement due to his injury. The learned advocate for the claimant argued that as a result of the accident the leg of the claimant was shortened to some extent and as a result of that he is unable to perform any work whatsoever. But nowhere in his evidence the claimant has stated like that. As such, we are unable to accept this claim of learned advocate for the claimant.

5. Be that as it may, the petitioner has claimed that he used to earn Rs. 500 to Rs. 550 per week by working in the tailoring shop. This fact has been corroborated by the evidence of the PW 4 who is the owner of the said tailoring shop. Learned Tribunal was of the opinion that it should be considered that the monthly income of the claimant was Rs. 2,000 at the time of accident. In absence of any reliable documentary evidence, we are of opinion that the learned Tribunal was justified in coming to such a conclusion. So we are also of the opinion that the monthly income of the claimant was Rs. 2,000. As the petitioner, at the time of the accident was aged 19/20 years so the learned Tribunal preferred to take multiplier of 16 in arriving at a just compensation to be awarded in favour of the claimant. We fully agree with this decision of the learned Tribunal.

6. As such, from our above discussion we are of opinion that petitioner's annual income was Rs. $2,000 \times 12 = \text{Rs. } 24,000$. We have already pointed out that it would be just and proper to take the multiplier of 16 for the purpose of this case. As such, the amount of loss of income comes to Rs. $24,000 \times 16 = \text{Rs. } 3,84,000$. We have earlier pointed out that the claimant suffered permanent disablement to the extent of 50 per cent. So the total amount of loss of earnings suffered by the claimant comes to Rs. $3,84,000 + 50 \text{ per cent} = \text{Rs. } 1,92,000$. In addition to that the learned Tribunal awarded Rs. 5,000 towards pain and suffering. But it appears from the evidence on record that the claimant remained confined in the hospital for more than two months and he was under complete bed rest at his residence for about six months. Moreover, the nature of the injury, as sustained by the claimant, shows that he was also unusually deprived of the enjoyment of life due to the injury sustained by him. To our mind, the amount of Rs. 5,000, as awarded by the learned Tribunal is very meagre and we think that considering the nature of the injuries sustained by petitioner an amount of Rs. 20,000 should be awarded in favour of the claimant for compensating him for the pain and suffering as well as unusual deprivation of life, as suffered by him, as a result of the injury. The learned advocate for the claimant further submits that some amount of compensation should be awarded in favour of the claimant as he has suffered loss regarding his future income. But this fact has already been considered while considering the loss of income suffered by the petitioner due to the injury. As such, we are not in a position to award anything further on this head, as claimed by the learned advocate for the claimant.

7. Therefore, from our above discussion we are of opinion that claimant is entitled to get compensation to the extent of Rs. $1,92,000 + \text{Rs. } 20,000 = \text{Rs. } 2,12,000$. Said amount is subject to the adjustment of the interim compensation that was awarded in favour of the claimant. It appears that the learned Tribunal did not award any interest pendente lite on the amount of compensation. To our mind, from the facts and circumstances of the present case, it must be said that the learned Tribunal was not justified in refusing pendente lite interest in favour of the petitioner. We are of the opinion that the claimant is entitled to get at the rate of 9 per cent interest on the amount of compensation, i.e., Rs. 2,12,000

from the date of the filing of the claim application. In addition to that the claimant is entitled to get Rs. 2,000 which has been awarded in favour of the claimant towards costs.

8. In the result, the appeal succeeds. The order passed by the learned Tribunal is set aside. It is declared that the claimant is entitled to get compensation to the extent of Rs. 2,12,000 from the opposite parties along with the costs of Rs. 2,000. Said amount shall carry interest at the rate of 9 per cent per annum from the date of the filing of the claim application till its realisation. The opposite party insurance company is directed to deposit the amount of compensation along with the interest in the Tribunal in favour of the claimant within one month after making adjustment of the amount which might have been paid earlier.

Aloke Chakrabarty, J.

I agree.