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(2008) 07 DEL CK 0192

In the Delhi High Court

Case No : FAO No. 13 of 1999

Shri Barku Choudhary — APPELLANT

Vs

Sh. Bhim Singh, Sh. Raj Kumar Yadav, Sh. Subhash Chander and United Insurance Company Ltd. — RESPONDENT

Date of Decision : 25-07-2008

Acts Referred:

Citation : (2008) 105 DRJ 418

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Neha Gupta, for the Appellant; Mansoor Ansari, for R-4, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—The present appeal has been filed by the Appellant against the judgment dated 07.08.98 passed by Sh. Rakesh Kapoor, Judge, Motor Accident Claims Tribunal (for short as the "Tribunal"), Delhi.

2. Brief facts necessary for the disposal for this appeal are that the Appellant, Barku Chaudhary had suffered injuries in an accident involving Maruti Car No. DNC-2265. It is alleged that on 07.06.90, the Appellant boarded a DTC bus from Peera Garhi, Rohtak Road, Delhi. At about 3.30 pm, he got down from this bus at DTC bus stop, J.J.Colony, Madipur, New Delhi and was going towards his house at F-177, J.J. Colony, Madipur, New Delhi after crossing the Rohtak Road. In the meanwhile, Maruti Car bearing regd. No. DNC-2265 came from the side of PeeraGarhi and hit the Appellant, as a result of which the Appellant received multiple injuries. He was removed to E.S.I. Hospital and remained there under medical treatment for a month.

3. The Appellant filed the claim petition seeking compensation against Bhim Singh, Respondent No. 1 (the driver) of the offending car. Raj Kumar and Subash Chander (Respondents No. 2 & 3) were impleaded as being the joint owners of

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the offending car. M/s. United India Insurance Co. (Respondent No. 4) was impleaded as the offending car was allegedly insured with them at the time of the accident.

4. Written statement filed by Respondent No. 1. He admitted the factum of the accident but denied his negligence. He claimed that the Appellant had made an attempt to cross the road by passing in front of his car and did not bother for the location and situation of the road and tried to cross the same hurriedly, resulting in injuries to him.

5. A joint written statement was filed by Respondents No. 2 & 3. However, it was on the similar lines as that of Respondent No. 1.

6. Separate written statement was filed by the Respondent No. 4 wherein the Insurance Company admitted that the offending car was insured with them at the time of the accident but denied their liability to pay compensation to the Appellant.

7. Vide impugned judgment, the Tribunal awarded the compensation of Rs. 24,000/- along with the interest @ 12% per annum from the date of filing of the petition till realisation.

8. It has been contended by the Appellant Counsel that it is an admitted case that the Appellant remained on medical leave because of this accident from 08.06.90 to 02.01.91 and thereafter, from 01.08.92 to 24.08.92. Although, the Tribunal has admitted this fact yet it calculated the loss of absence strictly in terms of money ignoring the fact that the Appellant would have earned much more amount by way of doing over-time and would have gained more experience making his career more lucrative. Further, the Tribunal has also ignored the evidence on record of Dr. Balraj, PW-1 and the other medical record Ex.PW/1/A to Ex.PW-1/C and even the statement of the Appellant has not been looked into at all, wherein the Appellant has specifically stated that he cannot lift the weight from his right hand. He cannot run as he is still under medical treatment. He cannot do any work properly in any factory even the owner of the factory does not give him full salary as he is only able to do light work. The Tribunal has also ignored the fact that the Appellant was operated two times, and he is not cured completely and thus committed an error while awarding a meager sum of Rs. 24,000/-, only inspite the fact that the Appellant has become a permanent disabled till date.

9. Notice of this appeal was issued to all the Respondents. Inspite of various opportunities granted to Appellant, he did not take steps for getting these Respondents served.

10. Vide order dated 27.03.08 passed by this Court, considering the fact that Respondents No. 1 & 2 are the owner and the driver of the offending vehicle and the offending vehicle was duly insured with Respondent No. 4/Insurance Company, it was felt that there was no necessity of directing notice upon

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Respondents No. 1 to 3 and accordingly issuance of notice to Respondents No. 1 to 3 was dispensed with.

11. Ld. Counsel for the Respondent No. 4/Insurance Company has contended that no documentary evidence has been filed on record regarding the permanent disability. There is also no evidence for shortening of the leg. Thus, the award given by the Tribunal is just and fair.

12. The Appellant has examined seven witnesses in his favour. Dr. Balraj from ESI Hospital, L.D.C Sh. Kanahiya Lal from ESI Hospital, Sh. Nasir Ali, Asstt. Administrative officer from his employer, Sh. Jai Narain Singh Chaudhary and Sh. Sanjay Bharwaj, witnesses from his employer, Head Constable for proving the FIR and himself.

13. The Appellant has appeared as PW-7 in the witness box and deposed about the manner in which the accident took place and his subsequent treatment at ESI Hospital.

14. The Appellant is the only witness examined in this case with respect to the manner in which the accident took place. His testimony was not challenged by way of cross-examination.

15. No evidence was led by the Respondents.

16. Respondent No. 1, the driver of the offending car has not entered in the witness box to support his defence. For reasons best known to him, the Respondents have chosen not to produce any evidence to support the plea taken in the written statement and as such inference has to be drawn against the Respondents.

17. Hence, in the absence of any evidence, the Tribunal has opined that the story put forth by the Respondents in their written statement was false and concocted, which has been rightly done in this case. Therefore in the absence of any documentary evidence, I do not find any infirmity in the finding of the Tribunal on this issue.

18. The case sheets in Appellant case have been exhibited as PW-1/A to PW-1/C. The Appellant had remained in the hospital for a period of one month initially. He was operated upon for a fracture in the hospital but his treatment was free of charge in the hospital.

19. As regard to the contention of medical leave, the Tribunal held;

The petitioner had remained on leave from 8.6.90 to 2.1.91. He had also remained on leave from 1.8.92 to 24.8.92. At the time of the accident he was getting a sum of Rs. 767/- as wages which had increased to Rs. 1069/- in August,1992. Since, the petitioner had remained on leave for a period of about seven months from June to Jan,91, he was entitled to sum of Rs. 5,369/- as loss of income. He is also entitled to a sum of Rs. 1,000/- as loss of income for the leave taken in August,1992. Thus, the total loss of income in his case comes to

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Rs. 6,369/- or say Rs. 6,500/-. I, therefore, allow a sum of Rs. 6,500/- to the petitioner as compensation on account of loss of income.

Further, the Tribunal held;

The treatment of the petitioner in ESI Hospital was free of charge. However, keeping in view, that sometimes the patient or his relatives have to buy medicines or surgical implements from outside and are not able to keep all the bills, I am inclined to grant a sum of Rs. 2,500/- to the petitioner on account of expenses incurred by him on his treatment/purchase of medicines. I also allow a sum of Rs. 5,000/- to the petitioner on account of special diet which he might have been forced to take on account of the injuries received in this accident. I also grant another sum of Rs. 5,000/- to the petitioner on account of conveyance and a further sum of Rs. 5,000/- to the petitioner on account of pain and agony suffered by him in the accident.

20. In the instant case, the Appellant has not produced any Disability certificate to show that he sustained grievous injuries which resulted into his shortening of leg or the accident has effected his earning capacity.

21. In a plethora of cases, the Apex Court and various High Courts have held that the emphasis of the courts in personal injury and fatal accidents cases should be on awarding substantial, just and fair damages and not mere token amount. In cases of personal injuries and fatal accidents, the general principle is that such sum of compensation should be awarded which puts the injured or the claimants in case of the fatal accidents matter, in the same position as he would have been, if accident had not taken place.

22. In National Insurance Company Limited v. Usha Veena Rani Minz and Anr. II (2008) ACC 42 , the Jharkhand High Court has observed as under;

Even though the provisions of the Motor Vehicles Act relating to compensation to a victim who has suffered injuries in a motor vehicle accident, is a beneficial Legislation, but the benefit thereof can be availed only if the claimant lays a firm and reasonable foundation for his or her claim.

23. As regards to the contention of doing over time, there is no evidence led by the Appellant in this regard before the Trial Court. Thus, this plea cannot be looked into at this stage.

24. Regarding contention of the Appellant Counsel that the owner of the factory does not give him full salary as he is only able to do light work, there is no evidence in this regard. The Appellant did not examine the owner of his factory where he was working to show that he is able to do only light work.

25. In view of the above discussion, the award given by the Tribunal is just, fair and equitable. Accordingly, no infirmity can be found with the order of learned Tribunal.

26. Thus, the present appeal is dismissed.

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27. No order as to costs.

28. Trial court record be sent back.

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