

(2009) 04 DEL CK 0540
In the Delhi High Court
Case No : F.A.O. No. 76 of 2000

Smt. Naseem Bano

APPELLANT

Vs

Sh. Puran Singh and Others

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 171

Citation : (2009) 04 DEL CK 0540

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : O.P. Mannie, for the Appellant; Nemo, for the Respondent

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award of compensation passed by the Learned Motor Accident Claims Tribunal on 22nd October 1999 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 91,000/- with an interest @ 12% PA for the injuries caused to the claimant appellant in the motor accident.

2. The brief conspectus of facts is as under:

3. The injured claimant appellant Mrs. Naseem Bano, aged about 28 yrs was a self employed lady doing the business of manufacturing School Bags, and it is the case of the injured appellant that she was earning an amount of Rs. 4,000/- per month from her business. On 31st January 1998, the petitioner was the pillion rider on the two wheeler scooter driven by her husband. They were going from Tank road to Paschimpuri. At about 1:00 P.M. when they reached the Jakhira flyover, their scooter was hit from behind by a truck bearing registration No. Rj-05-G-0216. The truck was driven in a rash and negligent manner because of which the accident occurred. The lady suffered compound fracture of the shaft of left femur and also a fracture on the right ankle.

4. A claim petition was filed by the appellant before the Motor Accident Claims Tribunal on 20th April 1998 and the learned Tribunal awarded the compensation

on 22nd October 1999.

5. In the present appeal, the appellant has challenged the quantum of the compensation passed by the learned Tribunal. The counsel for the appellant contended that the Tribunal erred in awarding Rs. 7,100/- only as loss of wages whereas the Appellant had suffered a loss of Rs. 48,000/- of her business. Further it is contended that the learned Tribunal erred in not awarding any compensation to the Appellant for the services of the maid servant she had to avail for a period of one year at monthly wages of Rs. 1,500/-. Further the counsel contended that the compensation of Rs. 53,500/- made towards medical expenses is also on a lower side and the actual expenditure incurred by the appellant was Rs. 80,000/-. Enhancement is also claimed on the ground that the appellant had suffered grave mental and physical pain and shock due to the accident and hence the Tribunal erred in not awarding anything to compensate for that mental and physical pain and agony and the loss of amenities, damage for loss of expectation for life and inconvenience and hardship suffered by the appellant and a claim of Rs. 50,000/- is made towards each head. Further the counsel urged that the Tribunal erred in not awarding an interest of 18% pa instead it awarded interest of 12% pa.

6. Nobody has been appearing for the respondents.

7. I have heard the contentions of the Learned Counsel for the appellant, and perused the record.

8. On perusal of the award it comes in to light that the medical bills and cash memos, Ex. P-1 to P-88, were produced on record and were duly proved. Dr. Arvind Aggarwal, who treated the appellant entered the witness box as PW5 and deposed that the appellant had suffered comminuted fracture of shaft of left femur and Potts fracture of right ankle. He further deposed that the appellant was operated upon on 2/2/1998 and the plating of left femur was done and right ankle was fitted after open reduction. The tribunal after considering all the cash memos and vouchers pertaining to medicines, consultation and investigation etc. calculated that the appellant had incurred Rs. 43,500/- towards medical expenses. On perusal of the said Ex. P-1 to P-88, I feel that the same needs no interference.

9. As regards the expenses towards conveyance and special diet, the tribunal has awarded Rs. 5,000/- each in the absence of any evidence regarding them being not brought on record. Dr. Arvind Aggarwal, who treated the appellant and entered the witness box as PW5 and stated in his deposition that the appellant had suffered comminuted fracture of shaft of left femur and Potts fracture of right ankle. He further deposed that the appellant was operated upon on 2/2/1998 and the plating of left femur was done and right ankle was fitted after open reduction. Clearly, for early recovery the appellant must have taken protein rich diet and must have visited hospital at different intervals. Therefore, I feel that the expenses towards conveyance and special diet do not require any

enhancement and the same are assessed at Rs. 5,000/- each.

10. As regards the loss of income of the appellant due to the accident, the tribunal has observed that the appellant averred that she was self employed and was manufacturing school bags at her residence and used to earn Rs. 4,000-5,000/- per month. The appellant did not bring on record to prove that she was doing the said business of manufacturing bags. The appellant also did not bring on record anything to prove her income and the period during which she could not do her business. In the absence of the same the tribunal has assessed the loss of earnings of the appellant for three months with the aid of the Minimum Wages Act for the wages of a skilled workman at Rs. 2,361/- pm. I feel that the tribunal did not err in assessing the loss of earnings of the appellant for three months with the aid of the Minimum Wages Act for the wages of a skilled workman at Rs. 7,100/- (2361 X 3) in the absence of any cogent evidence on record to assist the court in assessing the loss of income. Therefore, the same is not interfered with.

11. As regards compensation to the Appellant for the services of the maid servant she had to avail for a period of one year at monthly wages of Rs. 1,500/-, the tribunal has observed that no evidence was brought on record for the same. The accident took place on 31/1/1998 and on perusal of the record, it becomes manifest that she kept visiting the Maharaja Agrasain hospital till 1/9/1999. She had a daughter aged 10 years and two sons aged 9 years; 7 years apart from her husband aged 42 years to take care. Due to the operation she would not have been able to take care of them and would have required an assistant. Even in the absence of the evidence regarding the period for which the appellant was unable to work, the tribunal considered the same to be three months and since the tribunal had assessed the loss of earnings of the appellant for three months, I feel that the tribunal could have awarded Rs. 5,000/- on this account as well. Therefore, Rs. 5,000/- is awarded to the appellant for the services of the maid servant she had to avail for a period of three months at monthly wages of Rs. 1,500/-.

12. Pain and suffering compensates victim for the physical and mental discomfort caused by the injury. Pain is physical; suffering is emotional. While pain is the physiological response to certain stimuli, suffering is psychological or emotional response to pain. The tribunal has awarded Rs. 20,000/- towards pain and sufferings and I feel that in the facts of the present case, since the appellant underwent an operation even after suffering the pain due to the accident, I feel that the amount towards pain and sufferings be enhanced to Rs. 50,000/-.

13. The appellant has further claimed compensation towards loss of amenities, loss of expectation of life and inconvenience and hardship suffered by the appellant. Compensation for loss of expectation of life and loss of amenities, resulting from the defendant's/respondent's negligence, affects the injured person's ability to participate in and derive pleasure from the normal activities of daily life, and to pursue his talents, recreational interests, hobbies or avocations.

In the facts of the present case, Rs. 50,000 is hereby awarded towards loss of amenities, loss of expectation of life and inconvenience and hardship suffered by the appellant.

14. As regards the issue of interest that the rate of interest of 12% p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 18% p.a., I feel that the rate of interest awarded by the tribunal is just and fair and requires no interference. No rate of interest is fixed u/s 171 of the Motor Vehicles Act, 1988. The Interest is compensation for forbearance or detention of money and that interest is awarded to a party only for being kept out of the money, which ought to have been paid to him. Time and again the Hon^{ble} Supreme Court has held that the rate of interest to be awarded should be just and fair depending upon the facts and circumstances of the case and taking in to consideration relevant factors including inflation, policy being adopted by Reserve Bank of India from time to time and other economic factors. In the facts and circumstances of the case, I do not find any infirmity in the award regarding award of interest @ 12% pa by the tribunal and the same is not interfered with.

15. Therefore, Rs. 43,500/- is awarded towards medical expenses; Rs. 5,000/- for conveyance expenses and Rs. 5,000/- for special diet; Rs. 7,100/- for loss of income for 3 months; Rs. 5,000/- for hiring services of a maid for 3 months; Rs. 50,000/- for pain and sufferings and Rs. 50,000/- towards loss of amenities, loss of expectation of life and inconvenience and hardship suffered by the appellant.

16. In view of the above discussion, the total compensation is enhanced to Rs. 1,65,600/- from Rs. 91,000/- with interest @ 7.5% per annum on enhanced compensation from the date of filing of the petition till realisation and the same should be paid to the appellant by the respondent insurance company.

17. With the above direction, the present appeal is disposed of.