
(2008) 03 RAJ CK 0080
In the Rajasthan High Court

Smt. Vimal Rai and Dr. R.P. Rao

APPELLANT

Vs

Gulab Singh and Another
 R.S.R.T.C. Vs Dr. (Smt.)
Vimal Rai and Others and Dr. R.P. Rao and Others

RESPONDENT

Date of Decision : 12-03-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173
Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (2008) 03 RAJ CK 0080

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—Since all these four appeals are directed against the same impugned Award dated 15.06.1996 passed by the Motor Accident Claims Tribunal, Kotputli (Additional Sessions Judge, Kotputli, District Jaipur) (for short the Tribunal), therefore, they are being decided by this common judgment.

S.B. Civil Misc. Appeal No. 1095/1996:

2. The present misc. appeal u/s 173 of the Motor Vehicle Act, 1988 is directed against the impugned Award dated 15.06.96 passed by the Motor Accident Claims Tribunal, Kotputli (Additional Sessions Judge, Kotputli, District Jaipur) (for short "the Tribunal) in Claim No. 123/1992, whereby compensation to the tune of Rs. 1,62,035/- has been awarded in favour of the appellant.

3. Brief facts of the case are that on 24.12.85 at about 1.30 p.m., the appellant along with other persons were coming in a car bearing No. HRU-2104 from Gurgaon to Jaipur. Near Shahpura the said car collided with the bus bearing No. RNP-255 driven by Gulab Singh, respondent No. of which RSRTC was the owner. The said RSRTC bus hit the car from back side and this accident occurred due to negligence of the driver of the bus, in which the appellant sustained serious injuries. On account of these injuries, she remained in hospital for treatment for

a long period and thereafter as per the advise of the doctor, the appellant was transferred from Jaipur to America for treatment. FIR was lodged by Dr. R.P. Rao at Police Station Shahpura regarding the accident and the police after investigation filed challan against the driver of the bus under Sections 279, 337 and 304A IPC.

4. In the claim petition, the Tribunal has awarded a sum of Rs. 1,62,035/- as compensation to the appellant vide its impugned Award dated 15.06.1996, against which the present appeal has been preferred by the appellant for seeking enhancement of compensation on the ground that the Tribunal has seriously erred in awarding Rs. 39,000/- only towards treatment in India, whereas the appellant claimed Rs. 50,000/- and the same was proved by leading sufficient evidence. The impugned award has also been challenged on the ground that the appellant could not work for last six months due to treatment and her income was 320 thousand dollar per month and the Tribunal has not properly considered the loss of income of six months during which she could not work.

5. The impugned Award has further been challenged on the ground that the Tribunal has also seriously erred in not awarding expenses for treatment in USA. The reason given in the Award is that the amount of insurance which was taken by the appellant in America is liable to be deducted. To this effect, it is submitted that for the expenses incurred by the appellant for treatment in USA, the appellant has to make the payment of 20% and 80% of the expenses is to be borne by the Insurance Company.

6. It is further contended that the Tribunal while passing the impugned Award has committed an error while not awarding compensation for the loss of earning and loss of future earning capacity. It is proved from the evidence that the working capacity of the appellant was reduced to 50% and during the period of treatment she was on bed for a period of six months but the Tribunal has awarded a meager amount towards this head and the certificate given by doctor C.S. Sharma regarding the fact that the working capacity of the appellant has been reduced to 50% has been ignored by the Tribunal.

7. It is further submitted that the Tribunal has also not considered this aspect that during treatment in USA, the appellant engaged a servant for 5 years but towards this head only Rs. 40,000/- has been awarded.

8. Per contra, learned Counsel appearing for the respondent RSRTC submitted that the Tribunal has awarded the compensation under the heads which were never pleaded by the claimant and were also discussed by the Tribunal itself while passing the impugned Award and thus, the Tribunal has seriously erred while awarding compensation under the heads which were never pleaded by the claimant.

9. It is further submitted by the learned Counsel appearing for the RSRTC that the compensation awarded in favour of the appellant is on higher side without considering the fact that the same was not claimed by the claimant and the

Tribunal has wrongly awarded a compensation to the tune of Rs. 1,62,035.

10. I have heard rival submissions of the respective parties and carefully gone through the record of the case as also the impugned Award dated 15.06.1996 passed by the Tribunal.

11. The Tribunal while awarding compensation to the tune of Rs. 1,62,035/- in favour of the appellant, has considered the earning of the appellant as well as the injury received by her and has rightly not included the expenses incurred by the appellant in USA during her treatment as the same was received by the appellant from insurance in America and the aspect of expenses for treatment in India has been properly considered by the Tribunal as also the loss of earning etc. and just and reasonable award has been passed by the Tribunal and the same requires no interference by this Court as no case of enhancement is made out.

12. Consequently, the present misc. appeal fails and the same is hereby dismissed.

S.B. Civil Misc. Appeal No. 570/1997:

13. The present misc. appeal u/s 173 of the Motor Vehicle Act, 1988 has been filed by appellant Dr. R.P. Rao against the impugned Award dated 15.06.96 passed by the Motor Accident Claims Tribunal, Kotputli (Additional Sessions Judge, Kotputli, District Jaipur) (for short the Tribunal) in MAC No. 74/1993, whereby compensation to the tune of Rs. 45,000/- has been awarded in favour of the appellant.

14. Brief facts of the case are that on 29.12.85 at about 1.30 p.m., the appellant along with other persons were coming in a car bearing No. HRU-2104 from Gurgaon to Jaipur. Near Shahpura the said car collided with the bus bearing No. RNP-255 driven by Gulab Singh, respondent No. of which RSRTC was the owner. The said RSRTC bus hit the car from back side and this accident occurred due to negligence of the driver of the bus, in which the appellant sustained serious injuries. On account of these injuries, the appellant remained hospitalized in SMS Hospital, Jaipur from 24.12.85 to 30.01.86 and spent a huge amount on his treatment etc. for a period of about five months and he could not do his job.

15. In the claim petition filed by the appellant, the Tribunal has awarded a sum of Rs. 15,000/- under the head of helper, hospitalization etc. and also awarded a sum of Rs. 25,000/- towards mental agony and physical pain and awarded total compensation to the tune of Rs. 45,000/- vide its impugned Award dated 15.06.1996.

16. As per the appellant, looking to the serious injuries received by the appellant and the treatment undertaken for petty long time, the compensation towards mental agony and physical pain has been awarded to the tune of Rs. 25,000/-, which is much less looking to the nature of injuries as the appellant lost his vision of left eye and also sustained grievous injury on his left leg due to which

limping has been developed. Under the head of transportation etc. Rs. 5,000/- have been awarded in favour of the appellant which is also not sufficient.

17. On the contrary, learned Counsel appearing for the respondent RSRTC submitted that the compensation awarded by the Tribunal is on excessive side and the same requires interference by this Court.

18. I have heard rival submissions of the respective parties and carefully gone through the record of the case as also the impugned Award dated 15.06.1996 passed by the Tribunal. The Tribunal while awarding compensation to the tune of Rs. 45,000/- in favour of the appellant, has considered the injuries sustained by the appellant as well as the expenses incurred on the treatment and after considering all the aspects, has awarded a sum of Rs. 45,000/- as compensation, which is just and reasonable and the same requires no interference by this Court. No case of enhancement is made out.

19. Consequently, the present misc. appeal also fails and the same is hereby dismissed.

S.B. Civil Misc. Appeal No. 1010/1996:

20. The present misc. appeal u/s 173 of the Motor Vehicle Act, 1988 is preferred by the non-claimant Rajasthan State Road Transport Corporation (for short "the RSRTC") against the impugned Award dated 15.06.96 passed by the Motor Accident Claims Tribunal, Kotputli (Additional Sessions Judge, Kotputli, District Jaipur) (for short "the Tribunal) in MAC No. 23/1992, whereby while partly allowing the claim petition filed by claimant-respondent No. Dr. Smt. Vimal Rai, compensation to the tune of Rs. 1,62,035/- has been awarded in her favour.

21. The impugned Award has been challenged by the RSRTC only on the ground that the aspect of contributory negligence has not been properly examined by the Tribunal and the compensation awarded in favour of the respondent No. is on higher side and the same requires interference by this Court.

22. I have heard rival submissions of the respective parties and carefully gone through the record of the case as also the impugned Award dated 15.06.1996 passed by the Tribunal.

23. As S.B. Civil Misc. Appeal No. 095/1996 filed by Smt. Vimal Rai (respondent No. in this appeal) for seeking enhancement of compensation has already been dismissed observing that the compensation awarded by the Tribunal to the tune of Rs. 1,62,035/- is just and proper and the same cannot said to be excessive, the present appeal filed by non-claimant RSRTC challenging that the compensation has been awarded on higher side, has no merit and the same deserves to be dismissed.

24. Consequently, the present appeal fails and the same is hereby dismissed.

25. The interim order granted by this Court on 30.10.96 stands rejected. The stay application also stands dismissed.

S.B. Civil Misc. Appeal No. 1104/1996:

26. The present misc. appeal u/s 173 of the Motor Vehicle Act, 1988 is preferred by the non-claimant Rajasthan State Road Transport Corporation (for short "the RSRTC") against the impugned Award dated 15.06.96 passed by the Motor Accident Claims Tribunal, Kotputli (Additional Sessions Judge, Kotputli, District Jaipur) (for short "the Tribunal") in MAC No. 74/1993, whereby while partly allowing the claim petition filed by claimant-respondent No. Dr. R.P. Rao, compensation to the tune of Rs. 45,000/- has been awarded in his favour.

27. The impugned Award has been challenged by the RSRTC only on the ground that the aspect of contributory negligence has not been properly examined by the Tribunal and the compensation awarded in favour of the respondent No. is on higher side and the same requires interference by this Court.

28. I have heard rival submissions of the respective parties and carefully gone through the record of the case as also the impugned Award dated 15.06.1996 passed by the Tribunal.

29. As S.B. Civil Misc. Appeal No. 70/1997 filed by Dr. R.P. Rao (respondent No. in this appeal) for seeking enhancement of compensation has already been dismissed observing that the compensation awarded by the Tribunal to the tune of Rs. 45,000/- is just and proper and the same cannot said to be excessive, the present appeal filed by non-claimant RSRTC challenging that the compensation has been awarded on higher side, has no merit and the same deserves to be dismissed.

30. Consequently, the present appeal fails and the same is hereby dismissed.

31. The interim order granted by this Court on 30.10.96 stands rejected. The stay application also stands dismissed.

32. Record be sent back.