

(2006) 03 GAU CK 0114
In the Gauhati High Court
Case No : F.A. No. 190 of 1998

State of Tripura and Others	Vs	APPELLANT
Khokan Chandra Dey		RESPONDENT

Date of Decision : 13-03-2006

Acts Referred:

Citation : (2006) 2 GLT 308

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : S. Chakraborty, for the Appellant; None, for the Respondent

Judgement

A.B. Pal, J.—In a motor accident on 3.6.1994, the claimant-Respondent sustained injuries for which he filed a claim petition, which was registered as T.S. (MAC) 128 of 1995. On 10.6.1998 the learned Tribunal awarded an amount of Rs. 65,000/- only as compensation with interest @ 12% per annum with effect from 17.5.1995, when the claim petition was filed. The offending vehicle being owned by the State Government, Appellants herein, it was directed that the said amount of compensation would be paid by the said Appellants. Aggrieved, the present appeal has been preferred.

2. The short fact giving rise to the said proceeding is that on 3.6.1994 the claimant-Respondent was returning from Gorkhabasti by a scooter bearing registration No. TRM-6142. One Asis Dutta was driving the scooter while the claimant-Respondent was the pillion rider. When they reached Buddha Mandir on Agartala-Airport road, a mini truck bearing registration No. TRP-199 of the Tripura State Rifles (for short "TSR") knocked down the said scooter causing hurt to the claimant-Respondent, who was immediately taken to the G.B. Hospital. He was admitted to the hospital and treated there as an indoor patient for a period of 37 days and thereafter on 9.7.1994 he was released from the hospital. The discharge certificate shows that he sustained compound and multiple fractures on his right leg. An FIR was lodged by one Biswajit Saha (not examined) on the same day alleging that due to wrong driving of the police vehicle the accident

had taken place.

3. The State Appellants being the owner of the vehicle contested the claim contending, inter alia, that due to certain mechanical defect the policed vehicle had fallen on a drain and just at that time one hospital Ambulance was coming from the opposite direction and behind it the scooter with Asis Dutta and the claimant-Respondent was also coming and due to the negligence of the driver of the scooter it dashed against the police vehicle. Thus the contention of the State Appellants was that for the accident there was no negligence on the part of the driver of the said vehicle.

4. During trial before the learned Tribunal the claimant-Respondent examined himself and one Sushil Majumder, who claimed to be the eye witness. Neither Asis Dutta, who was driving the scooter nor the informant, who was a student has been examined. The claimant-Respondent stated in his deposition that as a result of the accident, he sustained severe injuries on his right leg and in the GB Hospital he was under treatment following which he was discharging on 9.7.1994. As a result of the injuries he cannot properly walk. R.W. 2 Sushil Majumder was also Panchayat Secretary and he claimed that he had seen the accident as he was near the Buddha Mandir. He said nothing about the nature of injury or the treatment of the claimant-Respondent.

5. Though the accident was admitted by the State Appellants herein, it was, however, contended that the driver of the police vehicle had no negligence on his part and that the driver of the scooter was solely responsible for careless driving leading to the accident. In support of this contention, the State Appellants examined Pradip Kr. Sen, who was Lance Naik and was travelling by the said vehicle. O.P.W. 2 is Ratan Ch. Pal, who was actually driving the offending vehicle TRP-199. According to Pradip Kr. Sen, their vehicle was on the Airport road when certain mechanical defect had arisen near Buddha Mandir due to which the vehicle fell down on the left side of the road. Just at that time a hospital van was passing through the road safely, but one scooter coming behind that van came over the police vehicle, which was already sliding towards the drain on left side. As a result of the sudden dash, the claimant-Respondent sustained injuries on his leg and he was immediately taken to G.B. Hospital by a Auto Rickshaw. As the police vehicle was in stationary position at the time of accident, no responsibility can be fixed on its driver for the accident. O.R.W.2 also deposed in the same vein and he admitted that after the accident he was arrested by police.

6. The learned Tribunal after framing four issues on the basis of the pleadings of the parties proceeded to decide them. As the accident and the injuries sustained by the claimant-Respondent were not in dispute, the question was what should be the amount of compensation and who would be liable to pay the same. As it was a police vehicle there was no dispute that whatever amount is awarded the State Appellants would be liable to pay the same. Thus the solitary question was what should be the right and just compensation in the given facts and circumstances of the case.

7. Admittedly, the claimant-Respondent is a Panchayat Secretary and he has been receiving his pay and allowances after resuming his duties on 16.11.1994. Thus as the accident had taken place on 3.6.1994 and admittedly he resumed duties on 16.11.1994, he was on leave for more than five and half months. Even if this period could be covered by admissible leave, he is entitled to the amount equivalent to his pay and allowances for the said period as accumulated leave to certain extent can be encashed at the time of retirement. No documentary evidence was at all placed in order to show that the injury sustained by the claimant-Respondent resulted to any sort of permanent disablement. In fact no such claim has been made in the position. It is thus to be presumed that he was fully recovered after his treatment though in his deposition he stated that it was difficult for him to walk normally and he could hardly walk in hilly places. The discharge certificate indicates that he suffered from compound fracture on his right leg and he was confined in the hospital from 3.6.1994 to 9.7.1994. Learned Tribunal has taken a sympathetic view and made some guesswork for awarding the amount of compensation. It has been observed that the claimant-Respondent deposed that he had to undergo certain operation and some steel plates had to be fitted in his right leg. But on a careful perusal of his statement, I have noticed no such statement about placement of steel plates in the right leg. It is the settled legal position now that for claiming certain amount of compensation on account of treatment or disability. It is incumbent upon the claimant to produce materials for the satisfaction of the learned tribunal for making just amount of compensation. Admittedly, even for medicine no cash memo has been placed on record by the claimant-Respondent. In the absence of any documentary evidence in support of the claim, the learned Tribunal awarded Rs. 15,000/- towards medical expenditure, Rs. 5,000/- towards pain and sufferings and Rs. 45,000/- towards conveyance charges and loss of leave. Thus a total amount of Rs. 65,000/- has been awarded with interest @ 12% p.a. from the date of filing of the claim petition.

8. I have heard Mr. S. Chakraborty, learned Counsel for the State Appellants. The claimant-Respondent, who was duly served, has not entered appearance.

9. Mr. Chakraborty's only submission is that the amount awarded is absolutely based on no evidence and that it is not enough for the claimant-Respondent to say that after the accident and due to the injuries suffered by him, he is not in a position to walk normally. It was his duty to submit medical certificate or to examine the medical officer, who operated him to support his claim that for the injuries he became partially disabled. The statement made in the deposition that he is unable to walk properly is a claim of partial disablement, which has no supporting evidence at all. Thus, Mr. Chakraborty continues, the learned Tribunal should not have made an abrupt observation that due to the operation undergone by him, which was again supported by no evidence, the claimant-Respondent was entitled to certain amount of compensation for the mental and physical sufferings undergone by him. For these physical and mental sufferings an amount of Rs. 5,000/- has been awarded rightly, but for medical expenditure

Rs. 15,000/- has been awarded without any documentary evidence. The other sum of Rs. 45,000/- towards conveyance charges and loss of leave is again without any evidence in support thereof.

10. I have carefully gone through the materials on record and considered the submission of Mr. Chakraborty. As it is on record that the claimant-Respondent was on leave for more than five and half months, he is certainly entitled to get compensation equivalent to the total salary he was entitled to for such period. But no such figure has been made available by the claimant-Respondent. Without any supporting document that the claimant-Respondent was unable to walk normally, it was not proper on the part of the learned Tribunal to make any award on this count. Therefore, again basing on some guesswork, I am of the considered view that the claimant-Respondent was not entitled to more than Rs. 30,000/- for the period of five and half months during which he had to be on leave. He is, however, not entitled to any conveyance charges and, therefore, he is not entitled to the remaining amount of Rs. 15,000/-. This being the findings, the total amount awarded comes down to Rs. 50,000/- only on account of medical expenditure, pains and sufferings and compensation for the leave period. The amount of interest awarded by the learned Tribunal is, however, sustained.

11. For the reasons and discussions noted above, this appeal is partly allowed modifying the award from Rs. 65,000/- to Rs. 50,000/- and sustaining the rate of interest. Having regard to the facts and circumstances of the case, there shall be no order as to cost.