
(2008) 08 SHI CK 0037
In the High Court Of Himachal Pradesh

Vijay Kumar Sood

APPELLANT

Vs

Neeraj Acharya and Others

RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2008) 3 ShimLC 376

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—The defendant No. 4 has come in appeal against judgment, decree dated 24.5.2001 passed by learned Additional District Judge, (1) Kangra at Dharamshala in Civil Suit No. 3-K/98, decreeing the suit of respondent No. 1 for Rs. 1,20,000/- along with interest at the rate of 6% per annum from the date of decree till realization. In the appeal respondent No. 1 has filed cross-objections for enhancement of compensation.

2. The pleaded case of respondent No. 1 is that appellant, a contractor, on 4.6.1997 at about 4 p.m. was demolishing through blasting a bridge at Draman on Pathankot-Mandi road under respondents No. 2 to 4, a flying splinter of stone hit the right eye of respondent No. 1. The respondent No. 1 was a student and very good in study and was merit holder. The respondent No. 1 got treatment at various places but due to injury he lost vision in the right eye which caused 30% permanent disability which adversely affected his future prospects in life. The respondent No. 1 suffered physical and mental agony due to loss of vision in one eye. The blasting was done in negligent manner and no intimation of blasting was given to the residents in that area. The blasting was being handled by unqualified persons who had no necessary skill to handle blasting. The respondent No. 1 served notice u/s 80 CPC and ultimately he filed suit for recovery of damages against respondents No. 2 to 4 and appellant. In the suit respondent No. 1 had claimed Rs. 50,000/- for loss of vision in right eye, Rs.

1,00,000/- for loss of amenities in life, Rs. 3,25,000/- for loss of earning capacity and Rs. 25,000/- on account of medical expenses.

3. The suit was contested by respondents No. 2 to 4 who filed joint written statement. They took preliminary objections that suit was premature having been filed before expiry of two months after the receipt of notice u/s 80 CPC. On merits, it has been admitted that appellant was undertaking excavation of footing for the bridge and no demolition of bridge at Draman was in progress. The excavation was not done by appellant by the process of blasting and therefore, there is no question of stone hitting respondent No. 1. The respondent No. 1 has not suffered any injury to his eye due to blasting of bridge. The respondent No. 1 might have suffered injury to his eye by some other reason. The respondents No. 2 to 4 denied the claim of respondent No. 1. The appellant filed separate written statement and took preliminary objections of jurisdiction, lack of cause of action, maintainability, estoppel and misjoinder of parties. On merits, it has been pleaded that no work of demolition by blasting was carried out by appellant. No stone hit the eye of respondent No. 1 on account of any work undertaken by appellant at Draman bridge. The appellant denied his liability to pay any amount to respondent No. 1. It has been alleged that injury to the, eye of respondent No. 1 was not caused due to any act of appellant, in any case, the amount claimed by respondent No. 1 is excessive. The respondent No. 1 filed replication to the written statement of respondents No. 2 to 4.

4. On the pleadings of the parties, the following issues were framed:

1. Whether the plaintiff is entitled to the recover the suit amount in lieu of damage as alleged? OPP
2. Whether the suit is bad for want of notice u/s 80 C.P.C.? 1 to 3
3. Whether this Court has no jurisdiction to try the suit? OPD-4
4. Whether the suit is not maintainable in the present form? OPD-4
5. Whether the plaintiff is estopped by his act and conduct to file the suit? OPD-4
6. Whether the suit is bad for mis-joinder of party? OPD-4
7. Relief.

The learned Additional District Judge decreed the suit against appellant as noticed above, hence appeal, in which respondent No. 1 has filed cross-objections.

5. I have heard Mr. C.N. Singh, learned Counsel for the appellant, Mr. Anuj Nag, learned Counsel for respondent No. 1-cross-objector and Mr. A.K. Bansal, learned Additioanl Advocate General for respondents No. 2 to 4 and gone through the record. The learned Counsel for the appellant has submitted that it has not been proved on record that respondent No. 1 had suffered eye injury due to blasting undertaken by appellant at Draman bridge. He has submitted that learned

Additional District Judge has misconstrued and misinterpreted the evidence on record. It appears respondent No. 1 has sustained eye injury due to some other reason but he has wrongly attributed the injury in his eye due to alleged blasting work undertaken by appellant at Draman bridge. He has submitted that compensation awarded to respondent No. 1 is on the higher side. The learned Counsel for respondent No. 1-cross-objector has supported the impugned judgment but has submitted that less compensation has been awarded by learned Additional District Judge to respondent No. 1 and he has prayed for allowing compensation as claimed in the suit. In order to appreciate the controversy between the parties, it is necessary to refer to evidence which has come on record.

6. PW-1 Neeraj Acharya plaintiff has stated that on 4.6.1997 at about 4 p.m., a stone splinter due to blasting at Draman bridge hit his right eye, he was taken to Shahpur hospital and from there to Kangra hospital. On 5.6.1997 he was asked to go to Rotary Hospital, Maranda for scanning. He went to Maranda hospital and again he went to Dr. Sood who on 13.6.1997 referred him to PGI, Chandigarh/ AIMS, New Delhi. He went to Dr. Daljeet Singh hospital, Amritsar for treatment. He even got treatment at AIIMS at Delhi from 23.6.1997 to 28.6.1997. He was called for operation on 5.7.1997 and he remained admitted as indoor patient from 5.7.1997 to 14.7.1997. He was taken to Operation Theater but ultimately his eye was sealed. He cannot see from right eye. He was issued permanent disability certificate Ex.PW-1/J. He secured 529 marks out of 700 marks in class 10 and the result was declared after the accident. In five subjects he secured distinction. He used to take part in other activities. After the accident he is unable to concentrate as he remains under constant physical and mental agony, his career has been spoiled due to accident, his prospects in life have been adversely affected. He has spent about Rs. 40,000/- to Rs. 50,000/- on his treatment. The accident took place due to the negligence of defendants. The defendants did not inform the people that they would demolish the bridge by blasting. He sustained injury in the eye due to stone splinter on account of blasting and not due to any other reason. In cross-examination he has denied that he has filed a false claim. He has also denied that defendant No. 4 had not undertaken any work for demolition of Draman bridge. He has denied that he was hit by stone in eye due to plying of some vehicle. He has denied that due to tyre pressure of running vehicle a stone splinter hit his eye.

7. PW-2 Gian Parkash is the father of plaintiff who has supported the plaintiff. PW-3 Amar Nath has stated that on 4.6.1997 at about 4 p.m. blasting for demolition of Draman bridge was going on, due to blasting a stone splinter hit the right eye of plaintiff and he was taken to hospital. No body told about the blasting. The accident took place due to the negligence of the defendants. In cross-examination he has stated that plaintiff and he were standing at a distance of one metre when a splinter hit the plaintiff. He has denied that due to bursting of tyre a splinter hit the eye of the plaintiff. PW-4 Swaran Singh Baloria has produced record from the Primary Health Centre, Shahpur. PW-5 Dr. Ajay Datta

has stated that he was posted at CHC, Shahpur from January 1996 to January 1998 as Medical Officer. On 4.6.1997, Neeraj Acharya came to hospital in an injured condition. He examined Neeraj and issued OPD slip Ex.PW-5/A. He referred Neeraj to eye specialist, Kangra or Dharamshala. PW-6 Dr. S.B. Sood, Medical Officer, Civil Hospital, Kangra has stated that on 4.6.1997 Neeraj Acharya came to him. Neeraj told him that he had suffered injury in the right eye due to blasting. He was given initial treatment and on the next day he was sent to Maranda Eye Hospital for examination. Thereafter, Neeraj on 13.6.1997 came to him again. The condition of his eye was not in good shape, therefore he referred him to PGI/AIIMS, copy of OPD slip of Neeraj is Ex.PW-6/A. PW-7 Dr. J.S. Chandel, eye specialist has stated that since 1997, he is posted as senior surgeon, incharge, Kangra at Dharamshala. He issued permanent disability certificate Ex.PW-7/A to Neeraj Acharya as a member of District Medical Board.

8. PW-8 Girish Kumar, Assistant Engineer, HP PWD, Shahpur has stated that demolition of Draman bridge was going on under the supervision of their sub-division and Vijay Kumar Sood was the contractor. The work was started on 20.5.1997. 25 kg. gelatine and 100 detonators were issued to the contractor for the demolition of the bridge. In sixth month 25 kg. gelatine, 5 fuse coils and 100 detonators were issued to the contractor. The money was recovered from the contractor in July 1998 after the preparation of the bill. The bridge was demolished by using blasting. In cross-examination he has stated that he does not have personal knowledge that explosives were used for demolition of the bridge.

9. The defendants have also examined PW-8 Girish Kumar, Assistant Engineer, as DW-1 and he produced some record. DVV-2 Raman Kumar, Junior Engineer, HP PWD, has stated that he was posted Junior Engineer from 1994 to 1999 at Shahpur Sub-Division. He was in Shahpur Sub-Division when demolition work of Draman bridge was in progress, which was undertaken in his supervision. The demolition of Draman bridge was given to V.K. Sood contractor. He has produced stock storage register Ex.DW-2/A. Neeraj Acharya did not sustain any injury on 4.6.1997 due to blasting. In cross-examination he has stated that he had not brought measurement book (MB). He has stated that in the MB entry of time-to-time work is recorded. He could not say how much quantity of gelatine, fuse coils and detonator is entered in the MB. He has stated that in June 1997 explosive material was issued to V.K. Sood vide Ex.DW-2/A. On 4.6.1997 demolition work of the bridge was over. He has produced copy of bin card Ex. DW-2/C and copy of another bin card Ex.DW-2/D. On the relevant date he remained on the spot till 11 a.m. and thereafter he proceeded to another site. DW-3 K.S. Thakur, Assistant Engineer, HP PWD has stated that in the year 1997 he was posted at Shahpur Sub-Division as Assistant Engineer. The demolition and excavation of Draman bridge was in his sub-division, which was undertaken by V.K. Sood contractor. In cross-examination he has stated that the explosive material was issued from their office on 13.5.1997. He has stated that from the record he cannot say on which date the explosive material was issued to V.K. Sood

contractor. DW-4 Vijay Kumar has stated that the foundation of the bridge was excavated through labourers and for said excavation there was no necessity of any explosive. On 4.6.1997 work was undertaken but no explosives were used nor till that date any explosive material was issued to him. In cross-examination he has stated that blasting material is required for excavation. The blasting material was issued after 16.6.1997. He does not have any record of blasting material. He has admitted that blasting material was issued to him vide Ex.DW-2/B which was signed by him in token of receiving the material. He denied that on account of blasting a stone splinter hit the eye of the plaintiff. He has shown his ignorance that plaintiff has spent huge amount on his eye treatment who has suffered 30% disability due to eye injury. DW-5 Bidhi Chand has stated that he is working as store clerk at sub-division (B & R) Shahpur since 1996. The record is maintained for issuing material. He has proved challan No. 696 Ex.PW-5/A which bears his signature. In cross-examination he has stated that Ex.DW-2/B is store indent. He has also stated that in June 1997 vide RKM/SHK/115 explosives were supplied but he has not brought the record of supply of said material.

10. The appellant in his written statement has taken the stand that he had done no blasting work at Draman bridge, therefore, there is no question of injury to the eye of respondent No. 1 due to blasting undertaken for demolition of the bridge. It is not in dispute that work was allotted to appellant for construction of Draman bridge. It has also come in evidence that blasting material was supplied to appellant by respondents No. 2 to 4 for executing the work allotted to him. The appellant in his statement has admitted that blasting material was supplied to him for execution of the work. The case of respondent No. 1 is that injury to his eye was caused by stone splinter due to blasting undertaken by appellant at Draman bridge. The cross-examination of Neeraj Acharya conducted on behalf of appellant does indicate that even appellant has not denied injury to the eye of respondent No. 1 due to accident but, according to appellant the injury was caused to respondent No. 1 due to flying of stone due to tyre pressure of a running vehicle. A similar suggestion has been given to PW-3 Amar Nath in cross-examination conducted by appellant that injury to the eye of respondent No. 1 was caused due to stone flying and hitting the eye of respondent No. 1 due to tyre pressure of a running bus. The narrow point left for consideration is whether the injury was caused in the eye of respondent No. 1 due to blasting undertaken by appellant for demolition of Draman bridge or due to stone flying on account of tyre pressure of a running vehicle. PW-1 injured has specifically stated that flying stone splinter due to blasting undertaken by appellant at Draman bridge on the relevant date and time hit his right eye which caused damage and permanent disability to him. The statement of PW-1 has been corroborated by PW-3 Amar Nath who has stated that he was at a distance of one metre from the injured when stone splinter hit the right eye of the plaintiff. Ex.PW-1/D (Ex.PW-6/A) is the OPD slip of plaintiff wherein "blast injury" has been mentioned. The appellant nor respondents No. 2 to 4 have produced work order issued to appellant, nor they have produced documentary evidence when the work allotted to appellant

was actually started. It has been established on record that on the relevant date and time work was being undertaken by appellant at Draman bridge. DW-2 Raman Kumar Junior Engineer in his cross-examination has stated that time to time progress of the work is recorded in measurement book (MB) but no such MB has been placed on record by appellant. He has also stated that in June 1997 explosive material was issued to the contractor. Ex.DW-2/A is the copy of bin card showing supply of gelatine twice in the month of June 1997 to appellant, Ex.DW-2/B is the stock storage indent showing supply of 25 Kg. gelatine and 100 detonators to appellant vide challan No. 696 dated 3.6.1997. Ex.DW-2/C is the copy of bin card which shows supply of 100 detonators each to appellant twice in June 1997, Ex. DW-2/D is the copy of another bin card for supplying 5 fuse coils to appellant. It has been proved on record that in June 1997 blasting material was supplied to appellant. The appellant is a contractor and it is not his case that on 4.6.1997 at about 4 p.m. he was present on the site. It is reasonable to infer that the appellant was executing the work on the spot under the supervision of some person. In other words at the relevant date and time some labourers must have been deployed by appellant for executing the work on the spot. The appellant has not examined any person who was actually working on the spot on the relevant date and time. The preponderance of evidence leads to inference that on the relevant date and time blasting was undertaken by the appellant for executing the work and due to the negligence of appellant and his workmen in conducting blasting a flying stone splinter hit the eye of the respondent No. 1 causing serious damage and permanent disability to the right eye of the respondent No. 1. The learned Additional District Judge has rightly appreciated the material on record is coming to the conclusion that injury was caused in the right eye of the respondent No. 1 due to negligent act of blasting undertaken by appellant for executing work at Draman bridge. The findings recorded by learned Additional District Judge to this effect are upheld.

11. Now, the question is quantum of compensation. The respondent No. 1 was studying in matric when he sustained injury in his right eye. The matriculation examination result of respondent No. 1 was declared later on. The respondent No. 1 had secured 529 marks out of 700 marks in the matriculation examination as per certificate Ex.PW-1/L. The respondent No. 1 in five subjects out of seven as per Ex.PW-1/L had secured distinction. In fact respondent No. 1 secured 85th position in H.P. Board of School Education as per merit certificate Ex.PW-1/M. The respondent No. 1 was treated at CHC Shahpur vide Ex.PW-5/A, Civil Hospital, Kangra vide Ex.PW-1/D, Rotary Eye Hospital, Maranda vide Ex.PW-1/A, Dr. Daljit Singh Eye Hospital, Amritsar vide Ex.PW-1/E and Ex.PW-1/F, Dr. Rajinder Parshad, All India Institute of Medical Sciences vide Ex.PW-1/J etc. Ex.PW-7/A is the disability certificate of respondent No. 1 issued by Medical Board Kangra at Dharamshala. The percentage of disability of respondent No. 1 as per certificate Ex. PW-7/A is 30%. The learned Additional District Judge has awarded Rs. 1,00,000/- to respondent No. 1 on account of loss of amenities in life, due to disability suffered and Rs. 20,000/- on account of loss of future

earnings. The Learned Additional District Judge in all has awarded Rs. 1,20,000/- compensation to respondent No. 1. The learned Addl. District Judge has not awarded any amount to respondent No. 1 on account of treatment on the ground that respondent No. 1 has not proved expenses incurred by him or his father on his treatment.

12. In *Munish Kumar v. State of H.P. and Ors.* 2008 S.L.J. 688 (H.P.) , a Division Bench of this Court has held as follows:

It is well settled that in disablement cases compensation has always to be higher than even in cases of death since it is given to the living victim of the accident both for his personal loss and for economic loss. It can be said that the bodily injury is to be treated as a deprivation which entitled the victim to claim damages, which vary according to the gravity of the injury. Further, due to this injury, there can be loss of earnings, completely or partial due to the accident on his capacity to earn the same. Another consequence may be the loss he suffers on account of the enjoyment of life or full pleasures of living.

In *Deepak Singha Vs. Himachal Road Transport Corporation and Another*, wherein the appellant had lost vision in right eye in the accident and was 23 years of age and was a student of MBA was awarded Rs. 1,08,000/- for loss of pecuniary earnings, Rs. 37,500/- for pain and suffering and loss of matrimonial prospects and enjoyments of life, Rs. 13,000 for medical treatment, in all Rs. 1,58,000/-. In that case, the accident had taken place on 25.8.1980. In the present case, the accident took place on 4.6.1997.

13. The respondent No. 1 had a bright academic career. He secured distinction in five subjects out of seven, as per matriculation examination certificate Ex./PW-1/L and secured 85th position in matriculation examination conducted by HP Board of School Education as per merit certificate Ex.PW-1/M. The respondent No. 1 was 15 years of age at the time of accident. He was treated at many places including AIIMS, New Delhi. The treatment of respondent No. 1 continued at least upto 14.8.1999, as per OPD card of AIIMS Ex. PW-1/K. No doubt, vouchers of medical expenses incurred on the treatment of respondent No. 1 have not been placed on record but keeping in view long treatment of respondent in different hospitals, it can be safely inferred that respondent No. 1 or his father must have spent huge amount on treatment of respondent No. 1 which factor is to be taken into consideration for assessing the compensation. On the facts and circumstances in a given case compensation is to be assessed on some conjectures. The respondent No. 1 due to loss of vision of one eye has been disabled permanently. In *Deepak Singha supra* Rs. 1,45,500/- was awarded for pecuniary earnings and for pain and suffering and loss of matrimonial prospects and enjoyments of life. The respondent No. 1 had passed matriculation examination and secured distinction in five subjects out of seven and 85th position in the Board, therefore, keeping in view of norms laid down in *Deepak Singha*, I am of the opinion that respondent No. 1 in the present case is entitled to Rs. 1,75,000/- on account of loss of pecuniary earnings and for pain and

suffering and loss of matrimonial prospects and enjoyments of life due to injury sustained by respondent No. 1. In addition, the respondent No. 1 is also entitled to Rs. 25,000/- on account of medical expenses of his treatment. In all respondent No. 1 is entitled to Rs. 2,00,000/- compensation from appellant along with interest at the rate of 6% per annum from the date of institution of the suit till realization, hence appeal deserves dismissal and cross-objections filed by respondent No. 1 are liable to be accepted accordingly.

14. No other point was urged.

15. The result of the above discussion, the appeal is dismissed and cross-objections of respondent No. 1 are allowed, impugned judgment and decree are modified. A decree of Rs. 2,00,000/- is passed in favour of respondent No. 1-plaintiff and against appellant-defendant No. 4 along with 6% interest from the date of institution of the suit i.e. 2.6.1998 till realization of the decretal amount along with proportionate costs throughout.