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(1995) 03 DEL CK 0071

Delhi High Court

Case No: First Appeal No. 6 of 1985

Phool Pati	APPELLANT
Vs	
Chotu Ram and Others	RESPONDENT

Date of Decision: March 27, 1995

Citation: (1996) 1 ACC 130 : (1995) ACJ 632 : (1995) 33 DRJ 117 : (1996) 112 PLR 52

Hon'ble Judges: Chander Mohan Nayar, J

Bench: Single Bench

Advocate: Y.R. Sharma, S.M. Suri and Kishore Rawat, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present First Appeal arises out of the award dated August 13, 1984, passed by Shri Kuldip Singh, Judge, Motor Accident Claims Tribunal, Delhi.

(2) The brief facts of the case, as alleged are that the appellant was sitting under the tree near Kothi No.35, Sukhdev Vihar at about 4.35 P.M.on July 3, 1981 when a milk van bearing No. DHG-5783 being driven by respondent no.1 came in a rash and negligent manner at a very high speed and hit the appellant with the result that she sustained serious injuries on her person. It is further alleged that the front wheel of the said milk van ran over her. The van was driven by respondent no.1 and he did not blow any horn nor he gave any signal and he was driving the same in rash and negligent manner and, as such, lost control of the vehicle which caused the injuries. The appellant sustained fracture on the left leg above the knee as well as below the knee. She also sustained grievous injuries on her left arm which was fractured as well as received bruises and lacerated wounds all over her body. The appellant was removed to Holy Family Hospital where she remained from July 3, 1981 to August 6, 1981 and she continued to receive treatment even till the date of filing of the petition. The claim for Rs. one lakh was made against the respondents, which included respondent no.3 who was the insurer of the vehicle driven by respondent no.1.

(3) The petition was contested by the Insurance Company as well as by other respondents. The factum of accident was admitted but the negligence on the part of the driver was denied and it was stated that the vehicle was moving at a very low speed and the petitioner got afraid while it was taking a turn and started moving negligently and she got injured herself.

(4) The following issues were framed:

1. Whether the accident was caused due to rash and negligent driving of Van No. DHG-5783 by respondent no.1? Opp

2.To what amount of compensation, the petitioner is entitled and from whom?

3.Whether the Insurance Company is not liable as alleged in their preliminary objection in written statement? Opr 3.

4.Relief.

(5) The learned judge disposed of issue no.1 by holding that the accident took place only on account of rash and negligent driving on the part of respondent no.1. The injuries as suffered by the appellant were considered on the basis of the statement of the Doctor and that the appellant was admitted in hospital having pain and swelling in left arm, left thigh, left leg and ankle and she was having abrasions on the inner side of the left ankle. The appellant was having pregnancy of about 28 weeks and she was operated on 17th July, 1980 and her left ankle and left arm were under plaster. The Doctor further deposed that the petitioner delivered a male child which was dead. The injuries were, accordingly, held proved. The Tribunal then proceeded to determine the quantum of compensation and awarded the following amounts for the Heads as indicated:

1.Amount on account of special dietRs.2,500.00 medicines, treatment, conveyance etc.

2.Loss of earningsRs.6,000.00

3.Damages assessed for pain & suffering Rs. 20,000.00

4.Loss of child Rs. 2,500.00

The Tribunal, accordingly, awarded a sum of Rs.31,000.00 and disposed of the claim petition of the appellant.

(6) The appellant is aggrieved by the order of the learned Judge and has filed this appeal for enhancement. I have heard learned counsel for the appellant as well as of respondents.

(7) The Tribunal has considered the matter with elaborate reasoning but has fallen into an error with regard to the award of compensation which is not proportionate to the pain, injuries and the suffering of the appellant in the unfortunate accident.

He has awarded only a sum of Rs.6,000.00 for loss of earnings despite the fact that it was evident that the appellant could not do physical labour for a considerable period. The amount in this regard does not seem to be just and equitable. The second head of which the compensation is assessed is the award of Rs.2,500.00 for diet, medicines, treatment, conveyance etc. It is not denied that the petitioner was admitted in Holy Family Hospital where she remained admitted from 3rd July, 1981 to 6th August, 1981 and received treatment. The compensation of Rs. 2,500.00 on this count is also on the lower side.

(8) The compensation for loss of child as assessed at Rs. 2,500.00 is based on reasoning which rather looks strange and the learned judge has obviously not considered that the loss of a child cannot be brushed aside by saying that since the appellant had not seen any love and affection towards that child because the child was not born is rather far-fetched and imaginary .The loss of child whether the child is born or is in the womb of the mother is irreparable loss that causes pain and anguish to the mother is no less and to award a low amount of Rs. 2,500.00 does not seem to be justified and adequate. The same can be said about the compensation of Rs. 20,000.00 as awarded for pain, suffering and injuries sustained by the appellant.

(9) The learned counsel for the appellant , on the other hand, has not referred me to any precedent and the evidence on record to justify the award for the amount of Rs. one lakh as claimed by the appellant. The case has to be disposed of on some guess work in the award of compensation in such cases.

(10) I have considered the contentions raised as well as perused the record. It will not be necessary for me to apportion the compensation on different Heads as dealt with by the Tribunal. It is reasonable to hold that the compensation requires to be enhanced and it will be in the interest of justice that the same is enhanced from Rs. 31,000.00 to Rs. 50,000.00. The learned counsel for the appellant states that the appellant has only received a sum of Rs. 31,000.00 and no interest has been paid in respect of that amount. The appellant, Therefore, shall be entitled to interest at the rate of 12 per cent per annum on the awarded amount, which is now enhanced to Rs. 50,000.00 from the date of petition till realisation. The amount already paid shall be taken into account to work out the interest now held payable. The appeal is allowed in the above terms. The appellant shall also be entitled to costs which are quantified at Rs. 2,000.00.