

Ramesh Chandra

Vs

Randhir Singh and Others

With

Randhir Singh

Vs

Ramesh Chandra and Others

Civil Appeal No. 1188 of 1977

(L. M. Sharma, M. M. Punchhi JJ)

03.05.1990

JUDGMENT

PUNCHHI J. -

1. This appeal and special leave petition are cross cases in nature and are directed against the judgment and order dated December 7, 1976, passed by a Division Bench of the High Court of Allahabad at Allahabad in F.A.O. No. 444 of 1976.

The facts established before the Motor Accidents Claims Tribunal, Bulandshahr, and re-oriented before the High Court were that Randhir Singh, while driving a tempo on October 10, 1972, on a road leading from Bulandshahr to Sikandrabad, was hit head-on by a speeding truck owned by Ramesh Chandra, as a result of which his tempo was thrown into a nearby ditch whereby he sustained injuries on both his legs and his several bones were fractured as well. This was followed by the lodging of a report at Police Station, Sikandrabad and putting the injured at District Hospital, Bulandshahr wherefrom he was removed to Safdarjung Hospital, New Delhi for final treatment. The permanent result was that a part of the right foot of Randhir Singh had to be amputated as his toes had become gangrenous.

3. Randhir Singh moved the Motor Accident Claims Tribunal, Bulandshahr, seeking damages to the tune of Rs. 1 lakh. The contestants being Ramesh Chandra the owner of the truck, its driver and the insurance company took various defences to negative the claim. The matter was focussed by the issues framed. The Tribunal by an elaborate and well reasoned order fixed negligence on the truck driver and held the injured entitled to compensation. In the measurement thereof the Tribunal took note of the age of the claimant to be 22 years and his expected income as a driver of a motor vehicle at a minimum rate of Rs. 300 p.m., expected to be earned for at least 22 years in the coming. The figure thus arrived was at Rs. 79,200 and that being lump sum payment determined at Rs. 55,000 to be adequate compensation for the permanent disability suffered by the claimant. Besides the Tribunal granted Rs. 3,000 on account of expenses of treatment. Under the head of general damages for pain, suffering and loss of enjoyment of life the Tribunal awarded a sum of Rs. 20,000 as

compensation. Thus a total award of Rs. 78,000 was made in favor of the claimant. Rs. 50,000 was ordered to be paid by the insurance company as its liability was found to be limited to that extent. The remaining Rs. 28,000 was ordered to be paid by the owner. The claimant also got three-fourth of his costs.

4. Three separate appeals were filed before the High Court; one by the dissatisfied claimant; the second by the aggrieved truck owner and the third by the aggrieved insurance company. The High Court dealt with the matter in equal elaboration. It affirmed the view of the Tribunal in granting compensation under the three heads aforementioned. However, the award was improved to the extent that the claimant also got interest at the rate of 6 per cent per annum on the amount of compensation from November 11, 1972, the date on which the claim petition was filed up to the date of the payment thereof; subject of course to suitable adjustments in the event of any payment having already been made to the claimant.

5. In Civil Appeal No. 1188 of 1977, preferred by the owner of the truck, leave was granted limited to grounds II and XIX of the special leave petition. In ground II the question raised was that when the claimant had not claimed interest in the application, and the Tribunal had not awarded any, the High Court was in error in granting interest under Section 110-CC of the Motor Vehicles Act where the power of the court or the Tribunal was discretionary. In ground No. XIX, the question raised was that a sum of Rs. 20,000 on account of mental agony, pain and suffering etc. was arbitrarily granted, and thus ought to have been taken to be covered by the compensation granted on account of loss earning. In Special Leave Petition No. 5344 of 1977 the claimant has asked for more compensation, interest etc. on each count.

6. We have heard learned counsel for the parties and have perused the appeal papers, in particular regard of the limited nature of appeal of the truck owner. Section 110-CC, as it stood on the date of the accident, provided that where any court or Claims Tribunal allows a claim for compensation made under the Act, such court or Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. The caption of the provision is "Award of interest where any claim is allowed". The question of award of interest is dependent on the claim being allowed. Should the claim be not allowed, the question of grant of interest would not arise, and if awardable it is in addition to the amount of compensation. The court or Tribunal, in these circumstances, should determine, in the first instance, claim for compensation and in the event of its being allowed can further exercise the discretion to grant simple interest in terms thereof, but as an additive to the amount of compensation. So the addition of interest to the compensation, by judicial discretion, is sequential in the eye of law and no claim in that regard, in our view, specifically need be laid in so many words in the claim petition. The grant of interest, in our view, is not dependent on any pleading in that regard and can even be orally asked if the contingency arises. Thus, in our view, there is no substance in ground II of the special leave petition and the attack to the grant of interest is negated.

7. With regard to ground XIX covering the question that the sum awarded for pain, suffering and loss of enjoyment of life etc. termed as general damages should be taken to be covered by damages granted for loss of earnings is concerned that too is misplaced and without any basis. The pain and suffering and loss of enjoyment of life which is a resultant and permanent fact occasioned by the nature of injuries received by the claimant and the ordeal he had to undergo. If money be any solace, the grant of Rs. 20,000 to the claimant represent that solace. Money solace is the answer discovered by the law of torts. No substitute has yet been found to replace the element of money.

This, on the face of it appeals to us as a distinct head, quite a part from the inability to earn livelihood on the basis of incapacity or disability which is quite different. The incapacity or disability to earn a livelihood would have to be viewed not only in praesenti but in futuro on reasonable expectancies and taking into account deprivation of earnings of a conceivable period. This head being totally different cannot in our view overlap the grunt of compensation under the head of pain, suffering and loss of enjoyment of life. One head relates to the impairment of a person's capacity to earn, the other relates to the pain and suffering and loss of enjoyment of life by the person himself. For these reasons, we are of the considered view that the contentions raised by the truck owner appellant in that behalf must be negated and we hereby negate them.

8. With regard to further enhancement of compensation and further enhancement of interest, as claimed in the special leave petition by the claimant, we find in the facts and circumstances of this case, no scope in that regard.

9. As a result of the afore discussion, both these matters are without merit and are accordingly dismissed. Parties to bear their own costs.

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