

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 829 of 2001

Appellant :- Delhi Transport Corp. New Delhi

Respondent :- Sanjai Srivastava And Others

Counsel for Appellant :- Avinash Swarup, Vishesh Kumar Gupta

With

Case :- FIRST APPEAL FROM ORDER No. - 828 of 2001

Appellant :- Delhi Transport Corp. New Delhi

Respondent :- Sanjai Srivastava And Others

Counsel for Appellant :- Avinash Swarup, Vishesh Kumar Gupta

With

Case :- FIRST APPEAL FROM ORDER No. - 827 of 2001

Appellant :- Delhi Transport Corp. New Delhi

Respondent :- Shri Sanjai Srivastava And Others

Counsel for Appellant :- Avinash Swarup, Vishesh Kumar Gupta

Counsel for Respondent :- A.C.Srivastava

With

Case :- FIRST APPEAL FROM ORDER No. - 830 of 2001

Appellant :- Delhi Transport Corp. New Delhi

Respondent :- Km. Garima Minor And Others

Counsel for Appellant :- Avinash Swarup, Vishesh Kumar Gupta

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant.
2. No one appears on behalf of respondents in F.A.F.O. No.829 of 2001 despite service of notice.
3. Since, all these appeals are arising out of same accident and involves common issues, therefore, all the appeals are being decided together with this common judgement.
4. For convenience, the facts are being delineated from F.A.F.O.

No.829 of 2001.

5. All the aforesaid appeals have been preferred by the appellant-Corporation against the award dated 08.03.2001 passed by the Motor Accident Claims Tribunal/Additional District & Sessions Judge, Court No.11, Muzaffar Nagar (hereinafter referred to as 'Tribunal') in M.A.C.P. No.5 of 1992 alongwith connected claim petitions.

6. Challenging the aforesaid award, learned counsel for the appellant has contended that in the instant case, the Bus No.D.E.P-9976 was owned by the appellant which met with an accident with Maruti Car No.D.B.B-7815 owned by one Maraka Grates Pharma. It is submitted that it is a case of accident of two vehicles coming from opposite direction, and therefore, there was some negligence of the driver of Maruti Car in the accident, and Tribunal has erred in law in holding the sole negligence of driver of bus in the accident. It is further submitted that in such view of the fact, the Tribunal should have apportioned the negligence of drivers of both the vehicles equally, and it should have reduced the compensation accordingly.

7. Learned counsel for the appellant has assailed the award on the quantification of compensation only in F.A.F.O. No.829 of 2001 which arises out of M.A.C.P. No.5 of 1992.

8. On the issue of quantification of compensation, it is urged by the learned counsel for the appellant that claimant/respondent did not suffer any loss of income due to the injuries suffered by him in the accident. It is submitted that claimant/respondent being Class-I employee of Central Government has been reimbursed the entire medical expenses, and therefore, the Tribunal has erred in law in awarding medical expenses to the tune of Rs.2,92,000/- It is further urged that claimant/respondent was a Class-I employee of Central Government and there was no evidence on record that for the period of leave of about one year, he was not paid any salary and thus, the award of Rs.78,000/- under the head of loss of income for one year is illegal. It is also urged that Rs.10,20,000/- awarded by the Tribunal towards treatment in foreign country is also excessive inasmuch as the same has been awarded without there being any evidence on record. Accordingly, it is submitted that compensation awarded by the Tribunal is excessive and needs reduction.

9. Per contra, learned counsel for the respondents, who appears in F.A.F.O. No.829 of 2001, submits that finding of the Tribunal on

the issue of quantification of compensation is based upon proper appreciation of evidence and facts on record and same does not call for any interference by this Court.

10. I have considered the rival submissions of the parties and perused the record.

11. So far as the contention of learned counsel for the appellant-corporation in respect of contributory negligence is concerned, the Maruti Car was owned by one Maraka Grates Pharma and admittedly, the claimant/respondent and other injured persons and deceased were travelling in Maruti Car. It was a case of composite negligence, and therefore, it is the choice of the claimant to claim compensation from either of the tortfeasors. In the instant case, claimant has chosen to recover the amount from the owner of the offending vehicle, and therefore, following the judgment of Apex Court in the case of ***Khenyei Vs. New India Assurance Company Limited and others (2015) 9 SCC 273***, the contention of learned counsel for the appellant in respect of contributory negligence is not tenable in law and is hereby rejected. However, it is open to the appellant-corporation to recover the amount from the owner of the Maruti Car to the extent of negligence in the accident in an appropriate legal proceedings in view of the judgement of Apex Court in the case of ***Khenyei (supra)***.

12. So far as the issue of quantification of compensation is concerned, it is not in dispute that claimant/respondent in F.A.F.O. No.829 of 2001 has suffered 64% disability and because of the disability suffered by him, his movement has been restricted and since admittedly, there was 64% disability, therefore, this Court does not find any substance in the submission of learned counsel for the appellant with regard to amount awarded for the loss of income.

13. So far as the award of medical expenses is concerned, appellant did not prove that amount incurred in the medical expenses by the claimant/respondent was reimbursed to him. In such view of the fact, this Court does not find any substance in the submission of learned counsel for the appellant with regard to amount awarded towards medical expenses.

14. The record reveals that Tribunal has also awarded Rs.10,20,000/- which claimant/respondent was likely to spend for treatment in foreign country. The Court has perused the original record of the case and finds that claimant/respondent had undergone the treatment in All India Institute of Medical Sciences

and he had been given best treatment available in India. The record further reveals that several doctors appeared before the Tribunal and deposed that claimant/respondent got the best treatment available in India.

15. In the testimony of P.W.3-Dr. Surya Bhan, Professor of Orthopaedic, it has come on record that best possible treatment was given to the claimant/respondent and he was also advised to have treatment in abroad also. The Tribunal in awarding the aforesaid amount has placed reliance upon the fax message from Johns Wakens Department of Orthopaedics Surgery Baltimore.

16. It is pertinent to note that the accident had taken place on 06.07.1991, and claim petition was decided on 08.03.2001 after about ten years from the date of institution of claim petition, but claimant/respondent did not go for treatment in foreign hospital. Except in the statement of P.W.3, no other doctor, who appeared on behalf of the claimant/respondent, advised him for treatment in foreign country. There was no evidence on record indicating that amount of Rs.10,20,000/- awarded by the Tribunal for the expenses likely to be incurred in foreign country had been spent by the claimant/respondent. Therefore, this Court is of the view that award of Rs.10,20,000/- for treatment which is likely to be incurred in foreign country is not sustainable in law.

17. So far the amounts awarded in other heads are concerned, the Tribunal has rightly awarded them. In such view of the fact, the compensation in F.A.F.O. No.829 of 2001 is reduced by Rs.10,20,000/-.

18. Lastly, it is urged that the award of 10% interest is also excessive. The claim petition was instituted in the year 1992 and at that time, the prevailing rate of interest was 10% on the fixed deposits. Accordingly, this Court does not find any good ground to reduce the rate of interest as awarded by the Tribunal.

19. Thus, for the reasons given above, the F.A.F.O. No.829 of 2001 is partly **allowed** and award of the Tribunal is modified to the extent indicated above. The F.A.F.O. Nos.828 of 2001, 827 of 2001 and 830 of 2001 lack merit and are hereby **dismissed** with no order as to costs.

Order Date :- 30.10.2023
Sattyarth