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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 30th SEPTEMBER, 2019

+ FAO 114/2017 & CM Nos.8808-8809/2017, 8812/2017,
45911/2018 and 46931/2018

GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI

..... Appellant

Through: Mr. Gautam Narayan, ASC with
Ms. Shivani Vij and Mr. D. Shahi, Advocate

versus

MANOHAR SINGH AND ORS

..... Respondents

Through: Mr. Om Prakash Gupta, Adv. for
R-1 with R-1 in person

Mr. Dev P. Bhardwaj, CGSC with Mr. Jatin
Teotia, Advocate for UOI

+ FAO 241/2017 & CM Nos.19986-19987/2017, 20109/2017 and
45912-45913/2018

UNION OF INDIA

..... Appellant

Through: Mr. Dev P. Bhardwaj, CGSC with
Mr. Jatin Teotia, Advocate for UOI

versus

MANOHAR SINGH AND ORS

..... Respondents

Through: Mr. Om Prakash Gupta, Adv. for
R-1 with R-1 in person

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. These appeals arise out of the proceedings relating to civil suit
(CS no.183/2015) which was instituted by the first respondent on

30.06.2015, the claim for damages preferred having arisen out of the injuries suffered by him (plaintiff) in an unfortunate incident of bomb blast that had occurred near Gate nos.4 & 5 of this court on 07.09.2011. By judgment dated 28.01.2016, rendered *ex parte* against the appellants, Additional District Judge awarded damages in the sum of Rs.3 Lakh with simple interest at the rate of 9% p.a. with effect from 07.09.2011 (the date of the bomb explosion) alongwith further damages in the sum of Rs.2 Lakhs for mental trauma and harassment in favour of the plaintiff, the appellants herein – judgment debtor nos.1 and 2 – having been burdened with the liability to pay. The appellants had later moved the trial court with applications under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC) which were dismissed by the order which is impugned by the present appeals.

2. There is no dispute as to the fact that the first respondent (decree holder) had indeed suffered injuries in the above mentioned incident. It is also well conceded that in WP(C) 6686/2011, a division bench of this court, by order dated 21.09.2011, had issued certain directions, in terms of which a person who may have suffered grievous injuries in the said incident was to be entitled to the benefit of enhanced compensation of Rs.3 Lakh in contrast to the compensation of Rs.20,000/- for those who may have suffered minor injuries, the dispensation with regard to those who may have perished or suffered permanent disability being not relevant here.

3. It appears that the decree holder had been examined for purposes of evaluation of the nature and extent of injuries suffered by him by the medical authorities of Dr. Ram Manohar Lohia Hospital (RML Hospital), New Delhi, (third respondent), a medical institution of the Government of India. As per the assessment communicated to the decree holder on 11.04.2012, he was placed in the category of simple injury, it being noted in the said communication that the clinical examination, the occupational therapy assessment and plastic surgery opinion revealed that he had a healed scar on calf with good function of knee and ankle, he being an ambulant patient. It may also be noted here that the decree holder had challenged the said assessment by WP(C) 3340/2012 wherein certain directions were given by a learned single Judge, it leading to review of the status of the decree holder by a medical board, its opinion reiterating he to be a case of simple injury, this having been communicated on 10.04.2013 with reasons set out as under :-

“Mr. Manohar Singh sustained soft tissue injury to the right calf, for which he was admitted to this hospital. There was no associated bony or neurovascular injury. He was discharged from hospital after two days and was asked to follow up for dressings on outpatient basis. Mr. Manohar Singh turned up at regular intervals to the outpatient department of the hospital for follow up.”

4. It also needs to be mentioned at this stage itself that the decree holder was not satisfied and he moved the writ court with fresh application, the directions issued whereupon led to the constitution of

a fresh medical board which, however, reiterated the earlier opinion as communicated by letter dated 30.06.2014.

5. The civil suit claiming damages not only for the injuries but also for mental trauma and harassment was instituted by the decree holder on 30.06.2015 impleading, besides the appellants, the hospital in question as the third defendant, the claim being that the injuries suffered were grievous in nature reliance, *inter alia*, being placed on the definition of the expression “*grievous hurt*” as given in Section 320 of the Indian Penal Code, 1860 (IPC).

6. It is not in dispute that the appellants were duly served. It is not in dispute that there was no appearance at all on behalf of the appellant in the first captioned appeal i.e. Government of National Capital Territory of Delhi (GNCTD). It is also not in dispute that on behalf of the appellant of the second captioned matter i.e. Union of India (UOI), a proxy counsel did appear once but then there was default right till the date the impugned judgment was passed *ex parte* on the basis of *ex parte* evidence led by the decree holder (plaintiff).

7. As mentioned earlier, the appellants had moved applications under Order IX Rule 13 CPC, the prime contention expressed therein being that there were some internal communication gaps within the departments of the respective governments. The trial judge was not satisfied with the explanations and thus dismissed the applications with costs of Rs.20,000/- to be borne equally by the appellants, the order rendered to such effect on 25.02.2017 being under challenge by the present appeals.

8. Given the above backdrop, this Court finds no merit in the contentions urged vis-à-vis the dismissal of the applications under Order IX Rule 13 of the CPC. There is no contest to the fact that the appellants were duly served, the notices having been addressed and delivered at the office of Secretary of Home Department of each government. It is not the concern of the plaintiff (decree holder) as to which department within the government would have been responsible to put in contest or defend the claim. It was for the concerned officers of the said departments to take care. It is not a case where the trial judge hurried into deciding the claim presented through the civil suit. The proceedings in the trial court show that after the defendants had been set *ex parte* on 23.10.2015, the matter was adjourned to 10.11.2015 for adducing evidence in defence. The evidence was led by the plaintiff on the said date where-after the matter was adjourned further to 03.12.2015. The arguments could not be heard on the three subsequent consecutive dates i.e. 03.12.2015, 22.12.2015 and 15.01.2016. The case was finally decided only on 28.01.2016. The appellants had ample time and opportunity to awake from deep slumber and come back to the court to seek opportunity for participation which they failed to do. In these circumstances, this court finds no reasons to interfere with the impugned order whereby the applications under Order IX Rule 13 of the CPC have been dismissed.

9. It will be appropriate, at the same time, also to deal with another contention which was urged by the counsel for GNCTD

during the course of hearing. His submission, made with reference to *Ramesh Chand Ardawatiya vs. Anil Panjwani*, (2003) 7 SCC 350 and *Union of India vs. Ravinder Kumar*, (2015) 12 SCC 291, was essentially that even though no pleadings had been filed on behalf of the defendants against whom the relief was eventually granted, it was the obligation of the civil court to formulate the points for determination and given the previous history, as noted at the outset, to take into consideration and render some opinion respecting the evaluation by the three medical boards of the third defendant – RML Hospital. This court finds that the impugned judgment does not suffer from any such deficiency. The evaluation of the injuries by the medical boards, from the given material, was apparently based on clinical assessment and the effect on the tissues or neurological system of the lower limb of the decree holder. The trial Judge instead has gone by the period for which the victim (plaintiff) was rendered incapacitated so as to be guided by the eighth clause of Section 320 IPC. There is a finding of fact returned, on the basis of evidence led, that the plaintiff was unable to follow his ordinary pursuits on account of the injuries suffered for more than twenty days. Indeed, the statute referred to classifies such injury in the category of “*grievous hurt*”.

10. In the above facts and circumstances, the appeals are found devoid of substance and consequently dismissed. The pending applications are also dismissed.

R.K.GAUBA, J.

SEPTEMBER 30, 2019/yg