
(2007) 08 P&H CK 0105
In the Punjab And Haryana At Chandigarh
Case No : First Appeal Order No. 241 of 1987

Amarjit Kaur Bhatti

APPELLANT

Vs

Kashmiri Lal and others

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Citation : (2009) 2 AICJ 110 : (2008) 1 RCR(Civil) 456

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Mr. Anurag Chopra, AdvocateFor the Respondent No. 4, Mr. L.M. Suri, Sr. Advocate, with Mr. Neeraj Khanna, Advocate., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J.—This order shall dispose of FAO Nos. 489 of 1987 titled as New India Assurance co. Ltd. v. Dr. Mrs. Amarjit Kaur Bhatti and others, 490 of 1987 titled as New India Assurance Co. Ltd. v. Smt. Parkash Kaur and others and FAO No. 241 of 1987 titled as Dr. Mrs. Amarjit Kaur Bhatti v. Kashmiri Lal & others, as they arise out of the same motor vehicular accident.

FAO No. 241 of 1987

The claimant Dr. Mrs. Amarjit Kaur Bhatti alongwith Baldev Singh, Smt. Raj Kumari, was travelling on 1681983 in jeep bearing registration No. PJF941 in connection with the official duty and they were proceedings towards Moga. The jeep was being driven by Harbans Singh. When the jeep reached a little ahead of Petrol Pump, bus No. PNB 7288 driven by Kashmiri Lal belonging to State Transport Company Pvt. Ltd., came at a very high speed and struck against the jeep resulting in the death of Harbans Singh, driver of the jeep and simultaneously claimant Dr. Mrs. Amarjit Kaur suffered multiple injuries. The other companions also suffered injuries. It was claimed that the accident had occurred due to rash and negligent driving of the bus by Kashmiri Lal, respondent No. 1.

3. Dr. Mrs. Amarjit Kaur Bhatti claimed a sum of Rs. 5 Lacs as compensation on account of injuries sustained by her, whereas the legal heirs of Harbans Singh

claimed a sum of Rs. 1,50,000/ as compensation on account of death of Harbans Singh.

4. The claim petition was contested by the respondents and it was claimed that the accident had taken place due to rash and negligent driving of the jeep which was being driven by Harbans Singh and, therefore, the respondents were not liable to pay amount of compensation.

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

"1. Whether Harbans Singh deceased died on account of rash and negligent driving of Kashmiri Lal respondent ? OPD

2. Whether the claimants are legal heirs and dependent of the deceased Harbans Singh and entitled to compensation. If so, to what amount and from whom ? OPC

2A Whether Dr. Smt. Amarjit Kaur suffered injuries on account of rash and negligent driving of Kashmiri Lal respondent ? OPC

2B Whether Dr. Smt. Amarjit Kaur is entitled to compensation ? If so, to what amount and from whom ? OPC

3. Relief."

Issue Nos. 1 and 2A were decided together and it was held that the accident had taken place due to rash and negligent driving of the Bus being driven by Kashmiri Lal, respondent No. 1 which resulted in the death of Harbans Singh driver of the jeep and multiple injuries were suffered by Dr. Mrs. Amarjit Kaur Bhatti.

6. In the case filed by L.Rs of Harbans Singh, on issue No. 2, the claimants were held to be legal heirs of the deceased Harbans Singh and were held entitled to compensation to the tune of Rs. 76,800/. However, no appeal has been filed by the claimants/legal heirs of Harbans Singh.

7. However, on issue No. 2B, the learned Motor Accident Claims Tribunal, Ferozepur (hereinafter referred to as the "Tribunal") has been pleased to grant a sum of Rs. 1,10,000/ as compensation to Dr. Mrs. Amarjit Kaur Bhatti on account of the injuries suffered by her.

8. Mr. Anurag Chopra, learned counsel appearing on behalf of the appellant, has challenged the findings of the learned Tribunal recorded on issue No. 2B on the ground that the compensation granted to Dr. Mrs. Amarjit Kaur Bhatti for the injuries sustained by her, is inadequate. The contention of the learned counsel for the appellant was that Dr. Mrs. Amarjit Kaur Bhatti had suffered head injury, injury on the nose, base of orbit of the left eye, both jaws, panfacial fracture of face, loss of teeth, right ribs were fractured, and liver spleen was ruptured, both bones of the left lower leg were fractured and as a result of the injuries, she is said to have suffered diplopia, total loss of smell headache and giddiness. The said injuries were proved by Dr. Abraham Thomas, Assistant Professor, Plastic Surgery, CMC Hospital, Ludhiana. It was proved on record that she remained

admitted in Hospital from 1681983 to 991983 and was also operated upon during this period. Again she was admitted on 20101983 in the Hospital where she remained as indoor patient till 28101983 and she was again operated for the injuries suffered by her. It was also recorded that the loss of binocular vision was permanent. The loss of disfigurement of face, loss of teeth and smell were also held to be permanent and deformity was held to be about 50%.

9. The learned Tribunal awarded a sum of Rs. 10,000/ for loss of her salary for the period during which she could not attend her duties. With regard to the expenditure incurred on her treatment, the learned Tribunal was pleased to grant a sum of Rs. 25,000/ keeping in view the fact that the medical reimbursement does not cover all the expenses which a person has to incur on his treatment. However, the claim with regard to attendant was rejected keeping in view the fact she was still in service and is capable of performing her duties properly. So far as the compensation, under the heads "Pain and suffering" and "physical disabilities", is concerned, the learned Tribunal has been pleased to grant a sum of Rs. 75,000/.

10. The learned counsel for the appellant by placing reliance on the judgment of this Court in the case of Rajesh v. Surjeet Singh and others, 2005(2) RCR(Civil) 486 : 2006 ACJ 761, contended that the compensation awarded by the learned Tribunal for pain and suffering is totally inadequate. His contention was that in spite of proof of injuries and permanent disfigurement, the compensation awarded is on the lower side. Para 13 of the said judgment relied upon by the learned counsel for the appellant reads as under :

" If the approach adopted by the M.A.C.T. is examined in the light of the principles stated above, then no doubt is left that the award of compensation is extremely on lower side. Injured claimant appellant deserves to be awarded at least Rs. 2,00,000/ for 25 per cent permanent disability suffered by him. He also deserves to be awarded at least a minimum amount of Rs. 1,00,000/ for the loss of business prospects as there is ample evidence on record to record a finding that there was loss of business prospects and the matrimonial prospects. Accordingly, the award of the M.A.C.T. is modified by enhancing the amount of Rs. 25,000/ awarded for shortening of legs to Rs. 2,00,000/ Total amount of the award comes to Rs. 5,00,000/. The award on other counts is confirmed. The final picture which emerges is as follows :

(1) Compensation for expenses incurred by the injured claimant for his treatment

: Rs. 70,000/

(2) Nursing expenses

: Rs. 5,000/

(3) Compensation on account of pain and suffering

: Rs. 25,000/

(4) Compensation in lieu of 25 percent of permanent disability including shortening of 11/2" of height, impairment of mastication, working and walking.

: Rs. 2,00,000/

(5) For loss of matrimonial prospects

: Rs. 1,00,000/

(6) For loss of business prospects

Rs. : 1,00,000/"

Learned counsel for the appellant also placed reliance on the judgment of the Hon"ble Karnataka High Court in the case of K. Jagannath Rai v. Ganbarathna C. Bai and others, 2004 ACJ 982, wherein it has been held as under :

"26. The Tribunal has awarded a sum of Rs. 10,000/ towards loss of income. The Tribunal has arrived at this sum taking into account the salary of Rs. 10,000 paid by the appellant to Nagaraj, PW4. PW4, in his evidence, has stated that since March 1996 he has been serving in the appellant's firm and has been paid monthly salary of Rs. 5,000. PW4 has stated that even as on the date of deposition he was working in appellant's firm. Nothing is elicited in the crossexamination of PW4 which could destroy the credibility of his evidence. If that is so, it is totally unreasonable for the Tribunal to award Rs. 10,000 only under the head "loss of income". The services of PW4 were engaged by the appellant to do the service which otherwise the appellant would have done for himself. In that view of the matter, award of Rs. 10,000 is very meagre and should be regarded as a token compensation. At the rate of Rs. 5,000 per month, the appellant must have paid a sum of Rs. 2,30,000/ for the period from March 1996 to the end of December, 1999. But there is no concrete evidence that services of PW4 had been utilised exclusively to compensate the deprivation of the services available to the firm from the appellant. In that view of the matter, we think that compensation of Rs. 1,50,000/ towards loss of income would be a reasonable and fair compensation.

27. The claims Tribunal has awarded Rs. 20,000 under the head "loss of amenities". Here again, we are of the considered opinion that sum of Rs. 20,000 is a meagre compensation to be awarded under head "loss of amenities" if we keep in mind the grievous injuries 3 and 5 and the medical evidence produced by the appellant. The Tribunal has not properly appreciated the evidence of the doctors, and other medical evidence adduced in the case and has over simplified the injuries. Keeping in mind the grave nature of injuries suffered by the appellant and also the principles to which reference has been made supra governing the determination of compensation under the head "loss of amenities", we think that a sum of Rs. 50,000 would be a just and reasonable compensation under the said head and accordingly we award a sum of Rs. 50,000. For the very same reasons, we increase compensation for shortening of life time from Rs. 10,000 to Rs. 25,000. Even the rate of interest awarded by the

Tribunal at 6 per cent having regard to the recent trends of judicial pronouncements is on lower side. The Tribunal, therefore, ought to have awarded interest at least at the rate of 8 per cent. Accordingly, we enhance the rate of interest from 6 per cent to 8 per cent.

28. Thus, the appellant is entitled to total compensation of Rs. 2,85,000/ under the following heads :

(1)

Pain and suffering

: Rs. 30,000

(2)

Expenses of treatment

: Rs. 30,000

(3)

Loss of income

: Rs. 1,50,000

(4)

Loss of amenities

: Rs. 50,000

(5)

Compensation for shortening of life

: Rs. 25.000

12. I find force in the contention raised by the learned counsel for the appellant. Keeping in view the nature of the injuries suffered by the claimant Dr. Mrs. Amarjit Kaur Bhatti, the compensation of Rs. 75,000/ awarded by the learned Tribunal is on the lower side. Having regard to the injuries as well as the permanent disability suffered by her and on account of pain and suffering, it is held that the claimant is entitled to a sum of Rs. 2,00,000/ (Rs. Two lacs) only. In addition thereto, the claimant would also be entitled to a sum of Rs. 25,000/ (Rs. Twenty thousands) on account of medical expenses incurred by the claimant on her treatment and a sum of Rs. 10,000/ (Rs. Ten thousands) as awarded by the learned Tribunal on account of loss of salary. However, it is held that the other claims raised by the claimants have been rightly rejected by the learned Tribunal.

13. Consequently, findings recorded by the learned Tribunal on issue No. 2B are modified and it is held that claimantappellant Dr. Mrs. Amarjit Kaur Bhatti shall

be entitled to a total compensation of Rs. 2,35,000/-. She would also be entitled to interest @ 9% per annum on the enhanced amount of compensation From the date of filing of claim petition till realisation. However, liability of Insurance Company shall be limited to Rs. 50,000/ (Rs. Fifty thousands) only in view of the decision in FAO Nos. 489 and 490 of 1987. The Insurance Company is directed to make the payment to the claimants and recover from the owner.

FAO Nos. 489 and 490 of 1987

14. These appeals have been filed by the Insurance company against the impugned part of the award of the learned Tribunal whereby the total liability to pay compensation to the claimants has been fastened on the Insurance Company.

15. Mr. L.M. Suri, learned senior counsel for the appellant insurance company contended, that the liability of the Insurance Company was only limited to Rs. 50,000/ in terms of Section 25(2) of the Motor Vehicles Act, 1939. The contention of the learned senior counsel was that as per terms and conditions contained in the insurance policy, the Insurance company was liable to pay compensation only to the extent of Rs. 50,000/ and not to the entire amount of compensation as awarded by the learned Tribunal. In support of this contention, reliance was placed on the judgment of the Hon"ble Supreme Court in the case of Oriental Insurance Co. Ltd. v. Cheruvakkara Nafeessu and others, 2001(1) RCR(Civil) 475 : JT 2001(1) SC 341, wherein the Hon"ble Supreme Court has been pleased to lay down as under :

"A conjoint reading of all the terms of the policy of insurance executed in this case indicate that total extent of liability of the insurance policy is Rs. 50,000/ but the company is liable to indemnify the insured against all sums including claimant's costs and expenses which insured becomes liable to pay and nothing in the policy affects the right of any person indemnified by the policy or any other person to recover an amount under or by virtue of the provisions of Section 96 of the Act. However, the insured is liable to repay to the company all sums paid by the company which the company would not have been liable to pay but for the condition of liability relating to third party.

Despite holding the liability under the policy limited to the extent of Rs. 50,000/ the claim Tribunal and the High Court were not unjustified in directing the appellant company to pay the whole of the awarded amount to the claimants on the basis of the contractual obligations contained in clauses relating to the liability of the third parties and avoidance clause. However, the Claims Tribunal and the High Court were not justified in rejecting the right of the appellant company to recover from the insured the excess amount paid in execution and discharge of the award of the Tribunal.

The appellant company is liable to pay the entire award amount to the claimants. Upon making such payment the appellant can recover the excess amount from the insured by executing this Award against the insured to the extent of such excess as per Section 174 of the Motor Vehicles Act, 1988. No costs."

16. The learned senior counsel for the appellant Insurance Company further placed reliance on the judgment of this Court in the case of Vinay Dattatraya Deuskar and others v. Pepsu Road Transport Corporation, Patiala through the General Manager and others, 1997(3) RCR(Civil) 604 : (19972) PLR 824 and the judgment of the Hon"ble Supreme Court in the case of National Insurance Co. Ltd. v. Keshav Bahadur and others, 2004(2) RCR(Civil) 99 : JT 2004(2) SC 282, wherein it has been held as under :

Sections 95, 110A and 110CC Motor Vehicles accident Extent of the liability of the insurer in respect of third party Discretionary power of the Tribunal to award interest scope Death of a third party in a motor vehicle accident Legal heirs of deceased claiming compensation from the insurance company Under the policy of insurance liability of the company limited to Rs. 50,000 against the premium of Rs. 240 paid by the insured No extra premium paid for enhanced liability Tribunal awarding a compensation of Rs. 72,000/ with interest at the rate of 12 per cent High Court confirming the quantum of compensation but reducing the interest to 9 per cent High Court directing the payment of the amount within stipulated time failing which interest at the rate of 18 per cent was directed to be paid Whether insurer is liable to enhanced compensation than what is provided in the policy even in the absence of payment of any extra premium Whether discretionary award of penal interest valid. Allowing the appeal partly, held that since the liability of the insurer in terms of the policy was limited to Rs. 50,000 only, the insurer cannot be made liable for enhanced compensation. Once the discretion has been exercised by the Tribunal to award a simple interest on the amount of compensation to be awarded at a particular rate from a particular date there is no scope for retrospective enhancement for default in payment of compensation. Insurance company having deposited the statutorily fixed amount of Rs. 50,000 on 6.3.1988 in terms of High Court's orders, accordingly directed to pay interest at the rate of 9 per cent only from the date of the claim till the date on which the amount was deposited."

Learned senior counsel for the appellant insurance company also placed reliance on the judgment of this Court in FAO No. 869 of 1986 titled New India assurance Co. Ltd. v. Guru Nanak Transport company (Regd.) Patiala and others, 2007(1) RCR(Civil) 798, decided on 1172006.

17. Learned counsel appearing on behalf of the claimant respondents has not been able to dispute this proposition of law.

Consequently, both the FAO Nos. 489 and 490 of 1987 are allowed and it is ordered that the liability of the Insurance Company is limited to Rs. 50,000/ (Rs. Fifty thousands) only. The Insurance Company is first directed to make payment of entire amount of compensation to the claimants and thereafter can recover the same from the owner of the offending vehicle.