
(2000) 10 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : FAO 568 of 1986

Amit Kohli

APPELLANT

Vs

U.O.I.

RESPONDENT

Date of Decision : 03-10-2000

Acts Referred:

Citation : (2001) 1 RCR(Civil) 256

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. Dinesh Ghai, for the Appellant; Mr. D.D. Sharma, for the Respondent

Judgement

R.L. Anand, J.—Amit Kohli son of Shri Girdhari Lal (one of the injured) has filed the present appeal and it has been directed against the award dated 8.5.1986, passed by the Motor Accident Claims Tribunal, Ambala, who awarded a sum of Rs. 86,000/- by way of compensation for the injuries sustained by the appellant.

2. The brief facts of the case are that on 13.1.1985, at about 11.30 A.M., the appellant and his companion Ashok Kumar were going on a motor-cycle No. CHD-9101 to Surajpur. The motor-cycle was being driven by the appellant and Ashok Kumar was sitting on the pillion seat. When they reached near the Police Station, Chandimandir, a 3-Ton military truck No. T-77 D-26754-N was going ahead of the motor-cycle. The appellant blew the horn and he wanted to overtake the truck. However, the driver of the truck without giving any signal, indication or horn, suddenly turned the truck towards right side, as a result of which, the right bumper of the truck hit the motor-cycle and both the occupant were thrown and both of them received injuries. As per the appellant, the accident took place due to rash and negligent driving of the driver of the truck; namely Amar Singh. The appellant was a young boy of 20 years of age and he was working as a Clerk with the Punjab Small Industries Export Corporation and was drawing Rs. 750/- per month. He received extensive injuries and fracture on the left foot, left arm, left hand, left leg and other parts of the body. He remained

under treatment at the P.G.I., Chandigarh. According to the appellant, he became incapacitated for whole of his life and has already spent Rs. 10,000/- on his treatment. He remained confined to bed for sufficiently long time and was unable to pursue his studies and job. His motor-cycle was also damaged and he claimed a compensation to the tune of Rs. 3 lacs.

3. It may also be mentioned here that Ashok Kumar, companion of the appellant, also filed a separate claim petition and his claim petition was also disposed of vide the impugned award dated 8.5.1986 but he has not filed any appeal.

4. A joint trial was conducted of both the claim petitions. Written statement was filed by the Govt. of India and it denied the allegations. According to the Govt., the claim of the appellant was highly exaggerated. The Govt. came with the stand that on 13.1.1985, respondent No. 2 was driving the military truck in question and he was returning after training drive. The driver gave the signal through the light indicator as also by his right hand and slowed the vehicle in order to turn to his right to his Unit. The driver of the motor cycle, i.e. the appellant, ignored the signal and drove the motor-cycle in a rash and negligent manner. Finding that the truck was turning, the appellant applied the brakes of the motor-cycle suddenly and it became difficult for him to control the motor-cycle. The motorcycle toppled down and the occupants fell and received minor injuries. There was no contact between the motor-cycle and the truck. The accident had taken place on account of the negligence of the driver of the motor-cycle. Other objections were also taken by the Union of India that the claim petition is not legally maintainable against the Union of India because the military vehicle was on sovereign duty.

5. The Tribunal framed the following issues in order to dispose of the claim petition :-

"1. Whether the accident in question took place due to the rash or negligent driving of truck No. T-77-D-26754-N by its driver Amar Singh respondent No. 2?

2. What amount of compensation, if any, the petitioners are entitled, and if so from whom ?

3. Whether the truck in question was on sovereign duty and if so, to what effect ?

3A. Whether the Motor-cycle No. CHD-9101 was damaged in the accident in question, if any, the petitioner is entitled for the same ?

4. Relief."

6. The parties led evidence in support of their case and on the conclusion of the proceedings, issue No. 1 was decided in favour of the appellant. Issue No. 2 was decided partly in favour of the appellant and the Tribunal held that the appellant is entitled to the compensation of Rs. 86,000/- as against the claimed amount of Rs. 3 lacs. Issue No. 3 was also decided against the respondents. Under issue No. 3-A, the Tribunal awarded a sum of Rs. 3,500/- by way of compensation for

damage to the motor-cycle. Finally, a sum of Rs. 86,000/- was awarded by way of compensation to the appellant under various heads, for the reasons given in paras 18 to 27, which read as under :-"

18. Now I take up the case of Amit Kohli. As regards general damages, it is but apt to recall the statement of PW11 Dr. V.P. Bansal. According to him there were four injuries on the person of Amit Kohli. Both the bones of the left leg, left forearm and three metatarsal bones of the left foot were fractured. He had a small lacerated injury over the base of left ring finger. Dr. V.P. Bansal gave the evidence in the court on 15.3.1986 i.e. about 14 months after the occurrence. By that time, the fracture of the left forearm had united and but for some wasting of the muscle, the forearm was normal and there were minor limitations of movement of the left wrist. The fractures of the left leg had not united by then and Amit Kohli was still under plaster on that portion of the body. The doctor had advised the use of electric stimulator to enable the fracture to unite. There was mal-union of metatarsal bones leading to deformity over the left foot but the witness was not definite in view of the presence of the plaster on that part of the body. The claimant was still walking with the help of crutches because he could not put his full weight on his left leg. It was opined by the Dr. V.P. Bansal that even if the fractures of the left leg unite, still Amit Kohli would have about 50% disability of the total body. As regards the permanent disability of the left arm and the left foot it was assessed by the witness at 30% of the total body.

19. Depicting his own position, Amit Kohli deposed as PW7 that he was still using crutches. He continued to be under pain and was unable to follow his normal vocation of life. He has not been able to resume his job with the corporation.

20. On this aspect of the case the respondents have not led any evidence to refute the above circumstances. It is clear that Amit Kohli, a young man of 21 years, has been crippled. He has suffered lot of pain and mental anguish. He is from the age group which is supposed to be quite active but he has been rendered immobile. He remained admitted in the P.G.I., Chandigarh upto 14.2.1985 and during this period he was operated upon four times. Even thereafter Amit Kohli had to visit the hospital repeatedly for check up and follow up treatment. Even after 14 months of the accident, the claimant was yet in pain. The deformities developed by the claimant are likely to impair his enjoyment in his future life. His prospects of getting a good match in the marriage have also diminished. Having regard to all these circumstances, I find that a sum of Rs. 60,000/- would meet the ends of justice on account of general damages.

21. The claimant has led ample evidence to prove the award of special damages. The claimant took the medicines as prescribed to him. He was advised special rich diet for recoupment. He had to purchase electric stimulator because the fracture of the left leg did not unite under normal circumstances. It has come in the evidence of Dr. V.P. Bansal that the patient was using electric stimulator. Though the price of electric stimulator was stated to be Rs. 4000/- by Dr. V.P.

Bansal, but the claimant has produced the receipt Ex. PW12/A which indicates that he spent a sum of Rs. 3100/-. No exception can be taken to this expenditure incurred by the claimant. His brother Shri M.P. Kohli appeared as PW8 to say that being elder in the family he had been looking after Amit Kohli and had spent all the amount on his medicine, diet, transport and other charges.

22. Taking up the case of medicines first, the claimant has produced 48 bills for having purchased the medicines and other items from 13.1.1985 to 22.11.1985. These are supported by prescriptions. The total costs of these medicines etc. amount to Rs. 3853-75. The receipts and prescriptions are Ex. P8/1-67. For the facility of the court, the claimant produced the document Ex. P8/68 which indicates the total of the expenditure made under this head. It contains total of 52 items. The first two items were rough slips and as these were not supported by any receipt, these have been excluded from the total. Similarly, item number 40 is also not supported by any receipt. So this amount of Rs. 657- has been deducted from the total. The last item of Rs. 715/- pertains to the diet money of the witnesses, deposited by the claimant in the court. This amount is covered by the costs of litigation. It would be separately awarded to the claimant and it cannot be awarded to him under the head of medicines etc. This, therefore, stands excluded. The total costs of medicines etc. comes to Rs. 3853-75.

23. The claimant has also produced the copy Ex. P7 to indicate the total expenditure made on behalf of the claimant. In it, all the items have been written which include medicines, transport, diet etc. However, as separate assessment of each item is being made, this copy Ex. P7 cannot be given any weight. The medicines have been calculated on the basis of the receipts produced by the claimant. Otherwise also this copy Ex. P7 appears to have been purposely prepared and it does not depict true picture. For instance, Rs. 30/- have been included for transport charges for 13.1.1985 itself. On this date accident took place. The injured was taken to the hospital by the military authorities and he remained admitted there upto 14.2.1955. There was no occasion for his transport by a private three-wheeler from Sector 27 to P.G.I., and back. Thus the amount of Rs. 30/-, Rs. 157- for one way journey, has been wrongly mentioned in the copy. Similarly, there are other exaggerated entries as well.

24. As to the transport charges, it appears that on each visit the claimant had to spend Rs. 15/- because he was transported in a scooter-rickshaw and he was otherwise unable to move independently. This amount of Rs. 15/- per trip seems to be reasonable. The claimant has placed on record the photostat of his O.P.D. Card issued by Nehru Hospital, P.G.I., Chandigarh and it shows that he visited that hospital on six occasions after his discharge from the hospital. On this calculation, the transport charges amount to Rs. 90/- and the claimant is awarded round figure of Rs. 100/-.

25. It has come in the evidence of PW11 Dr. V.P. Bansal that Amit Kohli was advised to take rich diet. The claimant also affirmed that fact. So does his

brother M.P. Kohli PW-8. Taking into account the normal range of the price of articles of rich diet, I assess it at Rs. 20/- per day. It is only this much diet which can be easily digested by a person, particularly lying on the bed. The monthly expenditure comes to Rs. 600/-. Upto the date of the evidence, the claimant had taken that diet for 14 months. The compensation on this head is, therefore, assessed at Rs. 8400/-.

26. The claimant was employed as clerk in the corporation on daily wages at the rate of Rs. 25/- per working day. It is obvious from the letter Ex. P-3. Normally in a month there are 20 working days, in view of the five-day week and other holidays. At this calculation, the income of Amit Kohli is assessed at Rs. 500/- per month. As per the statement made on 15.3.1986, Amit Kohli had not been able to resume his work, so his loss of income is assessed at Rs. 7000/-.

27. Under the head of special damages, the total of separate expenditure on five items comes to Rs. 22453-75. Making it a round figure, I consider it just and reasonable to award Rs. 22,500/- towards special damages. The total compensation, thus, payable to Amit Kohli on account of injuries suffered by him comes to Rs. 82,500/-."

7. Not satisfied with the amount of compensation awarded by the Tribunal, the present appeal by the appellant.

8. I have heard the counsel for the parties and with their assistance have gone through the record of this case.

9. It is a claimant's appeal and, in these circumstances, the only challenge which has been given by the appellant is to issue No. 2. It is proved on the record that the appellant had suffered the injuries. In this regard, the statement of Dr, V.P. Bansal, who appeared as PW-11, is relevant. According to this doctor, there were four injuries on the person of the appellant. Explaining the extent of damage, it has come in evidence that both the bones of the left leg, left fore-arm and three metatarsal bones of the left foot were fractured. Besides that, the appellant had a small injury over the base of left ring finger. The statement of Dr. Bansal was recorded after about 14 months of the accident and by that time, it was certified by the doctor that the fracture of the left forearm had united but there was some wastage of muscles, the fore-arm was normal but there were certain minor limitations of movement of the left wrist. It was further certified by the doctor that the fracture of the left leg had not united by then and the injury was still under plaster. The doctor advised the use of electric stimulator to enable the fractures to unite." The doctor further advised that there was mal-union of metatarsal bones leading to deformity over the left foot but he was not definite in view of the presence of the plaster of paris, which was on that part of the body. Even after 14 months, the appellant was not in a position to walk of his own and he required the help of crutches. He could not put his full weight on his feet. The doctor further certified that even if the fracture of the left leg unites, the appellant would have about 50% disability of the total body and with regard

to the permanent disability of the left arm and the left foot, it was assessed at 30%. This is the history of the injuries. It is also the proved case on the record that the appellant was working as a Clerk on daily wage basis in a Govt. department and he had to lose his job.

10. During the course of submissions, counsel for the appellant submitted that though the accident took place in the year 1985, about 15 years back, but its effects are still alarming. The appellant is in big problem. Even after his discharge from the hospital, he has undergone three operations and has spent about Rs. 20,000/- on medicines, which is recurring expenditure. In spite of the operations, the appellant is not in a position to lead normal life. He has virtually crippled himself. He has lost the job and so his marriage chances. He has virtually become a liability.

11. I appreciate the arguments of the counsel for the appellant. It is proved on the record that even after 14 months of the accident, the appellant was in trouble as certified by the doctor, who was examined by the Tribunal on 15.3.1986. At that time, the condition of the appellant was bad. This court can well realise the tension, pains, stress and sufferings of the appellant. The disability of the body of the appellant has been assessed at 50%. It is also proved on the record that special diet was prescribed, to the appellant. In spite of the medical advice, the appellant has not been able to become fully fit. The point for determination, in these circumstances, is whether the compensation amount of Rs. 86,000/- awarded to the appellant can be held to be just or not.

12. It is true that the accident took place in the year 1985 but equally it is true that the appellant is still a victim of that accident and is suffering because of that. So much so, the appellant is not in a position to walk properly. He is not in a position to put weight on his left leg. His disability of the body has been assessed at 50%. Even after the passing of the award by the Tribunal, the appellant is under treatment and he has undergone certain operations. All these factors have been weighed by me and in this view of the matter, I raise the compensation from Rs. 86,000/- to Rs. 1,25,000/-. Apart from the enhancement, the appellant shall also be entitled to interest on the enhanced compensation @ 12% p.a. from the dated of filing of the claim petition, i.e. 2.3.1985 up to the date of actual payment of the entire amount. The amount of compensation shall be paid by the driver as well as Union of India as the driver had caused the accident when he was in the employment of the Union of India. Directions are given to the Govt. and the driver to pay the compensation within three months from the receipt of a copy of the order.

13. The appeal stands partly allowed in the above terms.

14. Appeal partly allowed.