

(1993) 10 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 89 of 1984

Bhagwan Dass

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 21-10-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1994) ACJ 702

Hon'ble Judges : Bhawani Singh, Acting C.J.; L.S. Panta, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; C.L. Sharma, Addl. A.G., for the Respondent

Judgement

Bhawani Singh, Actg. C.J.

1. This appeal arises out of the Claim Petition No. 28 of 1982, decided by the Motor Accidents Claims Tribunal (I), Mandi, on February 11, 1982. Briefly, the facts may be stated thus.

2. Claimant Bhagwan Dass (hereafter "the claimant") parked his car for repairs outside a workshop on September 5, 1981, at 7 p.m. at Srawari Bazar, Kullu. While he was taking out some articles from the boot of the car and most part of his body was inside it, a jeep bearing No. HPU 782 belonging to respondent Nos. 1 and 2, being driven rashly and negligently by respondent No. 3, came from Akhara Bazar and hit the leg of the claimant resulting in grievous injuries. At this time, the claimant was the Managing Director of Kullu Valley Agro-Industries Pvt. Ltd., Raison and getting Rs. 1,000/- per month by way of salary in addition to income of equal extent from agriculture. At the time of accident, he was 55 years old. He moved claim petition u/s 110-A of the Motor Vehicles Act, 1939, claiming compensation to the tune of Rs. 2,00,000/-. In answer to this claim petition, respondent Nos. 1 and 2 raised preliminary objections about the limitation and maintainability of the petition. It has also been denied that the accident was the result of rash and negligent act of the third respondent and it has been stated

that the claimant suffered injuries because of his own fault. Almost similar is the reply of the third respondent, although he has admitted that he was driving the vehicle on that day at the relevant time.

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

(1) Whether the petition is within time? OPP.

(2) Whether respondent Yudhvair Singh drove the vehicle HPU 782 rashly and negligently and caused injuries to the petitioner as alleged? OPP.

(3) If issue No. 2 is proved, whether the petitioner is entitled to compensation? If so, to what extent and from whom? OPP.

(4) Whether the petition is not maintainable in the present form? OPR.

(5) Relief.

4. The Motor Accidents Claims Tribunal held that the claim petition had been filed within time since the accident had taken place on September 5, 1981 and the claim petition was preferred on February 11, 1982. This issue has not been pressed before us.

5. Regarding issue No. 2, the Motor Accidents Claims Tribunal, after examining the evidence on record, came to the conclusion that the claimant had proved that he had suffered injuries due to the rash and negligent driving by respondent No. 3. On issue No. 3, the finding has also gone against the respondents and in favour of the claimant. Issue No. 4 was not pressed before the trial court and same has happened before us also. Ultimately, while examining issue No. 3, the Motor Accidents Claims Tribunal found the claimant entitled to a sum of Rs. 26,552.50. This award was challenged by the State before this court in Himachal Pradesh State through Collector, Kulu v. Bhagwan Dass, F.A.O. No. 95 of 1984. It was dismissed by this court on June, 8, 1984. It would be relevant to quote the judgment hereunder to appreciate the present case:

On the issue of negligence, it is clear on the evidence brought on record that the respondent-claimant was hit from behind and that he received injuries while he was taking out certain articles from the dicky of his stationary car. The evidence also brings out that the vehicle driven by the respondent driver was on the wrong side. The negligence, therefore, is attributable clearly to the respondent driver.

On the issue of compensation, there is hardly anything which can possibly be urged on behalf of the appellants. A sum of Rs. 6,552.50 has been awarded as compensation for the cost of medical treatment and conveyance. This sum has been determined principally on the basis of documentary evidence. The remaining amount of Rs. 20,000/- represents compensation under different heads, such as pain, shock, suffering and permanent partial disablement. No compensation appears to have been awarded under the head of economic loss. Whether or not compensation awarded is adequate is a matter which has to be

gone into in the appeal preferred by the respondent-appellant (Bhagwan Dass v. State, F.A.O. No. 89 of 1984). So far as the appellants are concerned, however, there is no manner of doubt that the awarded sum represents compensation which cannot be regarded as excessive.

The appeal is, therefore, summarily dismissed.

6. The present appeal has been filed by the claimant for enhancement of compensation amount on various grounds, namely, that he had remained under plaster for nearly one year, remained in the hospitals for four-and-a-half months with severe injuries. It is also the case of the claimant that there has been shortening of his leg by one inch, besides stiffening in the ankle joint. The accident caused multiple compound fracture in the fibula and tibia in the left leg and the claimant had to be carried to Post Graduate Institute, Chandigarh, from Civil Hospital, Kulu. He was unable to move about and required attendant's services. The award with respect to pain and suffering is unreasonably low and the claimant has to be paid for the loss of salary for one year from the date of accident and attendant's and conveyance charges from Kulu to Chandigarh which have been wrongly disallowed by the Motor Accidents Claims Tribunal. Costs of the petition and interest at the rate of 12 per cent from the date of application till payment have also been claimed in addition to loss in business.

7. We heard the learned counsel for the parties. The record of the case was extensively read over to us by them in order to support their respective submissions-Mr. K.D. Sood for enhancement of compensation under various heads and Mr. C.L. Sharma, the learned Additional Advocate General, for maintaining the same as per the award of the Motor Accidents Claims Tribunal. We have examined the matter carefully. We proceed further to examine the question as to the negligence part of the case.

8. In the decision in Himachal Pradesh State through Collector, Kulu v. Bhagwan Dass, F.A.O. No. 95 of 1984, the learned Chief Justice has found that the evidence in the case clearly points out that the vehicle driven by the respondent driver was on the wrong side and negligence is attributable to him. While examining this case, we have also gone through the evidence. We are also of the opinion that it was on account of the rash and negligent driving of the vehicle by the third respondent that the accident had taken place as a result of which the claimant sustained serious injuries. The defence set up by the respondents, more particularly the third respondent, is not at all satisfactory and in tune with the evidence which has been produced by the claimant in order to sustain the claim raised by him.

9. In view of the aforesaid background, this question should not detain us any further and we hold, therefore, that the respondents are responsible for the accident which had taken place on account of the rash and negligent driving by the third respondent.

10. Turning to the question of compensation, this question has been left open, to

be decided in this case by the learned Chief Justice in his judgment of June 8, 1984, therefore, we examine this question.

11. Mr. K.D. Sood, learned counsel for the claimant, urged that the claimant had remained in the hospital from September 5, 1981, to December 19, 1981 and again from December 29, 1981, to February 2, 1982, at Kulu. Thereafter, he was admitted in the Post Graduate Institute, Chandigarh, from February 26, 1982, to February 29, 1982. In this Institute, the claimant was operated upon again and the plaster was removed on August 30, 1982. This way the claimant remained in plaster for a period of about one year. During this period it was not possible for the claimant to move about and he had to be looked after by an attendant. Besides, he had to lose salary at the rate of Rs. 1,000 per month for a year. In addition to this, the claimant sustained business loss. The claimant is also entitled to expenditure on special diet which he had to take while admitted in the hospital. In a nutshell, the claim of the claimant is that he should be awarded compensation of Rs. 25,000/- for pain and suffering, Rs. 12,000/- for loss of salary, Rs. 7,000/- towards attendant charges, Rs. 1,57,000/- on account of loss in business and some amount towards the transport charges and special diet. Claim towards interest at the rate of 12 per cent per annum from the date of application till payment has also been raised.

12. In order to give sustenance to the submissions, the learned counsel for the claimant brought to our notice decisions like Haryana State through Haryana State and Another Vs. Sudesh Raizada and Others, , Thanka Vs. Chinnappa Gounder and Others, and Deepak Singha Vs. Himachal Road Transport Corporation and Another,

13. From the other side, as already stated, Mr. C.L. Sharma, the learned Additional Advocate General, submitted that the evidence as to salary is fragile, therefore, no amount on this account can be awarded. So far as charges for attendant are concerned, statements of the claimant and his witnesses are not of satisfactory nature, so the attendant charges cannot be allowed. The exact amount of business loss cannot be calculated, more particularly when the business of the claimant had not started for lack of feasibility report. For pain and suffering, the case set up is that the amount awarded is quite reasonable and does not call for enhancement. Demand for interest at the higher rate has also been disputed, since, according to the learned counsel, it was a rate available around the year the accident had taken place in.

14. We have examined all these respective submissions of the learned counsel for the parties. Before we give our opinion on all these questions, we may record here that it is a case of personal injury and it is well settled by series of decisions that amount of compensation in such like cases is higher than in fatal cases, since it is the claimant himself who utilises the compensation amount in personal injury cases and it is he who has to suffer the impact of the accident throughout his remaining life.

15. If we look at the medical evidence, we notice that the claimant has suffered grievously on account of the rash and negligent driving of the third respondent. Let us take note of the relevant evidence on this aspect. We have already noticed that the claimant had to remain in Kulu hospital for a sufficient long time and then he was referred to Post Graduate Institute of Medical Sciences and Education, Chandigarh. He was operated upon for the injuries at both the places. He remained under plaster for about a year. Dr. Roshan, Medical Officer, Civil Hospital, Kulu, PW 2, has stated that the claimant sustained fracture of both bones of left leg. It was compound fracture and the claimant remained in the hospital from September 5, 1981, to December 19, 1981 and was again admitted on December 29 to February 2, 1982, whereafter he was referred to Post Graduate Institute of Medical Sciences and Education, Chandigarh. The claimant was treated by him at Kulu hospital. His left leg has shortened by one inch due to the injuries sustained by him in the accident. Shortening of leg is a permanent disability. Because of the weakness of tissues and repeated friction to the place of injury, the skin gets ruptured and the claimant has to be treated time and again throughout his life. This is not a disability but is a permanent problem for him. There will be permanent limp in the left leg of the claimant while walking which amounts to permanent disability. There is stiffness in the ankle of the left leg which will be permanent. All these defects are the result of injuries received by the claimant in the accident. The claimant cannot run as he used to run normally prior to the accident.

16. Dr. D.K. Oberoy, PW 7, examined the claimant on September 5, 1981. He found the following injuries on his person:

(1) Lacerated wound on the anterior aspect of left leg, starting just below the medial condyle of left tibia, running downwards along the anterior border. The underlying muscles of the posterior compartment were exposed and swollen. The muscles attached to the medial border of this were lying torn in the wound, comminuted fracture of left tibia was present and broken ends were lying in the wound.

A butterfly shaped piece was lying separately attached to the bone with periosteum alone. Fresh blood was oozing from the wound. Clotted blood tissue debris and hair fragments were present in the wound.

(2) Lacerated wound 2 cm. x 0.4 cm. x 0.5 cm. was present on the lateral aspect of anterior part of left leg near the middle, 4 cm. from the line of injury No. 1. The injury No. 1 was grievous and the injury No. 2 was simple in nature, which had probably occurred less than two hours before examination. These were inflicted by blunt weapon.

X-ray Nos. 1720/38 dated 5.9.1981 were taken and these showed comminuted fracture of both bones of leg. A few pieces of tibia were lying separately.

17. From the nature of the injuries, we have no doubt that the claimant has suffered serious bodily pains for sufficient long time and in future as well he will

not be a complete person as he was, on account of the injuries sustained by him in this accident as pointed out by Dr. Roshan, PW 2, also. Pain and suffering cannot, of course, be measured mathematically, however, we can see the seriousness of the same from the nature of injuries, the medical treatment undergone, period taken for receiving the medical aid and its future consequences which are apparent as we have already discussed in the preceding part of this judgment. The Motor Accidents Claims Tribunal has only awarded Rs. 20,000/- under this head. The claimant claims enhancement of Rs. 5,000/- under this head. We think this demand is most genuine and has to be allowed. Accordingly, we make enhancement of Rs. 5,000/- under the head of pain and suffering.

18. Now comes the question of loss of salary. The claimant was the Managing Director of Kulu Valley Agro-Industries Pvt. Ltd., Raison. He states that he was getting Rs. 1,000/- per month by way of salary and was also earning the same amount from agriculture. So far as income from agriculture is concerned, Mr. C.L. Sharma has rightly submitted that there is no positive evidence on this aspect. So far as the income from salary is concerned, it was contended by the learned counsel for the respondents that the evidence on this question is also of unsatisfactory nature. It is not clear whether the claimant was receiving Rs. 1,000/- per month by way of salary and if so, whether he was not paid the same on account of absence from duty due to this accident.

19. Mr. K.D. Sood, learned counsel for the claimant, has taken us through the evidence on this question and we notice that the claimant was receiving Rs. 1,000/- per month by way of salary, but the evidence points out that he did not receive it for a period of eight months only. Accordingly, loss under this head is only to the extent of Rs. 8,000/- and we award it to the claimant.

20. So far as business loss is concerned, it was pointed out by Mr. K.D. Sood that it was a company formed by the claimant with others and claimant was a technical expert to look after the project and on account of his absence, the matter got delayed with the result that the production could not be stalled in time resulting in loss and in case the loss is apportioned, Rs. 1,57,000/- falls to the share of the claimant.

21. Mr. C.L. Sharma submits that the project may be in the offing, but it had not taken shape for lack of feasibility sanction. His further contention is that the claimant was not the only person to deal with the business, other Directors of the company could also look after it.

22. It is true that the claimant had formed a company under the name and style of Kulu Valley Agro-Industries Pvt. Ltd., Raison, with other Directors, it had not started its project since the feasibility sanction was still awaited. The question is whether the delay in the initiation of this project was on account of the present accident, since the claimant could not attend to it as his presence was necessary being an expert. It may be that the project had not started for lack of feasibility

sanction, but the confinement of the claimant in the hospitals has decidedly contributed in not stalling and completing this project. Looking to the nature of evidence on this question we award only Rs. 20,000/- towards business loss.

23. So "far as attendant is concerned, it can be safely assumed that the claimant could not have remained in the hospitals for such a long time without an attendant. There is also evidence which indicates that the claimant had an attendant with him. We, therefore, award Rs. 5,000/- under this head, but disallow the expenses towards special diet and transport charges since there is no satisfactory evidence on these questions.

24. The net result of the aforesaid discussion is that the claimant would be entitled to enhancement and modification to the following extent:

- (1) Pain and suffering amount is enhanced by Rs. 5,000/-;
- (2) Loss of salary for Rs. 8,000/-;
- (3) Loss of business for Rs. 20,000/-; and
- (4) Attendant charges Rs. 5,000/-.

The claimant will also be entitled to interest at the rate of 12 per cent per annum from the date of application till payment. The appeal is allowed in the aforesaid terms, however, we leave the parties to suffer their respective costs.