

(2011) 01 P&H CK 0343

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1193 of 1995 (O and M)

Budh Singh

APPELLANT

Vs

Shri Pritam Singh and Others

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2011) 162 PLR 125 : (2011) 3 TAC 58

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The claim is for enhancement of compensation for a person whose hand was amputated in a motor accident. The Tribunal found that the issue of negligence had not been established and awarded Rs. 12,000/- as compensation u/s 140 of the MV Act.

2. The claimant was an Assistant Linesman in the Electricity Board and he claimed that he was driving his own cycle accompanied by a person by name Prem Singh. The insured's vehicle was coming from the opposite direction loaded with cement bags. The claimant's evidence was that a rope was dangling at the back of the truck and he got entangled with the rope and he was pulled down on the road and was dragged to about a distance of 10 to 15 feet and his hand was crushed under the wheel of the truck. The cross-examination had been undertaken about the length of the road and as to how the accident could not have been taken place in the manner in which it was stated by the claimant. PW4-Prem Singh gave evidence about the incident but his evidence was also rejected since there was a material contradiction about the direction in which the vehicle was coming. PW4 was asked about which side of the vehicle the rope was hanging and how the cyclist got entangled and his own evidence was that he was dragged to about a distance of about 20 to 25 feet and that people had collected immediately after the accident took place. A hair-splitting reasoning adopted by

the Tribunal and the extreme forensic exercise that it had undertaken in a *res ipsa loquitur* situation leaves much to be desired. It was a wholly insensitive approach for a judge to say that the negligence was not established in a case where even the driver of the truck did not take courage to go to the witness stand to counter the version given by the claimant and his witness. Even a contradiction between the claimant and the witness about the direction in which the vehicle was travelling, in my view, would be wholly irrelevant, if he looks at the issue from the larger perspective of whether the accident like this resulting in an amputation could have been possible without there having been negligence on the part of the driver. Most significantly, in this case, there was no denial of the involvement of the truck in the accident. In my view that ought to be concluded the issue for proof of negligence of the driver. I, therefore, set aside the finding of the Tribunal and hold the driver of the insured's vehicle to be responsible for the accident by his negligent driving.

3. In the manner of assessment of compensation, it has to be seen that the doctor had been examined, who certified that the claimant had suffered an amputation that was assessed at 70% disability. 70% disability ought to be understood as resulting in 70% loss of earning capacity as well in the manner set out in the Schedule under the Workmen's Compensation Act. The fact that he was being retained in service shall be of no significance. The loss of earning capacity is understood in the context of what loss he would go through if he were to seek employment in open market. This aspect of the case has been considered by this Court in FAO No. 3432 of 2009, decided on 29.09.2010 titled *New India Assurance Company Limited v. Smt. Santosh and Ors.* (2010) 160 P.L.R. 780 as under:

In cases of injury, it is not merely the financial issues that the Courts look at but it also factors the loss of amenities to life, pain and suffering and several non-pecuniary damages. There is definitely a resultant loss of prospects of promotion and loss that is occasioned by the physical disability that a person carries. In a slightly different situation in *The Management of Sree Lalithambika Enterprises, Salem Vs. S. Kailasam*, , coming under the Workmen's Compensation Act, the contention was that for a person, who continues in service and has not suffered any financial loss, there shall be no compensation since no loss of earning is sustained by such a workman. This case and several other cases have examined this situation through several judgments. We are not dealing in cases of workmen against the Workmen's Compensation Act but I would still apply the same principle as applicable. In *V. Jayaraj Vs. Thanthai Periyar Transport Corporation Ltd.*, , *Mgt. of Tamilnadu Cement Corporation Ltd. Vs. N. Jayapalan*, , *Executive Engineer, PWD, (B and R) Vs. Narain Lal*, the Courts have dealt with the situation of continuance of employment of a workman despite the injury and awarded compensation including projected loss of earning capacity, (para 19)

20. The Madras High Court posed the question in *Lalithambika's case* (supra) whether an employer could be relieved of his liability to pay compensation by

retaining a person in employment and providing for the same wages. It answered that the mere continuance of work does not disentitle a person from claiming compensation. There is also an opinion of the House of Lords that may be relevant to understand this concept. *Bale v. William Hunts and Sons Limited* 1912 A.C. 496 was the case of a workman, who was blinded in one eye. The defect was not visible and he was to have appearance as two eyed man. He had come to such a disability status when he had sustained an employment injury in which the defective eye had to be removed with the consequences that he could not get employment though physically he was as well as before. The House of Lords held that the incapacity of work included inability to work or in other words, there is incapacity for work when a man has a physical defect which makes his working un-saleable in any market reasonably accessible to him. Applying the same logic, a person who has suffered an injury may not come by immediate loss if he is retained in the same employment and does not lose his job, but in his own saleability elsewhere as a fresh recruit to a new employer, he may come by a serious handicap. That shall be a justification enough to provide for compensation in such types of cases.

4. He was 45 years of age and he was in government service with sure prospect of increase in salary. I would, therefore, factor an increase of 30% to take the income at Rs. 3,120/- per month and adopt 70% as the resultant loss of earning capacity and apply a multiplier of 13. The amount will be Rs. 3,66,912/-. I will provide to wards pain and suffering Rs. 25,000/- The loss of amenities for life for a person, who has lost his hand, I would provide for Rs. 50,000/- and make a further provision of Rs. 5,000/- towards attendant charges. There is no definite proof of medical expenses probably on account of the fact that his medical expenses were covered by his own department. The total compensation would come to Rs. 4,46,912/-.

5. The amount in excess over what has been determined by the Tribunal already shall attract interest at 6% from the date of petition till date of payment.

6. The liability shall be on the Insurance Company and the appeal by the claimant shall stand allowed to the above terms.