
(2011) 02 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No's. 190 and 194 of 1995 (O and M)

Dhian Chand Singla

APPELLANT

Vs

Joga Singh and Others

RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:

Citation : (2011) 162 PLR 108 : (2011) 3 TAC 70

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—Both the appeals arise out the same accident and they are for enhancement of claim for compensation for injuries sustained in the accident. The appeal in FAO No. 190 of 1995 is for enhancement of compensation for injuries suffered by a person, who was a Senior Executive Engineer with the Punjab Electricity Board, aged 48 years, and drawing a salary of Rs. 9,575/-. The Appellant in the connected appeal in FAO No. 194 of 1995 is for enhancement of claim for compensation by a girl, who was 15 years of age, who incidentally was the daughter of the claimant in FAO No. 190 of 1995. While assessing the compensation, the Tribunal awarded Rs. 2,50,000/- on a lumpsum basis without adverting to the several heads of claim and for the daughter, the Tribunal had awarded Rs. 75,000/-.

2. The injuries suffered by the father in the accident were grievous and literally had resulted in fractures of every limb from crown to toe. The injuries as noted are reproduced as under:

1. Fracture on right elbow on right arm.
2. Two bones fractures of left leg.
3. Fracture of right ankle.
4. Displacement of right hip joint.

5. Fracture on bone in right hip joint.
6. Fracture of left 4th rib.
7. Fracture of nasal bone.
8. Fracture of jaw.
9. Fracture of two front teeth.
10. Loss of eye-sight of right eye.

3. It would seem that he had fallen flat on the ground and the weight of the vehicle must have fallen over him. The extensive fractures and the loss of teeth had very serious impact on his health. At the initial stage of his treatment, he was critical having suffered some effusion in his lungs with serious infection through the crush injuries suffered in his chest. He had lost vision in one eye completely and he had suffered a shortening of the limb of about 2 1/2 inches. The Neurosurgeon, Orthopaedist and Eyesurgeon, besides the doctor, who had initially admitted him, were all examined in this case to speak about the nature of injuries and the extent of disability suffered by the claimant. The Tribunal has recorded as under:

AW3 Mr. Dinesh Kumar has proved the disability certificate of Mr. Singla. Ex.A3 is relevant and most important document in this regard. According to Ex.A3, patient has evascular neurosis right femoral head (secondary to dislocation). Shortening left leg (previously recorded 1" due to fracture of the left leg). Now the shortening of left leg appears decreased as some shortening has developed on right side also due to collapse of femoral head. Foot drop on right side. Partial limitation on movement of right elbow. He has a disability of 70% which is permanent. He is suffering from post traumatic optic atrophy right eye. The disability is permanent. The disability is 30% (thirty percent). AW4 Shri Gurmit Singh, Senior Assistant office of P.S.E.B. proved the salary statement of Dhian Chand Singla and according to this witness, the basic salary of this injured was Rs. 5,750/- and his total emoluments are Rs. 9,575/-. His date of birth is 24.5.1943 and he remained on leave from 13.10.91 to 31.3.92. AW6 D.C. Bansal also stated that he was called in order to examine eye problem of Mr. Singla. He also examined the claimant clinically on 19.8.93 at the time of giving his statement. This doctor has certified that the eye sight of Mr. Dhian Chand Singla from his right eye has been totally and permanently lost. The injury to the eye of Mr. Dhian Chand Singla claimant could be caused in a vehicular accident. On 2.5.93, when this patient was referred to him, he reported that Mr. Singla was suffering from post-traumatic optic atrophy of right eye. The disability was permanent and was 30%. He proved report Ex.A2/2. Dr. R.K. Kaushal AW7 had brought the bed head ticket of Reema Singla Ex.A.24 and according to this doctor, this injured had the evidence of head injury. The movements of her right side of the body were less. Her right eye became black and she has laceration on her right leg measuring 60cm x 1cm. She had ecchymosis over right upper limb.

C.T. Scan of the head was done and it showed bleeding on the left side of the brain. RW8 Dr. Rajiv Aggarwal also examined Dhian Chand Singla. On the day of examination, according to this doctor, the patient had avascular necrosis of right femoral head, secondary to dislocation of the hip joint and he had the shortening of left leg which was previously recorded as 1" due to the fracture. At the time of examination, it developed some shortening of the right side also due to the collapse of femoral. This leads to the decrease of the shortening of the left leg. He had foot drops on the right side and partial limitation of movements of the right elbow, and his disability was permanent and was assessed at 70%. The patient was examined on 28.05.1993. This witness has also proved his endorsement Ex.A.2/1. The doctor further stated that disability of patient was likely to worsen with the lapse of time as cause of disability was collapse of femoral head which would lead to osteo-arthritis.

4. In my view, the compensation had not been properly assessed commensurate with the medical evidence elucidated in the award. The Tribunal took note of the fact that he continued in service, but he had been assigned lighter duties. He had lost vision in one eye which the doctor certified as 30%. The total vision in eye as per the scale of compensation provided under the Workmen's Compensation Act results also in 30% loss of earning capacity. In evidence, he stated that he had an attendant on him and was being paid Rs. 600/- per month and would require his assistance at all times. I would, therefore, provide the attendant charges to be paid to him at all times since he has lost his stability in his walking and there was evidence to the effect that he has been given special orthopaedic shoes with padding and he has difficulty in walking. The doctor had also stated that he had osteo-arthritis and his condition was likely to worsen as he advanced in age. I will, therefore, provide for a corpus of Rs. 24,600/- by adopting a multiplier of 13 which will return an appropriate income of at least Rs. 600/- for his attendant. The Tribunal had estimated the special diet at Rs. 10,000/- which I will retain. For all the enormity of the fractures which were more than about 10 all over his body, I will award Rs. 1 lakh towards pain and suffering. The reduction in life expectancy and loss of amenities for a person, who had been severely mauled by his injuries and who had been seriously handicapped in his mobility with a poor prognosis for improvement must also be duly compensated. I would award Rs. 1 lakh as a compensation. Having regard to the fact that he had 30% loss of vision and disability assessed for the whole body at 70%, I would take that this would have resulted at least in 50% loss of earning capacity. It is no consolation for a person that he is being retained in the same job, for, the issue of loss of earning capacity must be understood in the context of what a person with his disability would lose if he were to compete in open market. This Court has an occasion to deal with this concept in a judgment 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 issue 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*, , *Kerala Minerals and Metals Limited v. Raman Nair* 1998 (I) L.L.J. 993 (Ker.), and *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 Bunts 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.

5. I will take the disability that has been assessed at 75% which have been resulted in 50% loss of earning capacity. He was earning Rs. 9,575/- and I would work a 50% loss of earning to this amount and adopt a multiplier suitable to his age namely 13. The loss of earning capacity will be assessed at Rs. 7,46,850/-. The overall compensation would come to Rs. 9,81,450/-.

6. The Tribunal had assessed a compensation of Rs. 2,50,000/- and the amount in excess of what has been determined by the Tribunal already shall attract interest at 6% from the date of petition till date of payment. The liability for making the payment shall be in the same manner as determined by the Tribunal

already.

7. The claim for compensation for injuries suffered by the girl has been assessed at Rs. 75,000/-. Dr. R.K. Kaushal, who had given evidence, stated that a girl had head injuries and the movement of the right side of the body had become less. Her right eye became black and she had laceration on the right leg. She had acehymosis over her right limb and the C.T. scan that was taken showed that she had bleeding on the left side of the brain. So many years have gone by and there is no means of knowing how the girl coped with her life. The evidence at the time of trial was that she had lost one year. The Tribunal had awarded Rs. 75,000/- which I will increase to Rs. 1 lakh by providing an additional amount of Rs. 25,000/- for loss of studies for a year. The additional amount of Rs. 25,000/- will attract interest at 6% from the date of petition till date of payment.

8. Both the appeals are allowed on the above terms. The liability shall be in the same manner as determined by the Tribunal already.