

(1966) 02 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 126 of 1962

Dr. Maharaj Krishna Chopra and Another	APPELLANT
Vs	
The State of Punjab and Others	RESPONDENT

Date of Decision : 15-02-1966

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1969) ACJ 308

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : J.K. Sharma, for the Appellant; J.N. Kaushal, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Sharma, J.—Dr. Maharaj Krishan filed application No. 13 of 1961 u/s 110A of the Motor Vehicles Act before the Motor Accident Claims Tribunal (hereinafter referred to as the Tribunal) for awarding Rs. 10,000/- by way of compensation on account of the injuries which he received as a result of an accident caused by the driver of the vehicle, Respondent No. 3, while driving the bus owned by the Punjab Roadways and the Punjab State Respondents No. 2 and 1 respectively at 7 45 A.M. on 2nd September 1960 on the road from Kalka to Kasauli. The Applicant was travelling in this bus. He alleged that the driver was driving the bus at a high speed which he could not control while negotiating a turn with the result that it struck against a small temple building on the right side of the road. This not only jolted him but his head and other parts of the body struck violently against the body of the bus causing him serious injuries. Mrs. Sushila Devi Chopra who was also travelling with her husband Dr. Maharaj Krishan received injuries in the like circumstances and filed application No. 15 of 1961 against the same Respondents on 19th January 1961 before the Tribunal for awarding her Rs. 10,000/- as compensation.

2. The Tribunal consolidated proceedings in both the above claims on various grounds. The Tribunal framed the following issues:

1. Whether the claim application is not time-barred ? Are there sufficient grounds to condone the delay and if not its effect 1
- 2 Whether the accident was caused due to the rash and negligent act of the driver of bus No. PNE-4871 of the Punjab State ?
3. What is the quantum of compensation due, if any, and from whom to whom ?
4. Relief.

The parties did not claim any other issue. The Tribunal found that the two applications were barred by time but held further that there was sufficient cause to condone the delay which he did. He also observed that the accident was due to the rash and negligent act of the driver of bus No. PNE-4371. Consequently he awarded with costs Rs. 8,000/- as compensation and Rs. 1,000/- as medical expenses to Dr. Maharaja Krishan and Rs. 4,000/- as compensation to his wife Mrs. Sushila Devi Chopra.

3. The Punjab State, Dr. Maharaj Krishan and Mrs. Sushila Devi Chopra felt aggrieved from the above order of the Tribunal. The Punjab State filed two separate appeals Nos. F A.O. 74 and 75 of 196:. Dr. Maharaj Krishan and his wife Mrs. Sushila Devi Chopra as well filed two separate appeals Nos. F.A.O. 126 and 127 of 1962 respectively. This order will dispose of all the appeals as the same emanate from a common order of the Tribunal.

4. The Learned Counsel for the State in his two appeals urged that the Tribunal was not justified in holding that the bus was not road-worthy on the date of the occurrence and that the driver was rash and negligent in the performance of his duties. He also contended that the Applicants had been allowed compensation much out of proportion to the injuries suffered by them. He did not press ground No. 2 in the grounds of appeal relating to the condonation of delay in filing the claim applications by the two claimants. The Learned Counsel for Dr. Maharaj Krishan and Mrs. Sushila Devi Chopra urged that each of the two Appellants should have been awarded Rs. 25,000/- by way of compensation. The Learned Counsel in support of this contention mainly relied on the oral evidence led by the parties before the Tribunal. I may briefly refer to their statements here. Shadi Ram, A.W.1 said that he knew Dr. Maharaj Krishan and his wife who met with an accident on 2nd September 1960 and that they were not able to move about on account of the injuries received by them for about 3 or 4 months. He is a Lambardar (Head-man) of village Payal where the two injured persons stayed from 15. 9. 60 a few days after the accident onwards. He admitted having visited both of them when they were at General Hospital, Chandigarh. He found their faces swollen which made their speaking almost impossible. Hari Chand A.W.2 a resident of village Payal corroborated the statement of the above witness and further said that Maharaj Krishan was practising as eye-surgeon at village Payal and that his wife also treated women. Tara Chand A W. 3 another resident of village Payal, a raid by profession testified to the fact that he had been treating the two Applicants since 17th September 1960 and they had not fully recovered

from the injuries received by them in the accident. According to him their nerves had been adversely affected and it was on the 15th of January, 1961, that they started moving about. He is a registered medical practitioner and is said to have learnt his profession from his brother and not from any recognised medical Institution. Atma Singh A.W. 4 gave out that he, his wife and the two Applicants alongwith others were travelling in the ill-fated bus on 2nd of September, 1960, that the driver was driving the bus at a high speed and when it was about two miles from Kalka the bus went out of control and dashed against a small temple on the right side of the road. He went on to say that the temple building was damaged. He, his wife, and the two Applicants received injuries on account of this accident. According to him Dr. Maharaj Krishan and his wife suffered serious injuries and so they were removed to the General Hospital, Chandigarh. He further explained that there was no traffic or obstruction on the road and the day was also clear at the time the bus dashed against the temple. Mrs. Sushila Devi Chopra as A.W. 5 stated in terms of the testimony of the previous witnesses. She further stated that on account of the injuries received by her she lost her senses." Both of her jaws were broken. She received consciousness in the General Hospital, Chandigarh, where she stayed for 14 or 15 days. She said that she was a qualified nurse and used to practice as such which brought her from Rs. 200/- to Rs. 300/- per mensem and all this had been a loss to her because of the injuries received at the time of the accident. She went on to say that in order to run her house-hold and to look after her two young children she had engaged a servant to whom she was paying at the rate of Rs. 50/- per mensem. Dr. Iqbal Singh A. W. 6 after giving details of the injuries suffered by Dr. Maharaj Krishan Appellant slated that on account thereof his chewing and talking capacity had been adversely affected. He examined the Applicant on the day of his statement before the Tribunal and found that his neck was stiff and painful and there was tremor in his hands on account of nervousness. He further opined that on account of this disability the Applicant could not efficiently carry on his duties as eye-surgeon. He files the case history of the patient A. W. 6/2 in the Court. He further detailed the injuries noticed on Mrs. Sushila Devi Chopra's body after the accident. Injury on the lower jaw, out of the injuries, was found to be grievous. He admitted in his cross-examination that Dr. Shamsheer Singh and Dr. Sethi who were alive examined the two Applicants and after it rendered them the medical aid in the General Hospital, Chandigarh. He joined this Hospital as Casualty Medical Officer in 24th September, 1960. He gave his statement from the records maintained in the Hospital. He could identify the signatures of the two attending doctors. He, however, examined Mrs. Sushila Devi Chopra in the Court and opined that whole of her jaw was somewhat tilted thereby losing the proper position of teeth with the upper jaw teeth and that she was not able to open her mouth properly. The Tribunal observed that a biscuit was given to her in his presence which she could not properly masticate on account of the above defect. The doctor went on to say that the injury had permanently disfigured the Applicant's face. According to the doctor, the jaw injury had affected the working of the jaws by 20 per cent and the looks of the face by 10 percent. Dr. Maharaj

Krishan, Applicant, A.W. 7 supported the allegations made by him in his application and the statement of Dr. Iqbal Singh A.W. 6 before the Tribunal.

5 In rebuttal R.W. 1 Prem Shankar Kapur said that he also was travelling in the ill fated bus at the time of the occurrence which according to him was moving at the speed of 15 or 16 miles per hour although he did not consult the speedometer. He admitted that when the driver was negotiating a turn at a place two miles from Kalka, the bus went, out of control and struck against a temple. According to him the road was clear and that he heard a cracking noise from the bus. He conceded that some of the passengers received injuries on account of the accident. He admitted in his cross-examination that the bus might have been moving at a speed of 20 to 25 miles an hour. Ajit Singh R.W. 2 who was driving the bus on 2nd September, 1960, which met the accident, is said to have satisfied himself about the road-worthiness of the bus before taking it to the road. He admitted that Dr. Maharaj Krishan, his wife and children travelled in the same bus from Kasauli and that when he reached the spot about 2 miles from Kalka and was negotiating a turn he heard a cracking noise and the bus went out of his control and struck against the temple building. He explained that main leaf of the brakes had broken. It was admitted by him that there was no traffic on the road at the time of the accident and further that no speedometer was fitted to his bus. Harjit Singh R.W. 3 is an important witness. He examined the bus soon after the accident. His observations are incorporated in his report R.W. 3/1. According to him the brakes got out of order after the accident. Ram Parkash R.W. 4 was conductor of the bus on 2nd September, 1960. According to him the bus was going between 15 and 18 miles before the accident.

6. From the above evidence it is patent that the driver while negotiating the turn at a spot about 2 miles from Kalka could not control it and as a result it struck against a temple building on the right side of the road causing injuries amongst others to the two Applicants also. Ajit Singh driver's explanation that the bus got out of his control because the brakes failed has been belied by the evidence of Harjit Singh R.W. 3 who examined the bus after the accident. According to his report R.W.3/1 the brakes went out of order after the accident. This part of his statement has not been controverted by the State, the Punjab Roadways or the driver of the bus. He was examined by them as their own witness and so his statement carried conviction with the learned Tribunal and also with me. Therefore, the defence that the brakes failed at the crucial time and so the accident, was not available to them. The truth appears to be as has also been found by the learned Tribunal that the driver was driving the bus at a speed which he could not control while negotiating a turn and thus the bus struck against the temple building and a sudden jerk caused thereby resulted in injuries to the two Applicants. The driver evidently was driving the bus in a rash and negligent manner. The bus belonged to the Punjab State hence it is liable to pay damages suffered by the two Applicants on account of its employee, the driver's default, in the proper discharge of his duties.

7. There can be no doubt that the two Applicants suffered serious injuries on account of the accident. The jaws of both of them had been damaged. Dr. Maharaj Krishan on account of nervousness had developed tremor in his hands and so could not skilfully perform his functions as eye-surgeon. He is said to have been earning about Rs. 300/- per mensem which according to him have dwindled down to Rs. 50/- or Rs. 60/- per mensem. He has given his date of birth in his application as 24.7.1912, that is, he was about 43 years at the time of the accident. The doctor and the vaid who had been examined as witnesses in the case and who rendered him medical aid stated that he remained confined to bed for almost three months. This must have caused him about a thousand rupees as medical charges; Keeping in view all these circumstances the Tribunal correctly allowed him Rs. 8000/- as compensation and Rs. 1000/- for medical treatment.

8. The Learned Counsel for Maharaj Krishan, however, said that the compensation should have been Rs. 25,000/- because of the serious injuries suffered by this Applicant. He originally in his application claimed Rs. 10,000/- only as compensation. He did file another application before the Tribunal after the close of the case praying that he should be allowed to claim Rs. 25,000/- as compensation, but this application was rejected by the Tribunal and for good reasons. The Applicant at the proper time claimed Rs. 10,000/- only as compensation. It does not lie in his mouth to say that this amount be raised to Rs. 25,000/- at this stage. The Tribunal allowed Rs. 4,000/- as compensation to Mrs. Sushila Devi Chopra after taking into consideration all the circumstances. She suffered so many injuries and the jaw injury was particularly serious and grievous in nature. The doctor who examined her says that this injury had permanently disfigured her and her capacity to masticate and chew her food had decreased by 20 per cent. She could not attend to her normal duties in life for a considerable time. These factors are strong enough to enable the Tribunal to grant Rs. 4,000/- as compensation to her. The State-Appellant should have no serious grievance against this finding of the Tribunal. The Learned Counsel for Mrs. Sushila Devi Chopra, however, urged that she should have been allowed Rs. 25,000/- as compensation. As already indicated she claimed Rs. 10,000/- only as compensation in her application. There is hardly any justification for her to claim compensation at such a high figure. The amount already awarded by the Tribunal is adequate. There is no good ground for enhancing it any further.

9. For the reasons given above, all the four appeals fail and are dismissed. The parties are left to bear their own costs.