
(1997) 05 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 919 of 1985

Gurdial Singh

APPELLANT

Vs

Sawinder Singh and Another

RESPONDENT

Date of Decision : 22-05-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1997) 116 PLR 815 : (1997) 3 RCR(Civil) 609

Hon'ble Judges : P.K. Jain, J;M.S. Liberhan, J

Bench : Division Bench

Advocate : Gurcharan Singh, for the Appellant; Hemant Kumar, Addl. A.G., for the Respondent

Judgement

P.K. Jain, J.—In this Letters Patent Appeal, directed against the judgment dated May 6, 1985 passed by a learned single Judge of this court in F.A.O. No. 605 of 1984, the appellant-claimant is claiming enhancement of the compensation awarded to him on account of head injury received by him in a road accident caused by rash and negligent driving of Bus No. PBA-4326, owned by State of Punjab-respondent No. 2, and driven by Sawinder Singh - respondent No. 1.

2. The necessary facts for the disposal of this appeal are that on 13.4.1982 at about 7.00 p.m. the appellant was hit by Bus No. PBA-4326, belonging to Punjab Roadways, Amritsar Depot, driven by Sawinder Singh-respondent No. 1, near Milk Bar, Morinda. His left clavicle and temporal bones were fractured besides sustaining other minor injuries. Gurmit Singh was an eye-witness of this occurrence. Respondent No. 1 removed the injured to the local hospital, from where he was referred to the Post Graduate Institute, Chandigarh. At the P.G.I, he remained as an indoor patient upto 23.4.1982 on which date he was removed to Civil Hospital, Ropar, where he remained as indoor patient till 2.6.1982 when he was discharged. According to the testimony of Dr. Rajinder Saxena of PGI (PW 4), the appellant had received grievous injuries and there was permanent-damage to his brain. According to the said doctor, the injured was not able to

understand anything and was not responding to any verbal command. His opinion Was that it was difficult to say as to how long he would take to recover from that stage if at all he recovers.

3. On 12.8.1983, a claim petition under 110-A of the Motor Vehicles Act was filed by the appellant through his wife/next friend Smt. Ajmer Kaur claiming a sum of Rs. 2,50,000/- by way of compensation on account of the injuries sustained by him in the said accident. A request was also made for condonation of delay.

4. The petition was opposed by the respondents. Respondent No. 1 denied that the bus had hit the appellant. According to him, he had found the appellant lying in an injured condition and he with the help of the passengers had removed the appellant to the hospital and got him admitted. Respondent No. 2, in a separate written statement, resisted the claim on the grounds that the petition was time-barred, that the same was not filed by a proper person inasmuch as, the injured was not insane and that the appellant was not entitled to any compensation.

5. After recording the evidence of the parties, the Tribunal held that there was no sufficient ground for condoning the delay and the petition was barred by limitation, and that the petition had not been filed by a proper person, inasmuch as the claimant was not an insane and could have filed the petition himself.

6. Feeling aggrieved, the appellant filed F.A.O. No. 605 of 1984, which was accepted by a learned Single Judge of this Court by the impugned judgment. The order of the Tribunal was set aside. The delay was condoned and it was held that the claim petition was filed by the appellant through a proper person. However, finding no direct evidence produced by the appellant, rule of thumb was applied and a sum of Rs. 25,000/- was awarded to the applicant on all possible counts under which he could be entitled to compensation. Feeling aggrieved, the claimant has filed this Letters Patent Appeal for enhancement of the compensation.

7. We have heard the learned counsel for the parties and have perused the record of the Tribunal as well as the impugned judgment.

8. Shri Gurcharan Singh, Advocate, learned counsel for the appellant has argued that the Hon"ble Single Judge was required to award compensation to the appellant under separate heads i.e. (i) medical expenses incurred on the treatment of the appellant, (ii) compensation for pain, suffering, loss of amenities of life and disabilities, (iii) loss of income and (iv) compensation for attendance. The learned counsel has placed reliance upon a judgment of this Court rendered in Oriental Fire and General Insurance Co. Ltd and Anr v. Kewal Kumar 1983 A.C.J. 497.

9. On the other hand Shri Hemant Kumar, learned Additional Advocate General, while appearing on behalf of the State of Punjab, has taken us through the record of the Tribunal and has pointed out that there is not an iota of evidence on the record produced by the appellant to prove either his income or loss of

income, the costs of attendance, the actual medical expenses incurred by him on his treatment and such like other matters. It has been pointed out by the learned Addl. A.G. that a sum of Rs. 25,000/- along with interest is sufficient compensation awarded by the learned Single Judge.

10. It may be repeated that due to the rash and negligent driving of the bus, owned by respondent No. 2, and driven by respondent No. 1.....the appellant sustained head injury and his temporal bone was fractured leading to the impairing of his mental faculties. According to the medical evidence, it is difficult to say how long the appellant would take to recover from the said stage, if at all. The learned Single Judge came to a definite finding of fact that on the basis of the serious head injuries suffered by the claimant, he has almost crippled mentally. It has been further found as a fact that respondent No. 1, driver of the bus in question, was negligent and responsible for the accident in which the claimant received injuries and the State of Punjab-respondent No. 2 is liable to Ray compensation to the appellant. However, finding no satisfactory evidence on the record produced on behalf of the appellant, the learned Single Judge awarded a sum of Rs. 25,000/- to the appellant on all possible counts under which he may be entitled to compensation.

11. It cannot be disputed that while fixing the amount of compensation payable to a victim of accident, the damages have to be fixed separately as pecuniary damages and special damages. Pecuniary damages are those which the claimant has already incurred and which are capable of being calculated in terms of money i.e. medical attendance, loss of earning of profits upto the date of trial and other material loss. Non-pecuniary damages may include damages for mental and physical shock, pain and suffering, suffered or likely to be suffered in future, damages to compensate for the loss of amenities of life, inconvenience, discomfort, frustration and mental stress in life etc.

12. In the present case, no satisfactory evidence has been produced to prove as to how much amount was incurred towards medical expenses for the treatment of the appellant. Except but for the oral bald statement of the wife of the appellant, there is nothing to support or corroborate the same. No bills, vouchers, prescription etc. have been produced to prove such expenses. Still further, no revenue record i.e. copy of Jamabandi and copy of Khasra Girdawari have been produced to prove if the appellant owns or owned any agricultural land or/and was cultivating land of others as a tenant. The only factum established on the record is that the appellant is an agriculturist. It has also come on the record that one hand of the appellant had been amputated long back. In this background, it is really difficult to assess either the pecuniary or non-pecuniary damages to be awarded to the appellant. While assessing the compensation to be awarded in such like case, the nature of injuries, status of person, effect of injury on the person in future and mental and physical pain that be suffered, are to be taken into consideration.

13. In *Shajan Vs. N. Raman Pillai and Others*, , the High Court of Kerala awarded

a sum of Rs. 53,500/- on all counts to the victim of a bus accident who had sustained brain injury, although there was definite evidence on the record on certain counts. Keeping in view this direct precedent available, we are of the view that the ends of justice would be met if the compensation to be awarded to the appellant on all counts is enhanced to Rs. 50,000/-. The learned Additional A.G. has not been able to cite any precedent to the contrary.

14. For foregoing reasons, we accept this Letters Patent Appeal and enhance the compensation awarded to the appellant to Rs. 50,000/- which will carry interest @ 12% per annum from the date of filing of claim petition till realization thereof. The appellant shall be entitled to costs throughout.