

(2010) 12 P&H CK 0200

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1399 of 2007 (O and M)

Gurmej Singh

APPELLANT

Vs

Vijay Kumar and Others

RESPONDENT

Date of Decision : 17-12-2010

Acts Referred:

Citation : (2011) 161 PLR 567 : (2011) 2 TAC 612

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The appeal is for enhancement of compensation for injuries sustained by Hawaldar in an Indian army, who also was a para trooper and a commando. The accident took place on a collision with the Haryana Roadways when the claimant was travelling in the army jeep. The Tribunal, on finding that it was a case on head-on collision, found that the responsibility must have been on both vehicles and apportioned the liability of the driver of the army jeep at 40% and 60% responsibility for the driver of the Haryana Roadways. As regards the injuries sustained, there had been substantial evidence. It could be seen that he was initially admitted in the hospital at Ambala and later brought to Chandimandir Army Hospital. He had fairly a long period of hospitalization lasting over 80 days. The Tribunal determined an overall compensation of Rs. 5,60,000/- but awarded 60% of the same and cast an abatement to the extent of 40% for the negligence of the driver of the vehicle in which he was travelling.

2. The manner of determination of compensation as undertaken by the Tribunal leaves much to be desired. It is expected that in every case relating to injury the Tribunal shall make specific assessment under every one of the heads of claim and shall not ever make an overall approximation without any discussion for compensation. It virtually amounts to abdication of judicial duty that a Tribunal has to perform. In the evidence, it was brought out through the eye specialist that in the accident, the brain and eye had been affected and the claimant had

been placed in medical category E-2 and P-2 which corresponded to the permanent disability category. He had also given evidence to the effect that he was not fit for military duty meaning thereby that he was not totally incapacitated but he was not in a position to handle all types of activities that one might be required to undertake as a military personnel. PW3-Neuro Surgeon had given evidence to the effect that he had undergone a mild impairment of his mental faculties and it had been on account of head injury. There was also evidence that he had lost all prospects of promotion to a higher rank due to his medical category P-2. PW6 was a member of the Medical Board which after the medical legal examination had assessed the disability on account of an impairment of eye sight at 50% and qua cerebral injury, the disability was assessed at 70%. It was also stated that he could not any longer be a soldier and he was put on miscellaneous jobs and in army terminology, it is called as "shattered appointment."

3. In the manner in which the medical evidence is given, I have no doubt in my mind that the nature of injuries suffered were serious and having regard to the fact that the medical expenses had been fully covered, the claim has to be undertaken to examine the component of pain and suffering and the other non-pecuniary damages. Having regard to the head injury and a prolonged treatment, I would award a compensation of Rs. 50,000/- towards pain and suffering. To an army commando, being sprightly, alert and ebullient are the watchwords. A person to be fettered for his life to what in army terminology itself is called shattered appointment, I would reckon that to be a shattering experience for a person to cope with for his life. I will, therefore, award the loss of compensation for loss of amenities of life at Rs. 1 lakh. The impairment has not merely been of an eye sight but there is a psychiatric ailment as well which by the medical assessment has been found as having resulted in an impairment in mental faculties. I would provide for a compensation of Rs. 50,000/- for reduction in life expectancy and for the impairments suffered.

4. The learned Counsel appearing for the State and for the Insurance Company would state that he was retained in the job and, therefore, he had not suffered any loss of income. The issue of assessment of loss of earning capacity in a case where an employer retains an injured employee has come up for consideration before the House of Lords and before several High Courts and in our country. These cases have been extensively considered in a judgment of 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 PLR 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*, *Kerala Minerals and Metals Limited v. Raman Nair* 1998 (I) L.L.J. 993 (Ker.), 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.

I will, therefore, reject the plea that by retention of a person in an employment, there is no need for ascertainment of loss of earning capacity. It should be viewed in the context of how a person, who is injured cannot secure employment in an open market and that should be a ground for assessment for loss of earning capacity, I will take in the light of the medical evidence 70% as the resultant loss in earning capacity, take the income from what was placed before the Tribunal as Rs. 8,000/- and I would assess the loss of earning capacity at Rs. 5,600/- per month. He was 36 years of age and I would adopt a multiplier of 15 and take the loss of earning capacity as Rs. 10,08,000/-. The total amount of compensation shall, therefore, be Rs. 12,08,000/-. The amount in excess over what has been already awarded by the Tribunal shall attract interest at 6% from the date of petition till date of payment.

5. As regards the liability, the claim for compensation could not be subjected to

any abatement in a case where the claimant himself had not contributed to the accident. Even if the negligent driving of the driver of the jeep in which he was travelling were to be accepted in the manner found by the Tribunal, it should still be found as a case of composite negligence and a claim by the person against anyone of the tort feorsors without suffering an abatement in a claim was perfectly tenable. This aspect has also been considered by this Court in the decision in *The Oriental Insurance Company Limited v. Smt. Meena Kumari and Ors.* (2010) 160 PLR 241 in FAO No. 4246 of 2006, decided on 24.08.2010 with reference to all the case law on the subject. The liability shall, therefore, be on the Respondents for the entire amount as determined and it shall be open for the insured and the insurer to file an independent suit for contribution against the owner of the Jeep, if they are so advised. The liability as found in this judgment shall it- i self be taken to give the cause of action for an independent action.

6. The award of the Tribunal is modified and the appeal is allowed as above.