
(1983) 10 P&H CK 0086
In the Punjab And Haryana At Chandigarh

Gursharan Singh Sandhu

APPELLANT

Vs

State Of Haryana and Others

RESPONDENT

Date of Decision : 07-10-1983

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A(3)

Citation : (1984) 1 ACC 183 : (1985) ACJ 641

Hon'ble Judges : Pritpal Singh, J

Bench : Single Bench

Judgement

Pritpal Singh, J.—This appeal has been filed by Gursharan Singh Sandhu against the award of the Motor Accidents Claims Tribunal, Chandigarh, dated November 11, 1976, dismissing his application claiming compensation of Rs. 5,48,000/- from the respondents on account of sustaining injuries in an accident.

2. The appellant was an Assistant Engineer, Class II, in the Punjab State Electricity Board, drawing Rs. 760/- per month as salary at the time of accident which took place on March 25, 1972 at about 8.30 a.m. in front of the entrance of the Bus Stand, Chandigarh. He was going on a motorcycle when a bus of the Haryana Roadways struck against him. He was immediately removed to the General Hospital, Sector 16 and, thereafter to the Post Graduate Institute of Medical Education and Research, Chandigarh. He was medically examined by Dr. B.P. Bansal, Assistant Professor, Orthopaedic Department of the P.G.I., at 8.30 a.m. and following injuries were found on his person : --

(1) Crushed injury of the right leg in its lower third with skinloss of 8" x 6" and there was a compound comminuted fracture of both bones of the right leg.

(2) Fracture of the lower third of the right femur.

(3) Abrasions over the dorsum of the right hand.

He was operated upon the same day by Dr. S.P. Kaushal. According to Dr. C. Bala Krishanan, Professor of Plastic Surgery, P.G.I., Chandigarh, it had been found

that there was serious danger of the appellant losing his leg as some skin had been lost and there was infection in the bone. A note (Exhibit A. 1) prepared by this doctor portrays the condition of the appellant after the accident, and the history of treatment given to him. This note reveals that the appellant was in shock and was given urgent blood transfusion. After adequate resuscitation, an emergency operation was performed at 4.00 p.m. on the same day by Dr. S.P. Kaushal. He fixed the femur fracture by an intra medullary nail. The multiple fractures of tibia were held in position by another intra-medullary nail. The wound was cleaned and the skin was sutured over the tibial fracture. The appellant's condition became critical at 1.00 a.m. on March 26, 1972 but it improved after more blood transfusion. On March 27, 1972 his condition again became critical due to fat embolism. He went in deep coma for some hours and recovered gradually by April 1, 1972. By April 3, 1972 his leg wound was infected and he was running high-fever. The infection was gradually brought under control. On June 20, 1972 a skin grafting operation covered most of the leg wound leaving the necrotic bone still exposed. A plastic surgical plan was carefully thought out to provide full thickness skin cover for saving his right leg. Six major operations and three minor operations were done between July 1972 and June 1973. Dead bone was removed and skin cover was completed. He was discharged from the hospital on July 15, 1973 to resume his duties under sheltered conditions. Looking at his condition the Chairman of the Punjab State Electricity Board allowed him to join duty without doing any office work. He was again admitted in the hospital on November 19, 1973. The scar and sinus track were excised and the area skin was grafted on November 22, 1973. His radiological examination showed that a weak bridge of new bone had formed across the gap in the tibia. He was ultimately discharged from the hospital on December 20, 1973. His total stay in the hospital was 510 days. The note adds that he was still in need of large bone graft to make the right leg able to take full weight in normal walking which will have to be done by means of major operation. When he was discharged from the hospital he was able to walk only with the help of crutches and his right leg became short by one inch. Movements of his right knee were partly limited. The right leg was not stable to bear weight. Bone union was weak and there was slight residual infection at the site of the bone. His disability was declared to be 40 per cent. The doctor opined that the appellant had been a brave patient and had survived three serious crises on March 25, 1972, March 27, 1972 and in April 1972. The doctor added that with great fortitude the appellant went through series of major plastic operations to bring a large flap of skin from the abdomen and flank carried on the left wrist to replace the extensive skin loss and scarring on the right leg.

3. The Haryana Roadways Bus was being driven by Jagdish Lal Driver, respondent No. 3. According to the appellant the accident took place due to the rash and negligent driving of the driver. He filed a claim petition to recover compensation of Rs. 5,48,000/- from the respondents on September 4, 1973.

4. The respondents contested the claim petition denying the rash and negligent

driving of respondent No. 3. It was stated that the accident had occurred entirely due to the appellant's negligence. It was, therefore, said that the appellant is not entitled to receive any compensation from them. An objection was also taken that the claim petition was barred by time.

5. On these pleadings the Motor Accident Claims Tribunal framed the following issues:

(1) Whether the claim application is within limitation ? If not whether there is sufficient ground for condonation of delay in filing this application ?

(2) Whether the accident took place due to rash and negligent driving of respondent No. 3 ?

(3) Whether the claimant is entitled to any compensation ? If so, to what extent and from whom ?

(4) Relief.

6. The learned Tribunal has held that the accident took place due to the rash and negligent driving of the driver of the bus, respondent No. 3, but the petition is barred by time and there is no sufficient ground for condonation of delay in filing the same and that had the petition been filed within time the appellant would have been entitled to recover Rs. 75,000/- as compensation from the respondents. On the point of limitation the claim petition was dismissed leaving the parties to bear their own costs.

7. The learned appellant's counsel has assailed the impugned order of the Tribunal on two grounds. One, that it is a fit case to grant condonation of delay in filing the claim petition and two, the quantum of compensation assessed by the Tribunal is highly inadequate. I find merit in both the contentions.

8. The accident took place on March 25, 1972. The period of limitation prescribed for filing the claim for compensation is 60 days which admittedly expired in May 1972. The claim was filed by the appellant a long time thereafter on September 4, 1973. Proviso to Sub-section (3) of Section 110-A of the Motor Vehicles Act confers powers on the Tribunal to entertain a claim even after the expiry of the prescribed period if it is shown that the claimant had been prevented by sufficient cause from making the same within time. As to what is sufficient cause depends on the facts of each case. It has been held by this Court in *New India Assurance Company Limited and Anr. v. Punjab Roadways Ambala City and Ors.* 1964 PLR 156 and *State of Himachal Pradesh and Others Vs. Jagdip Singh Pathanian*, that the expression "sufficient cause" used in Section 110-A has to be liberally considered so as to advance substantial justice where no serious negligence or inaction or want of bona fides is attributed to the claimant. The High Court of Madhya Pradesh in *Raju Narayan v. Chogalal Bhagirath and Ors.* 1972 A.C.J. 183 relying upon the decision in *New India Assurance Co's case* (Supra) observed that the Tribunal should place itself in the situation of the claimant who has suffered a motor accident. His immediate reaction is not to file

a claim but one of shock. It was held that when the injured had spent almost all the time in hospital and he presented the claim soon after his discharge from the hospital and the interval in between the discharge from the hospital and making of the claim is not excessive, the delay in making the same should be condoned.

9. It is proved from the testimony of Dr. C. Bala Krishanan and his note Exhibit A. 1 that the appellant remained admitted in the hospital from 25-3-1972 to 15-7-1973 in the first instance and during this period he had to undergo six major operations and three minor operations. He was discharged from the hospital on July 15, 1973 and then he was readmitted on 19-11-1973 and was finally discharged on 20-12-1973. He put in this claim during the intervening period on 1-9-1973. From these facts it is plain that as a result of the accident the appellant must have become an utter wreck on account of being hospitalised for a period of 510 days. The appellant had been finally discharged from the hospital in December 1973. The claim petition was submitted by him even prior to that on 1-9-1973. I am wholly satisfied that in the circumstances proved on the record the appellant was unable to make the application earlier and it is not a case in which he should be charged with deliberate negligence or unexplained inaction. A want of bona fides on his part has not been established and I have no hesitation to hold that he was prevented by sufficient cause from filing the claim application earlier than the date he did. There could not be a better case for condonation of delay than the present one. It is no doubt true that the appellant remained out of hospital from 15-7-1973 to 19-11-1973 but during this period he was allowed to join duty on compassionate grounds and apparently no active work was allotted to him. His condition was such that he was again admitted in the hospital after a short period and he was finally discharged from the hospital only on 20-12-1973, The question of condonation of delay has to be judged considering the seriousness of the injury suffered by the appellant and the irresistible conclusion is that the appellant having suffered such serious injuries would first think of returning to his normal health rather than to file a claim application. The appellant must have suffered great mental shock on receipt of serious injuries and was not expected to think about claiming compensation before his ultimate discharge from the hospital. The nature of injuries and the disability caused as a result thereof were such which must not have permitted the appellant or his near relatives to give preference to the filing of the claim application over his recovery. Thus, I am unable to agree with the learned Tribunal that the appellant had not made out a case for condonation of delay. The learned respondents' counsel cited a judgment of this Court in *Kehar Singh v. Sukhdev Singh and Ors.* 1978 PLR 240, to support the finding of the Tribunal on the point of condonation of delay. In that case the claim application was filed after a delay of more than one month and it had come in evidence that on every 12th day the claimant used to go to Jagadhri in a bullock-cart. It is in such circumstances that it was held that if he could move to Jagadhri from his village as to why he could not file his claim application. The delay in filing the application in such circumstances was considered suggestive of

utter negligence on his part. Apparently this judgment is entirely inapplicable to the circumstances of the present case. In this view of the matter the finding of the Tribunal refusing to condone the delay is reversed and it is held that sufficient cause has been shown by the appellant for not making the application till 1st of September, 1973 and accordingly the delay is condoned.

10. Adverting to the quantum of compensation I find that the amount arrived at by the learned Tribunal is on the lower side. A Division Bench of this Court in P.S. Bhatnagar v. State of Punjab and Ors. 1977 ACJ 213, has observed as follows in connection with the assessment of damages : --

The broad general principle which should govern the assessment of damages in cases such as this is that the Tribunal should award to injured party such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries. The principle is sometimes referred to as the principle of *restitutio integrum*, but it is manifest that no award of money can possibly compensate a man for such grievous injuries as the appellant in this case has suffered. The principle, therefore, affords a little guidance in the assessment of damages for the pain and suffering undergone and for the impairment which results from the injuries and in fixing such damages the Judge can do no more than an endeavour to arrive at a fair estimate taking into account all the relevant considerations.

11. It is to be noted that the appellant on the date of accident was 28 years" of age and in pink of health. As a result of the accident his whole personality has undergone a drastic change with very little enjoyment of life left. The Tribunal has itself remarked in the impugned award that "it is quite possible that the petitioner may not fully recover and will have to live with his disability for whole of his life". Further it has been observed that the disability suffered by the appellant can cause harm to him in his future promotion and he will not be able to do any field work. The Tribunal has also taken into account that the appellant on the fateful day was going to some place in connection with his marriage proposal when he was involved in the accident. He has been unable to marry since then and in future if at all he will be married to a girl of a lower status. The medical evidence referred to above indicates that his present disability is 40 per cent. The doctor speaks of the serious crisis and grave shock suffered by the appellant as well as six major operations and three minor operations undergone by him. The appellant himself averred that the right portion of his stomach and some part of his chest have been permanently disfigured. His right leg has become shorter than the left leg and on account of the weakness of the leg bone even a short walk gives him pain. It is an unpalatable truth that no amount of money can now renew the shattered body of the appellant. It is evident that due to the injuries sustained by him in the accident his health has been irreparably injured and his future life is without much hope of enjoyment. He has indeed undergone a great amount of pain and suffering and as the learned Tribunal has remarked the probability is that he will never recover. Taking into account the

over-all circumstances, I consider it reasonable to award him compensation under various heads as follows:

For loss of Pay Rs. 10,000/- For immediate pain and shock Rs. 10,000/- For suffering due to multiple operations Rs. 10,000/- For permanent disfigurement Rs. 20,000/- For loss of future enjoyment Rs. 50,000/- For loss of future prospects in service Rs. 20,000/- For sundry expenses on diet etc. Rs. 5,000/-
_____ Total Rs.1,25,000/- _____

12. In view of the above findings, this appeal is allowed the order of the Tribunal is set aside and compensation of Rs. 1,25,000/- with interest at the rate of Rs. 10/- per cent per annum from the date of the filing of the claim till the date of its payment is awarded to the appellant against the respondents.