

(2005) 05 SHI CK 0038
In the High Court Of Himachal Pradesh

Harvinder Singh @ Jangoo

APPELLANT

Vs

Amar Jeet Kaur and Others

RESPONDENT

Date of Decision : 30-05-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2006) 2 ACC 369 : (2005) 2 ShimLC 291

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—This judgment shall dispose of two appeals since they arise out of the same award and the same accident.

2. The facts necessary for disposal of the case are that Amar Jeet Kaur, who was a minor at the relevant time, filed a claim petition, through her mother and natural guardian claiming compensation u/s 166 of the Motor Vehicles Act. In this claim petition it was alleged that when the claimant was coming back from her school on a bicycle at about 4.15 p.m., near Ghuttanpur, truck bearing No. HPN-2068 coming from Paonta Sahib side in a rash and negligent manner hit the applicant. It is alleged that the applicant fell down on the spot and sustained injuries. She was taken to the hospital at Paonta Sahib and from where she was referred to the Ortho Specialist. Thereafter she was taken to Waryam Singh Hospital at Yamuna Nagar. The claimant had been under treatment in various hospitals at Paonta Sahib, Yamuna Nagar, Panchkula and also at P.G.I., Chandigarh. Compensation of Rs. 5 lakhs along with interest was claimed on behalf of the claimant.

3. The driver Harvinder Singh @ Jangoo filed a reply to the claim petition. He denied the factum of the accident. According to him, no accident had taken place with his truck.

4. On the pleadings of the parties the Tribunal framed the following issues:

(1) Whether the petitioner suffered injuries due to rash and negligent driving of

respondent No. 1 of truck No. HPN-2068? --OPP

(2) To what amount of compensation the petitioner is entitled to and from whom? --OPP

(3) Relief.

5. After recording the evidence the Tribunal has awarded compensation of Rs. 1,15,000 in favour of the claimant and against the driver and owner. The vehicle in question was not insured. The driver and owner were held liable to pay the compensation. The driver of the vehicle has filed F.A.O. No. 158/98 for setting aside the award on the ground that the claimants have failed to prove that the accident took place with the truck in question. F.A.O. No. 173/98 has been filed by the claimant Amar Jeet Kaur claiming enhancement of the compensation.

6. I have heard Mr. Kuldip Singh Kanwar, learned Senior Counsel for the driver and Mr. Tarlok Chauhan, learned Counsel for the claimant.

7. Amar Jeet Kaur appeared as her own witness. She stated that at about 4.30 p.m. when she was near Ghuttanpur and had crossed the bridge respondent Harvinder Singh who was driving a truck came and hit her and dragged her on the road. She states that she became unconscious. According to her the accident was witnessed by her brother and one Bhupinder. She states that she received major injuries on her left arm. The skin on the arm had virtually come off in the accident. She was taken to the hospital at Paonta Sahib, from where she was taken to Waryam Singh Hospital at Yamuna Nagar. There she was admitted for 11 days and a rod was inserted in her arm. Then she was referred to Verma Hospital at Panchkula for plastic surgery. She was admitted there for 23/24 days. According to her thereafter she stayed at the residence of her sister at Sector 45, Chandigarh and from there she used to come in a three-wheeler for getting dressing done at Panchkula. She got the dressing done 15-20 times and for each visit she had to spend Rs. 100 on a three-wheeler. Thereafter, she was again sent back to Waryam Singh Hospital where the rod was removed and she was sent home. She states that after the rod was removed she was again taken to Verma Hospital, Chandigarh where she remained admitted for five days and her arm was straightened. Thereafter, she has been getting physiotherapy done at Panchkula. Her hand does not open fully. She cannot close her fist and straighten her arm.

8. Amar Jeet Kaur states that when she remained under treatment outside her village she was accompanied by her mother and her maternal uncle. She was also put on special diet. She claimed that more than Rs. 1,00,000 has been spent on treatment and about Rs. 10,000 on transportation.

9. The claimant states that she was studying in 9th Class and she lost one year due to the accident. Her arm has become totally disfigured. She still feels acute pain in her arm. The Doctor has advised another operation which will help her in closing her fist. She has also produced on record photographs Exts. PA to PC

which depict the condition of her arm. Her birth is of June, 1977. In cross-examination she has admitted that she made a statement in the Criminal case against the driver. She was confronted with her statement in the criminal Court in which it is not recorded that the truck in question dragged her on the road. She also admits that she was told after about 2 days by PW-Bhupinder that Harvinder was driving the truck. She has denied the suggestion that she was driving the cycle at a high speed and fell off the cycle, and suffered injuries.

10. PW 2 Amarjit Singh is the brother of the claimant. According to him he witnessed the accident. The deceased was riding her bicycle on the left side of the road when the offending truck HPN-2068 came at a high speed in a negligent manner driven by Harvinder Singh. He hit the bicycle from behind and she was dragged along with a truck for some distance. He states that the truck driver stopped the truck and saw the injured but despite their entreaties did not take the injured to hospital and fled away from the spot. In cross-examination he has stated that the site of the accident is about 5 kms, from the Police Station. He has been confronted with the F.I.R. Ext. PE and his statement in the Criminal Court in which it was not recorded that the deceased was dragged by the truck.

11. PW 3 is Dr. Rakesh Kumar who first treated the claimant in the Civil Hospital, Paonta Sahib. He has proved the hospital slip Ext. PF and the details of injuries Ext. PG. On Ext. PG he has drawn a sketch of the injured arm of the claimant. He states that since the injuries were serious he has referred the patient to an Orthopaedic Surgeon. In cross-examination he states that other than the injuries of the left arm and the knee there were no other injuries on the body of the complainant. He has denied the suggestion that the injuries could have been caused by a fall from the cycle. He has stated that if a person is dragged by a loaded truck then he would have injuries over the other portion of the body also.

12. PW 4 is Bhupinder Singh the other eye-witness. He has repeated what PW-Amarjeet Singh has stated and therefore it is not necessary to deal with his statement in detail.

13. PW 5 is Dr. Vinod Singhal, Orthopaedic Surgeon, Waryam Singh Hospital, Yamuna Nagar has stated that claimant remained admitted in the hospital w.e.f. 10th October, 1994 to 20th October, 1994. She had a fracture and dislocation of the left elbow joint and she had multiple injuries. Blood transfusion was done. Thereafter, open reduction and internal fixation of the fracture and dislocation of elbow by inserting K-Wires was done. The patient was referred to Verma Maternity and Nursing Home, Panchkula for plastic surgery. He has also proved the receipts of payment Exts. PW 5/E, PW 5/F and PW 5/G. According to him there is disfigurement of the arm.

14. PW 6 is Dr. Gurdarshan Gupta, is Orthopaedic Surgeon in District Hospital, Nahan. He was a member of the Medical Board which issued the disability certificate Ext. PW 6/A to the claimant. According to this disability certificate she has suffered 60% permanent disability.

15. PW 7 is Dr. Yogesh Kaplash, Plastic Surgeon, Verma Hospital, Panchkula who conducted plastic surgery on the claimant. He states that she was admitted in hospital w.e.f. 20th October, 1994 to 2nd November, 1994. He has proved on record the various documents showing the nature of the treatment being Exts. PW 7/A to PW 7/F. He states that the claimant was again admitted in the hospital on 27th August, 1995 and was discharged on 30th August, 1995. He has also proved the various receipts issued by the Hospital at Panchkula to the claimant. These are Exts. PW 7/G. PW 7/H and PW 7/I.

16. PW 8 Gurmeet Kaur is the mother of the claimant. Her statement need not detain me long since it is repetitive in nature. She gives the details of the amount spent by her in the treatment of the claimant.

17. Respondent examined himself as his witness. He states that no accident took place with his truck and he did not hit any person. He has admitted that he had crossed Ghutanpur at about 4 p.m. and Sohan Lal, conductor was accompanying him at that time. He also states that Sohan Lal is alive. Sohan Lal has not been examined.

18. The first question to be decided is whether the claimant has proved that the accident did take place? According to me the claimant has successfully discharged her burden. Not only the claimant, but two of the eye-witnesses PW 2 and PW 4 have stated that the accident took place. This is also corroborated by the F.I.R. which was lodged on the same day at 5.40 p.m. i.e. a little over an hour after the accident took place. The Police Station is about 5 kms. from the site of the accident. The family members obviously must have first taken the injured to hospital and then lodged the F.I.R. In the F.I.R. Ext. PE which is the first version of the accident the number of the truck and the name of the driver is clearly given. There is nothing to show that the said witness has wrongly implicated the driver.

19. Sh. Kuldeep Singh Knawar, learned Senior Counsel submits that in the evidence the claimant and her witnesses tried to build up a new case that she was dragged along with the truck. This is not mentioned in the F.I.R. or in the statements recorded in the criminal case lodged against the driver or in the claim petition. He submits that if the claimant had been dragged with the truck her entire body would have suffered scratches and bruises and, therefore the version put forward by the claimant cannot be believed.

20. The case of the claimant is that she was hit from behind and she was dragged with the truck. The entire skin of her arm was missing after the accident. This could obviously happen not by a fall but only when her arm would have been dragged against the road. At what angle she was dragged by the truck has not been explained. It could be that her left forearm bore the burnt of the dragging and therefore the entire skin on the left fore-arm was removed as a result of the accident, and other parts of her body did not suffer major damage. In any event this question is not so material. I have held that the truck was

involved in the accident. The driver has taken a false plea that the accident did not happen. He did not care to examine Sohan Lal. Therefore, an adverse inference has to be drawn against him.

21. In view of the above discussion I am of the considered opinion that the finding of the Tribunal on the issue of negligence is correct and calls for no interference.

22. The photographs Exts. PA to PC, which are on record, show that the left arm from the elbow to the hand of the claimant is totally disfigured. Even from the photographs it is apparent that skin has been grafted on to her arm. She cannot flex her fingers and close her fist. The medical evidence fully supports the version of the claimant. It has come on record that she remained under treatment for almost one year. She remained as an indoor patient for about 35 days. She has had treatment at various places mainly at Paonta Sahib, Panchkula and Yamuna Nagar. This Court has dealt in detail with the question with regard to the principles for has dealt in detail with the question with regard to the principles for determination of compensation in F.A.O. No. 410/1998 titled Chetan Vs. Himachal Road Transport Corporation and Others, decided on 16th, March, 2005. The relevant portion is quoted below:

The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act are well-settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in the accident. On account of the injuries, the claimant may suffer consequential losses such as, (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc.; and "(iii) loss or diminution to the pleasures of life by loss of a particular part of the body; and (iv) loss of future earning capacity. The damages can be pecuniary as well as non-pecuniary, but all have to be assessed in Rupees and Paise. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Motor Vehicles Act enjoins upon the Courts to do. The Court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by him. Such compensation is what is termed as just compensation. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The Court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. The compensation or damages assessed for the personal injuries should be substantial damages to compensate the injured for the deprivation suffered by him throughout his life. They should not be only token damages.

23. This Court held that the assessment of compensation in personal injury cases should be liberal and not niggardly. The law values life and limb in a free society on a generous scale. The proper approach to the problem is to adopt a test as to

what Contemporary society would deem to be a fair sum and allow such amount of compensation. Taking into consideration all these facts I am constrained to observe that the award of the Tribunal is abysmally low and not at all in consonance with the well settled principles enunciated by the Court from time to time with regard to the assessment of damages in the case of injuries. The approach of the Court has been extremely conservative. The Tribunal has also not awarded any amount for loss of amenities, future disability, discomfort etc. The Tribunal has also not awarded any compensation for loss of marital prospects and disfigurement. No amount has been awarded for future loss of income. No amount has been awarded for loss of one year of studies. Therefore, the amount has to be assessed all-over again.

24. The first head is that of medical expenses. In this case various bills that are produced on record and have been exhibited are for a sum of Rs. 38,317.50. The claimant may also have spent some other amounts which may not be reflected in the bills. She also requires one more operation for which another sum of Rs. 25,000 required. Keeping into view all these facts a sum of Rs. 70,000 is awarded for medical expenses.

25. The claimant when she was admitted in the hospital was looked after by atleast two of her family members for a period of one month. In addition thereto as long as she lived in Chandigarh with her sister and even thereafter till her treatment was over she required atleast one attendant. Keeping in view the fact that treatment lasted for more than 10 months it would be reasonable to assess the compensation for attendant charges and their expenses at Rs. 15,000.

26. The claimant has claimed about Rs. 10,000 for transportation. This amount appears to be reasonable and, therefore, a sum of Rs. 10,000 is awarded under this head. The claimant has stated that she was having special diet and nutrition such as fruit, soup, etc. She is awarded a sum of Rs. 5,000 for special diet, etc.

27. The Court below has awarded Rs. 30,000 to the claimant under the head pain and suffering. In my opinion this is on the lower side. The claimant has been in and out in the hospital for more than one month. She has remained under treatment for almost one year. She still suffers pain and suffering may go on for a long time. Therefore, she is awarded a sum of Rs. 50,000 for pain suffering.

28. The claimant is a young girl, aged about 17 years, at the time of accident. She lost one year of school. Therefore, she is awarded a sum of Rs. 10,000 for loss of one academic year.

29. One of the most important head for which the Tribunal has not awarded any compensation is loss of amenities, future discomfort and disability which the claimant shall suffer throughout her life. The claimant has to live with the permanent disability of 60% in relation to the arm throughout her life. Her arm has become totally disfigured. She can never live like a normal human being. Therefore, it would be reasonable to award her Rs. 50,000 under this head.

30. The claimant has not suffered any actual loss of income since she was not earning anything. However, the claimant can never do the work like agriculture etc. Her earning capacity has definitely been impaired. Even if 60% disability to her arm is not taken as 60% loss of earning capacity it would be reasonable to assess the loss of her earning capacity at 20%. Taking a very conservative view of the matter and keeping in view the fact that the deceased belongs to an agricultural family where manual labour is required it would be reasonable to assess the loss of her income at Rs. 500 per month or Rs. 6,000 per year. Keeping in view the age of the deceased it would be reasonable to use the multiplier of 18 and loss under this head comes to Rs. 1,08,000.

31. The claimant is a young girl whose marriage prospects have been adversely affected by the accident. Her arm is totally disfigured. She is suffering from a permanent disability. It would be difficult for her mother to get her married easily. She has to live with this disfigurement throughout her life. Therefore, she is awarded a sum of Rs. 32,000 for loss of marital prospects and disfigurement.

32. Therefore, it is ordered that the total amount of compensation for which the claimant is entitled is Rs. 3,50,000.

33. The appeal filed by the driver being F.A.O. No. 158/1998 is dismissed and the appeal filed by the claimant being F.A.O. No. 173/1998 is allowed and the compensation is enhanced from Rs. 1,15,000 to Rs. 3,50,000. The claimant is held entitled to interest on the enhanced amount of Rs. 2,35,000 @ 6% p.a. from the date of filing of the claim petition i.e. 7th March, 1995 till the date of deposit. Interest has been awarded at a lower rate of 6% since a major component of the enhanced amount of compensation is loss of future income which is to be paid to the claimant at one go.

The appeals are disposed of in the aforesaid terms with no order as to costs.