
(2000) 09 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 99 of 1993

Himachal Road Transport Corporation and Another	APPELLANT
Vs	
Ganeshwar Sharma and Another	RESPONDENT

Date of Decision : 12-09-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2001) ACJ 931 : (2000) 3 ShimLC 126

Hon'ble Judges : Kuldeep Chand Sood, J; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Suresh Bhardwaj, for the Appellant; Praneet Gupta and Bhupender Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Kuldeep Chand Sood, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") is directed against the award of the Motor Accidents Claims Tribunal, Kangra at Dharamshala, dated 31.12.92, in Claim Petition No. 19 of 1991.

2. In order to appreciate controversy, facts in brief may be noticed:

Ganeshwar Sharma, claimant, resident of village and P.O. Deol in Tehsil Baijnath, District Kangra, was employed as Junior Engineer with the H.P. State Electricity Board at the relevant time. He was drawing monthly salary of Rs. 4,000.

3. On 29.4.90, he was going to Baijnath from Palampur on a scooter as a pillion rider. The scooter was driven by Nirmal Sharma, PW 4. When scooter reached near Banuri Mor (curve), a bus No. HPK 9644 driven by respondent Som Nath came from the opposite direction and struck with the scooter. Both the claimant and Nirmal Sharma fell down. Claimant sustained grievous injuries and became unconscious. He was taken to Civil Hospital, Palampur. He was hospitalised at Palampur and was subsequently referred to Indira Gandhi Medical College, Shimla. He was operated and his leg remained under plaster. Due to this

accident, his right leg was shortened by half an inch. The Medical Board had assessed the permanent disability to be 10 per cent. Himachal Road Transport Corporation is the owner of the bus involved in the accident.

4. The case of the claimant is that accident occurred due to the rash and negligent driving of the bus by its driver Som Nath. Claimant claims Rs. 5,00,000 as compensation under various heads. The respondents resist the claim. Allegations are controverted. According to the owner and driver of the bus, claimant did not sustain any injury due to any accident with bus No. HPK 9644.

5. Learned Motor Accidents Claims Tribunal vide his impugned award, allowed the claim petition and made an award of Rs. 1,03,000 in favour of the claimant. Learned Tribunal directed the payment of interest at 12 per cent per annum from the date of filing of the petition in case the award amount was not deposited or paid to the claimant within 30 days from the date of announcement of the award.

6. Dissatisfied, Himachal Road Transport Corporation and its Regional Manager have preferred this appeal.

7. The award is contested on the following grounds:

(a) The accident did not occur due to rash and negligent driving of the driver of the bus;

(b) The amount of award is excessive and not based on the evidence on record.

8. We have heard Mr. Suresh Bhardwaj learned counsel for the appellants and Mr. Praneet Gupta, learned counsel for the respondents and gone through the record.

9. So far negligence is concerned, there is overwhelming evidence on record which shows that accident occurred due to the rash and negligent driving of respondent No. 2, Som Nath, driver of the bus. Apart from the evidence of claimant Ganeshwar, PW 3 and Nirmal Sharma, PW 4, the rider of the scooter, that bus hit the scooter on the wrong side of the road, there is evidence of Kamal Kumar, PW 7 which supports the version of the claimant. According to Kamal Kumar, on 29.4.1990, he saw the scooter, involved in the accident at Banuri Curve going towards Baijnath. At that time, H.R.T.C. bus also came from Baijnath side. On seeing the bus, the scooter was stopped by the scooterist. The bus being not under control of the driver, hit the scooter and complainant fell into the nearby kahal. The bus dragged the scooter for some distance. The witness has not been shaken in the lengthy cross-examination. There is no reason to discard his testimony. It is true that Som Nath, driver of the bus, appearing as RW 1, states that the accident did not occur due to his fault. According to him, the driver of the scooter got perplexed on seeing the bus, he applied the brakes. The scooter skidded and fell down and as a result whereof, claimant received injuries. He though admits that he was prosecuted for rash and negligent driving in the criminal court. There is nothing on the record except the self-serving statement of Som Nath, driver of the bus, that the accident occurred due to the skidding of the scooter on bajri. Respondents also rely upon the judgment of the Sub-

Divisional Judicial Magistrate, Palampur dated 17.7.1991 whereby Som Nath was acquitted of the charges under Sections 279, 337 and 338 of the Indian Penal Code. We have perused the judgment. It appears, the driver of the bus Som Nath took a defence in criminal case, that the accident occurred due to the mechanical failure. The defence taken by him was that because of sudden application of brakes, the main leaf broke and bus tilted towards the right direction. The defence taken by the respondent driver of the bus, in the criminal case is in total variance to the stand taken by the driver of the bus before the Tribunal. The judgment of the criminal court does not help the appellant in any manner. It rather strengthens the case of the claimant-respondent that accident was caused due to the rash and negligent driving of the bus by respondent.

10. In view of the weight of evidence on record, the findings arrived at by the learned Tribunal on the question of negligence cannot be faulted with.

11. The next submission of Mr. Bhardwaj, learned counsel for the appellant is that the claimant was not entitled for any amount under the heads:

- (a) Cost of medicines;
- (b) Loss of income; and
- (c) Loss of future income.

12. Learned Tribunal has allowed the compensation under the following subheads:

(1) Cost of medicines, etc. Rs. 6,600 (2) Pain and suffering Rs. 10,000 (3) Cost of one attendant Rs. 6,400 (4) Loss of income Rs. 32,000 (5) Loss of future income Rs. 48,000 Total: Rs. 1,03,000

13. In an accident for personal injuries, the damages are invariably divided into two main parts:

- (a) Special damages; and
- (b) General damages.

14. Special damages are those which have to be specifically pleaded and proved. It consists of out of pocket expenses on account of treatment, medicines, travel, etc. It also includes loss of earnings up to the date of trial. These damages, normally speaking, are capable of substantially exact calculation. General damages may not be specifically pleaded. This includes compensation for pain and suffering, loss of amenities of life, loss of expectation of life and the like including the suffering on account of permanent disability, if any and for loss of earning power in future.

Cost of medicines and travel expenses:

15. The claimant claimed Rs. 25,000 on account of medicines and conveyance, etc. The learned Tribunal has allowed only Rs. 6,600 on this count. The contention of Mr. Bhardwaj is that as the claimant was a Government servant,

therefore, he might have been fully reimbursed for his treatment including the medicines. There is no evidence to show that claimant was fully reimbursed by his department for the cost of medicines and his travel expenses. We are conscious of the fact that all the medicines and other expenditure in hospitalisation is not reimbursable under the Rules.

There is un rebutted evidence of the claimant that department reimbursed him only to some extent. The Tribunal, it is well settled, is obliged to compensate an injured person under this head by awarding a reasonable sum adequate to reimburse the claimant as regards out of pocket expenses incurred by the injured. The claimant in this case was treated not only at Palampur but also at Indira Gandhi Medical College at Shimla, where he remained as indoor patient. He continued to visit the doctor, for his treatment, even after his discharge from the hospital. He must have spent considerable amount on medicines and travel. The claimant, in his evidence states that he spent about Rs. 15,000 to Rs. 20,000 on treatment out of which he was reimbursed by the department only to the extent of Rs. 3,400. We are satisfied that the amount of Rs. 6,600 allowed for cost of medicines, etc., which includes travelling expenses, is not excessive at all. Thus, the findings of the learned Tribunal cannot be faulted with.

Loss of income up to the date of trial:

16. The learned Tribunal has allowed Rs. 32,000 as loss of income up to the date of trial. The contention of Mr. Bhardwaj is that as the claimant was on leave, therefore, he was not entitled to compensation for the period he did not attend the office. The contention of Mr. Bhardwaj is fallacious and cannot be accepted.

17. Learned Tribunal found, as a matter of fact, that the accident took place in April, 1990 and the claimant could join his duties only in January, 1991. He, thus, remained on leave for about eight months. He was drawing a salary of Rs. 4,000 per month and, therefore, allowed compensation of Rs. 32,000 as loss of income up to the date of trial. It is not disputed that leave was taken by the claimant per force because of the accident. The claimant could have taken this leave at his leisure and pleasure. He could have encashed this leave at the time of his retirement. He could also reserve this leave for any contingency. We need not emphasise that in the absence of the availability of earned leave, a Government servant has to take leave without pay. It, therefore, cannot be said that the claimant did not suffer any pecuniary loss in this respect. Pecuniary loss on account of the leave taken by the claimant is capable of exact calculations as arrived at by the learned Tribunal. We draw support for the view we have taken, from Udairam Vs. Mohammad Usman and Others,

Loss of future income:

18. The last contention of Mr. Bhardwaj is that claimant was a Government servant and by this permanent disability, he suffered no loss in future income. It is true that the salary of the appellant was not effected due to the disability suffered by him. There is also nothing on the record to show that his future

promotional chances were reduced. The reason which weighed with the learned Tribunal was that as the petitioner walks with the help of crutches, therefore, he would not be able to do the field duty and this reduces his promotional chances.

19. Learned counsel for the claimant-respondent submits that the claimant being an Engineer could have looked forward for gainful employment after his retirement. He could be self-employed in view of his qualifications and experience as Engineer. Being handicapped, as the complainant is, he would not be able to employ himself gainfully after retirement and thus, there is loss of future income.

20. We are afraid, there is no evidence to this effect. Claimant does not say a word about it. There is also no evidence that because of the disability of the complainant, his chances for future promotions were reduced.

21. Under the head "general damages", a claimant is entitled to be compensated for:

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of expectation of life; and
- (d) discomfort and inconvenience.

22. The powers of the court or Tribunal to shift the amount of claim from one head to another within the overall amount of compensation, is no longer res integra. [See Bai Nanda v. Shivabhai Shankerbhai Patel 1966 ACJ 290 ; Babu Mansa Vs. The Ahmedabad Municipal Corporation and Others, K. Sapana v. B. Appa Rao 1988 ACJ 113 ; Rattan Lal Mehta Vs. Rajinder Kapoor,

23. In Babu Mansa Vs. The Ahmedabad Municipal Corporation and Others, a Division Bench of Gujarat High Court speaking through P.D. Desai, J., as Mylord then was, observed:

However, as long as the total amount to be awarded does not exceed the total amount claimed, there should be no objection in awarding higher amount than that claimed under one particular head, if on the true assessment of the evidence led at the trial, the claimant is found entitled to the same...So long as the award does not exceed the total amount claimed, there should be no objection in splitting it up under different heads and, even if a specific amount is claimed under a particular head, the Tribunal has the power to award an excess amount under that very head without amendment of the claim application provided the evidence justifies it.

24. Now in the award made by the learned Tribunal only Rs. 10,000 have been allowed under the sub-head pain and suffering, whereas, no amount has been allowed for discomfort, inconvenience, loss of amenities of life and expectation of life. The courts though allow lump sum money for non-pecuniary losses under

the head pain and suffering and loss of amenities but in fact, these are three different elements. The word "pain" is used to describe the physical pain caused by or consequent upon the injury while "suffering" involves an anxiety, fear, embarrassment, etc. The quantum awarded for pain and suffering varies from injuries to injuries.

25. In this case, the claimant not only remained bedridden for about eight months but also suffered permanent disability in terms of the shortening of his leg by 72 inch. The amount of compensation allowed for pain and suffering by the learned Tribunal is niggardly. We are of the view that at least Rs. 40,000 should have been allowed under this head. Similarly, no compensation has been awarded for the loss of amenities of life in view of the shortening of the leg of the complainant. This head under the special damages contemplates compensation for victim's enjoyment of life apart from material or pecuniary loss. It is admitted position that the claimant-respondent due to shortening of his leg will no longer be able to walk properly and enjoy the life. The claimant in our view was entitled to Rs. 25,000 under this head. Thus, even if the claimant is not held to be entitled to the loss of future income, in the circumstances amount of Rs. 48,000 awarded by the Tribunal under the head loss of future income can be shifted and adjusted under the heads pain and suffering, loss of amenities of life and loss of expectation of life.

26. Taking into consideration the nature of injury, the permanent disability, the pain and suffering undergone by the claimant, the amount of Rs. 1,03,000 cannot be said to be excessive by any standards.

27. No other point is urged before us.

28. In result, appeal fails and is dismissed with no order as to costs.