

(1996) 12 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 218 of 1993

Himachal Road Transport Corporation and Another	APPELLANT
Vs	
Vinod Bali	RESPONDENT

Date of Decision : 31-12-1996

Acts Referred:

Citation : (1998) ACJ 1284

Hon'ble Judges : M. Srinivasan, C.J.; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : M.S. Chandel, for the Appellant; Ramakant Sharma and Devyani Kuthiala, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—The Himachal Road Transport Corporation which is the owner of the bus involved in the accident and driver of the bus are the appellants in this appeal. The accident took place on 6.4.1989. The respondent herein was driving the scooter with his friend on pillion. When the scooter reached near Knolls Wood, Chhota Shimla and it was going uphill, the bus driven by the appellant No. 2 hit the scooter throwing out the respondent about 10-15 feet away. The respondent became unconscious immediately and suffered multiple injuries whereas the pillion rider escaped unhurt. The respondent filed an application for compensation under the Motor Vehicles Act on the ground that the bus was driven by the appellant No. 2 in a rash and negligent manner and, therefore, both the appellants were liable to pay the compensation. The respondent claimed a total amount of Rs. 5,00,000/- by way of compensation without specifying the various heads under which such amount was claimed. In the petition he has stated that he was working in Hitkari Potteries Private Limited, Parwanoo and was earning Rs. 2,800/- per mensem besides allowances, etc. His age is given as 34 years at the time of accident. It is further averred in the petition that even after about 6 months from the date of the accident, the respondent was not able to move about without crutches and his left arm had been deformed. According

to the petition, respondent was on 50 per cent pay leave after the accident and his wife had resigned her job in order to look after the respondent. She was earning Rs. 500/- per mensem as salary. The respondent was admitted to Indira Gandhi Medical College, Shimla and his entire family had to be shifted to Shimla by incurring the expenditure of Rs. 5,000/-. The family of the respondent consists of his 79 years old father, his wife, two minor daughters and a minor son. The respondent also suffered loss, inasmuch as his wife intended to set-up an industry at Kumarhatti in partnership with another person who has now backed out from the deal. The wife of the respondent had already spent a sum of Rs. 35,000/- on the project which has now been abandoned.

2. The petition was contested by the appellants on the ground that there was no negligence on the part of the appellant No. 2 in driving the bus and the fault was entirely with the respondent who was driving the scooter. It was also contested by the appellants that the compensation claimed by the respondent was highly exaggerated and he did not suffer any loss as claimed by him.

3. The Tribunal held that the accident occurred on account of rash and negligent driving of the bus by the appellant No. 2 and that the respondent is entitled to a total sum of Rs. 3,01,436/- by way of compensation. The Tribunal granted the same with interest of 12 per cent per annum from the date of the petition till the date of its realisation. Out of the awarded amount, a sum of Rs. 40,000/- was directed to be paid in cash and rest of the amount to be invested in fixed deposit initially for 61 months in any nationalised bank.

4. The appellants preferred this appeal and in C.M.P. No. 409 of 1993, this Court passed an order on 10.1.1994 directing release of a sum of Rs. 1,00,000/- to the respondent out of the amount deposited by the appellants subject to respondent's furnishing security to the satisfaction of the Registrar of this Court and the remaining amount was directed to be deposited in the name of the Registrar in the same bank for a further period of two years.

5. The respondent has preferred a memorandum of cross-objections which is registered as Cross-objections No. P1 of 1994. According to the respondent, he is entitled to compensation of Rs. 5,00,000/- as claimed in the original petition.

6. We have gone through the record and at the outset we must point out that the award passed by the Tribunal is not satisfactory at all and it is not based on a proper discussion and appreciation of the evidence on record. Instead the Tribunal has proceeded to decide the matter as if it is only a question of law and it has chosen to place more reliance on the decisions of the Courts under the Motor Vehicles Act rather the evidence on record.

7. On the first question as to whether the accident occurred on account of negligence of the driver of the bus who is the appellant No. 2 before us, we find that the driver of the bus was negligent and accident occurred only on account of his rash and negligent driving. No doubt, here also the discussion of the Tribunal is scrappy and it is not in accordance with the well settled principles on the basis

of which a question of fact has to be decided. As pointed out earlier, the Tribunal has placed more reliance on the judgments of this Court and other Courts rather than discussing the evidence on record as such. Hence, we have gone through the evidence and come to our own conclusion on this question.

8. The only witness examined on the side of the appellants is the driver of the bus who is the appellant No. 2 herein. This witness is naturally an interested one and he has not been able to explain as to how the respondent herein was rash and negligent in the matter of driving his scooter. It should be borne in mind that the scooter was going uphill and the bus was proceeding downhill. Naturally the velocity will be more in the matter of the bus being driven and the driver should have taken more care when he was driving the vehicle downhill. According to the evidence of the pillion rider, who is examined as PW 4, the scooter was being driven on the extreme left side at a speed of 15 to 20 kilometres per hour. That evidence has not been shaken in any manner in the cross-examination. The other witness to the accident who is examined as PW 7 is the respondent himself. Even if the evidence of PW 7 is not accepted, the evidence of PW 4 is sufficient to show that the bus was driven in a rash and negligent manner. The way in which the accident has occurred can also lead to the application of the principle of *res ipsa loquitur* and the Court is entitled to draw an inference that the bus was driven in a rash and negligent manner in this case. The evidence of RW 1, who is the driver of the bus, is hardly convincing and we are of the opinion that the finding of the learned Tribunal is correct, though on our own reasoning.

9. It is contended by the learned Counsel for the appellants that the police registered a case only against the respondent and not the driver of the bus. According to the learned Counsel, the fact that the F.I.R. was lodged only against the respondent is sufficient to indicate that it was the scooter which was driven in a rash and negligent manner and not the bus. We are unable to accept the contention as the F.I.R. was lodged by the bus driver himself and naturally against the respondent. The respondent was unconscious and he was taken to hospital immediately and there could not have been any report by the respondent to the police at that stage. The police has proceeded against the respondent. It will not be of any use to decide the question whether the negligence was on the part of the appellant No. 2 or the respondent. We are convinced that it was only rash and negligent act of the bus driver which has led to the accident. Hence, the finding on that question is affirmed.

10. The next question is about the compensation payable by the appellants to the respondent. There is no doubt whatsoever that he is entitled to compensation, but how it should be arrived at is the question to be decided. The Tribunal has applied the principle of multiplier. The Tribunal has proceeded to take a view that the respondent had lost a sum of Rs. 1,200/- per mensem on account of the accident and that but for the accident he would have earned and spared the said amount out of his earnings. On that basis the Tribunal has multiplied Rs. 1,200/- by 12 and arrived at a figure which was in turn multiplied

by 20. Obviously, the Tribunal has proceeded on the footing that the respondent was aged about 34 years on the date of accident and he would have earned for another 20 years and on that basis the multiplier of 20 has been applied. It comes to Rs. 2,88,000 to which a sum of Rs. 8,436/- is added because of loss of half of the pay of the respondent for about 7 months when he was working with Hitkari Potteries Private Limited as Liaison Officer. Another sum of Rs. 5,000/- has been awarded by the Tribunal being an amount required by the respondent for another operation on his leg to remove the iron rod which was inserted at the time of the first operation performed soon after the accident. In our opinion, the principle of multiplier cannot be invoked in this case at all. It is not a case of death of the victim of the accident. Here the victim is alive and making a claim for the loss and damages suffered by him. It is a matter to be found out by the Court as to what is the loss incurred by him on account of his accident both pecuniary and otherwise.

11. There is no dispute now that the respondent has suffered permanent disability to the extent of 45 per cent on his left thigh and 15 per cent on his right heel. Though the respondent claimed that his leg has been shortened, it is not proved by evidence on record. At the time of trial obviously the respondent went to the Court with the help of the crutches. In his petition he has stated clearly that he was advised to use crutches for about six months after the discharge from the hospital. Whatever it is, we find that the respondent had to suffer serious injuries which led to permanent disability to some extent. We accept the evidence of the doctors and hold that the respondent suffered 45 per cent disability on the left thigh and 15 per cent disability on the right heel.

12. There can be no doubt, whatever, that the respondent had suffered mental agony and also undergone pain and suffering not only during the period of his being hospitalised but also subsequently. As regards mental agony, it will be there probably throughout his life. Whenever the respondent looks at his leg he will certainly brood over the injury suffered by him and thus the mental agony will be continued forever during his lifetime.

13. As pointed out by the Tribunal, the respondent has not produced any record to prove the amount spent by him for the treatment which he had undergone in Indira Gandhi Medical College and Hospital, Shimla. He has also not been able to place before us any record to prove the amount which he had spent for the purpose of going to hospital off and on after he was discharged from the hospital for continuing his treatment. In such a situation, we have only to depend upon the general knowledge of the Court as well as the experience in worldly affairs.

14. It has been held by the Supreme Court in *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, that while fixing an amount of compensation payable to the victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. The relevant passage of the judgment reads as follows:

Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts, pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

15. It is not in dispute that the respondent was aged about 34 years at the time of the accident and at that age he suffered a major accident which certainly has caused a setback in his life. Taking that into account, if we apply the tests prescribed by the Supreme Court, we are able to arrive at the following conclusion.

16. As regards the pecuniary damages, no doubt, there is no documentary evidence before us to prove what the respondent spent for medical attendance. As regards the loss of earning up to the date of trial, the only evidence available is that of the respondent as well as PW 1, the representative of the employer of the respondent. From this evidence it appears that the respondent was paid only half pay during the period of 7 months. That has been taken note of by the Tribunal and the total amount is worked out to Rs. 8,436/- by way of loss of pay during the period when the respondent could not attend his office. That part of the award is, therefore, to be confirmed. The part of the award granting Rs. 5,000/- for the purpose of another operation to be performed by the respondent is also to be confirmed.

17. As regards the other material loss, it is in evidence of the respondent that his wife gave up her employment in which she was getting Rs. 500/- per mensem while she was working as school teacher in order to attend the needs of the respondent. It is also his case that his wife had entered into a partnership with another person and she had invested a sum of Rs. 35,000/- for the purpose, which she lost on account of this accident. No doubt, the wife of the respondent has not been examined as a witness. There is no difficulty in accepting the evidence of the respondent himself in that regard. It is also in evidence that the entire family had to be shifted to Shimla when the respondent was in the hospital undergoing treatment. Thereby, the family had to incur an expenditure of Rs. 5,000/- and to undergo several suffering which cannot be monetarily valued. As

regards the future prospects, it is in evidence that the respondent could have earned an increment but for the accident. It was got elicited by the appellants in the cross-examination of the respondent that he was employed at the time of evidence and was getting Rs. 3,500/- per mensem. This evidence shows that the respondent was able to get an employment at a higher salary than what he was earning at the time of accident. No doubt, learned Counsel for the respondent contends that the respondent had to be out of employment for about 31/2 years but it is not brought out in the evidence as such. But as pointed out by the Supreme Court the respondent is entitled to the damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future. As we have observed earlier it will be mental pain which the respondent has to suffer almost throughout his life as it is a case of permanent disability. No doubt, the respondent may not need the use of crutches at present but certainly it cannot be said that he is the same normal man as he was prior to the accident. There is no question of damages for loss of expectancy of life. It is not proved that normal longevity has, in any way, shortened. But there is a clear case of inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life as prescribed by the Supreme Court.

18. Learned counsel for the respondent has also drawn our attention to the judgment of the Madras High Court in *The Managing Director, Thiruvalluvar Transport Corporation Vs. Thangavelu and Another*, In that case, the Court held that loss of earning power is only one of the consequences of permanent disability besides the other consequences and said:

It is well-known that permanent disability will have several consequences apart from inability to work or earn as before. To be specific, the victim of the accident who suffers from permanent disability will not be in a position to carry on his normal household activities. More than anything else, he will be brooding over the disability day after day till the end of his life and suffer untold mental agony.

We have already applied that test in this case.

19. Learned counsel for the appellants draws our attention to the judgment of the Punjab and Haryana High Court in *Major Tarif Singh Ahlawat (Retd), Advocate Vs. The State of Haryana and Another*, In that case the Tribunal awarded Rs. 11,000/- for permanent disability which was found to be at 30 per cent. The claimant was a retired Major, practising as an advocate. The High Court held that taking all the facts into consideration, the award passed by the learned Tribunal was not adequate and the Court increased the compensation to Rs. 50,000 on account of medicines, loss of profession, permanent disability and pain and suffering. No specific reason is given in the judgment as to how the amounts are worked out.

20. Learned counsel also placed reliance on the judgment of the High Court of Madhya Pradesh in *Ambika Srivastava Vs. Madhya Pradesh State and Others*, There also in the case of fractures of tibia and fibula resulting in shortening of leg

and permanent disability, the claimant who was a lady had to remain under treatment for about two years and was confined to bed. The Tribunal awarded a sum of Rs. 26,500/- in all as compensation. The Court increased it to Rs. 40,000. In that case also we do not find any specific reason in the judgment of the learned High Court.

21. In view of the facts and circumstances, which have already been set out in detail, we hold that a sum of Rs. 1,50,000 will be a reasonable compensation with regard to pecuniary and non-pecuniary damages suffered by the claimant in addition to a sum of Rs. 8,436/- awarded by the Tribunal for loss of earning during the period of 7 months when the respondent could not attend his office and a sum of Rs. 5,000/- which was awarded by the Tribunal for the purpose of another operation to be undergone by the respondent. Thus, a total sum of Rs. 1,63,436/- is payable to the respondent by way of compensation. This amount will bear interest at the rate of 12 per cent per annum from the date of the original claim petition filed by the claimant till the date of realisation.

22. As pointed out already, a sum of Rs. 1,00,000/- has already been paid to the respondent, which shall be taken into account while the balance amount of compensation is calculated. The Registrar shall pay whatever balance is due to the respondent as per this award after taking into account a sum of Rs. 1,00,000/- which has already been paid to the respondent. The remaining amount after payment to the respondent shall be paid to the appellants. The appeal is allowed to the extent indicated above. No costs.

23. The security bond filed by the respondent in this Court stands cancelled and it be returned to the respondent by the Registry.

Cross-objections No. 81 of 1994.

In view of the disposal of the appeal as aforesaid, the cross-objections stand dismissed. No costs.