

(2010) 11 SHI CK 0338
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 274 of 2006

Jeet Ram alias Dila

APPELLANT

Vs

The Thakur Transport Co­operative Society and Others

RESPONDENT

Date of Decision : 03-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2010) 11 SHI CK 0338

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Sharma, J.—Two claim petitions were decided by the learned Motor Accident Claims Tribunal II, Solan, H.P., vide a common award dated 7th august, 2004. In one of the claim petitions, Shri Jeet Ram alias Dila, the appellant herein, was the claimant. The petition u/s 166 of the Motor Vehicles Act (in short "MV Act") was filed for grant of compensation of Rs. six lacs on account of personal injuries said to have been suffered in the motor vehicle accident that had taken place on 26th March, 1999, at about 1:15 p.m. near Shitla Mata Mord near Arki, District Solan, H.P., involving bus No. HIS 3294 in which he was traveling at the relevant time.

2. After due contest by the owner, driver and the insurer the learned Claims Tribunal allowed the petition. Consequently, a sum of Rs. 1,70,000/- was awarded to the petitioner as compensation, head wise details whereof are as under:

Pecuniary damages.

I) Medical expenditure: Rs. 15,000/-

Non pecuniary damages.

ii) Expenditure on attendant: Rs. 10,000/-

iii) Pains and sufferings: Rs. 20,000/-

iv) Loss of amenities of life: Rs. 30,000/-

v) Loss of future income: Rs. 95,000/

Total: Rs. 1,70,000/

3. The impugned award dated 7th August, 2004, has been challenged on behalf of the petitioner alone and admittedly the same attained finality insofar as the respondents are concerned.

4. I have heard the learned Counsel for the parties and perused the records.

5. It is in evidence that pursuant to the injuries suffered by the petitioner in the accident he had sustained permanent disability to the extent of 40%, involving his left eye and right upper limb. PW-1 Dr. Paramjeet Sharma, Eye Surgeon, was a member of the medical board which had examined the petitioner for assessment of disability vide certificate Ex. PW-1/A. He has stated that there is total loss of eye sight in relation to his left eye. Similarly, PW-6 Dr. Kashmir Singh, Professor and Head, Department of Nuro Surgery, I.G.M.C., Shimla, who had treated the petitioner and had also issued disability certificate, Ex. PW-6/A, has stated that there was:

Head injury with basal skull fracture 3rd cranial nerve palsy left with 7th cranial nerve palsy right with frozen shoulder right side total disability 40%. It is due to involvement of cranial nerve and right upper limb.

6. Thus it is apparent that owing to the injuries suffered by the petitioner in the accident under reference he had suffered permanent disability to the extent of 40%. It is in evidence that the petitioner, who is a mason, was aged about 35 years or so at the time of the accident. Though, according to him, his monthly income from his occupation as mason was to the tune of Rs. 4500/- apart from which he was also earning a sum of Rs. 1500/- from agriculture. However, there is no credible evidence on both the counts. At the given time, i.e., in the year 1999 when the accident had occurred, daily wage of a mason could not have been more than Rs. 100/- in any case and since he was not in some organized and permanent employment even there could be loss of some working days in a month. In such circumstances, monthly income of the petitioner can be reasonably quantified to Rs. 3,000/-. It being so, when the disability suffered by the petitioner, which is to the extent of 40%, is taken in terms of the corresponding loss of income, it would come to Rs. 1200/- per month. The yearly loss comes to Rs. 14,400/-. When multiplier of 16 is applied by placing reliance on the law laid down by the Hon'ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the total compensation under the head loss of future income on account of disability comes to Rs. 2,30,400/-.

7. In view of the above, compensation of Rs. 95,000/- awarded by the learned

Tribunal, under the aforesaid head, on the face of it appears to be on the lower side. The difference comes to Rs. 1,35,400/- (Rs. 2,30,400/- - Rs. 95,000/-). In somewhat similar circumstances a sum of Rs. 2,59,200/- was awarded as compensation for loss of earning capacity by the Hon''ble Apex Court in Sunil Kumar Vs. Ram Singh Gaud and Others, of the judgment, being relevant, are extracted below:

4. Tribunal by its order dated 25.6.2004 awarded a compensation of Rs. 45,000 for 45 per cent permanent disability suffered by the appellant; Rs. 21,000 for the amount spent on the treatment and Rs. 6,000 for physical pain and mental agony suffered by appellant. Thus, a total sum of Rs. 72,000 was awarded as compensation alongwith interest at the rate of 6 per cent per annum from the date of claim petition till payment.

9. Taking into consideration the present income of the appellant as Rs. 4,000 per month and the permanent disability of 45 per cent suffered by him, we are of the view that the capacity of appellant to earn in future would be reduced by Rs. 1,800 per month approximately. If $\frac{1}{3}$ rd is deducted towards miscellaneous expenses, the loss of income comes to Rs. 1,200 per month which, in turn, comes to Rs. 14,400 per annum. Appellant was 29 years of age at the time of accident. Taking the multiplier to be 18 (as per the Second Schedule to Section 163A of the Act), the total loss of income comes to Rs. 2,59,200.

10. For the reasons stated above, the loss of income is assessed at Rs. 2,59,200. The appellant would be entitled to the aforesaid amount in addition to the sum already awarded by the Tribunal, which has been upheld by the High Court. The appellant would be entitled to interest at the same rate, i.e., 6 per cent per annum on the enhanced amount as well from the date of filing of the claim petition till realisation.

8. In view of the above, the petition is allowed and a sum of Rs. 1,35,400/- is awarded to the petitioner in addition to the amount of compensation of Rs. 1,70,000/- already awarded by the learned Claims Tribunal. In addition thereto, the petitioner shall also be entitled to interest @ 7.5% on the initial amount of compensation of Rs. 1,70,000/- awarded by the learned Claims Tribunal from the date of institution of the petition (05.06.2003) till the date of payment thereof which is stated to have already been received by the petitioner. Similarly, interest @ 7.5% shall also be payable on the enhanced amount of compensation of Rs. 1,35,400/- w.e.f. 05.06.2003 till the date of payment/realisation. The additional amount of compensation of Rs. 1,35,400/- alongwith interest shall be initially payable by respondent No. 3, Oriental Insurance Company Limited, which shall be at liberty to recover the same from respondents No. 1 and 2 on the same analogy as adopted by the learned Claims Tribunal in the impugned award dated 07.08.2004, regarding validity of driving license of respondent No. 2, Vijay Kumar.

9. The appeal stands disposed of.