
(1989) 09 P&H CK 0087
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 418 of 1984

Jodhan Mal

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 16-09-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A(3), 110B

Citation : (1990) ACJ 316 : AIR 1989 P&H 296

Hon'ble Judges : A.L. Bahri, J

Bench : Single Bench

Advocate : Munishwar Puri and Rameshwar Puri, for the Appellant; Raj Kumar Bashamboo, for the Respondent

Final Decision : Allowed

Judgement

A.L. Bahri, J.—Jodha Mal (Jodhan Mal), claimant, challenges award of Motor Accident Claims Tribunal, Rupnagar Jan. 24, 1984 vide which his claim application was dismissed. Jodha Mal claimed Rs. 50,000/- as damages on account of the injuries suffered by him in a motor vehicular accident, which took place on May 10, 1982. He was travelling from Delhi to Una by bus No. HPG 2237 belonging to Himachal Pradesh Government. At about 3.30 A.M. on that day the bus met with an accident near village Bharatgarh, tehsil Rupnagar. Due to carelessness and negligence of driver of the bus, it overturned and Jodha Mal suffered injuries. He was admitted in the Post Graduate Institute on the same day and as finally discharged on May 26, 1982. A case was also registered vide FIR dt. May 10, 1982 regarding the accident. Jodha Mal served a notice for recovery of Rs. 10,000/- as compensation from the State of Himachal Pradesh. The said amount is for expenditure on travelling expenses and costs of medicines etc. The matter remained in correspondence with the State of Himachal Pradesh and ultimately he filed the present claim application on May 24, 1983.

2. The claim was contested by the respondents. Plea of limitation was taken. The accident was admitted, but it was denied that the same occurred on account of

negligence of the driver of the bus or that the claimant suffered injuries. Receipt of notice was admitted whereby the claimant asked for payment of Rs. 10,000/-. The bus was driven at a normal speed and suddenly the main spring leaf of the driver side broke down which pushed the bus on the right side and thus the accident took place. It was not due to the rashness or negligence of the driver. The claim was alleged to be highly exaggerated. The Tribunal framed the following issues :--

1. Whether the accident in question in which claimant sustained injuries was caused by the rash and negligent driving of bus No. HPG-2237 by its driver respondent No. 4 as alleged in the claim petition? OPA.
2. Whether the claimant is entitled to compensation? If so, to what amount? OPA.
3. Whether there is sufficient cause for condoning the delay in filing the application? OPA.

Under issue No. 1 it was held that the accident took place due to the rash and negligent driving of the bus and the appellant suffered injuries in the said accident. Under issue No. 2 it was held that the appellant had failed to prove for want of evidence the quantum of compensation payable to him. Under issue No. 3 the claim application was dismissed as barred by lime, and there being no sufficient cause to condone the delay.

3. An application for condonation of delay in filing the claim application was filed inter alia alleging that after the accident, through counsel, notice was given to the respondents on Aug. 16, 1982 to pay compensation. The respondents 1 to 3 adopted delaying tactics while writing several letters and last letter was received which is dt. Feb. 21, 1983. During this period the respondents continued getting details of the claim. The delay in filing the claim was not intentional and was not the result of negligent act on the part of the claimant. PW 2 Jodha Mal deposed about several letters written to the respondents and the replies received. Exhibit P1 is the copy of the registered notice which was given to the General Manager, Himachal Road Transport Corporation, Shimla and the Regional Manager, Himachal Road Transport Corporation, Una. Complete details of the accident and the injuries suffered by the claimant were given. Even the ticket numbers and the denomination of the tickets were also given. A sum of Rs. 10,000/- was claimed on account of expenditure met on medicines and travelling etc. Exhibits P2 and P3 are the acknowledgment receipts of this notice. Exhibit P4 is the letter from the Regional Manager, Himachal Road Transport Corporation, Una, addressed to the General Manager, Himachal Road Transport Corporation, Shimla. Copy of the same was sent to Shri B. N. Khanna, Advocate, Una, who had sent notice Exhibit P1. It was intimated in this letter that In charge, Himachal Road Transport Corporation, Nalagarh had, time and again, been requested to send accident enquiry report in the absence pf which it was not possible to submit comments on the notice. Exhibit P5 is the, reminder to the letter Exhibit P4, copy of which was also sent to Shri B. N. Khanna, Advocate.

Exhibit P6 is yet another reminder mentioning therein that the matter had already been sufficiently delayed and suitable reply be sent. Exhibit P8 is copy of the letter sent by Regional Manager to Jodha Mal, the claimant. It is dt. Dec. 23, 1982 asking him to send journey tickets in original so that further action in the matter be taken Exhibit P9 is another letter of the Regional Manager, addressed to Chief Medical Officer, Civil Hospital, Una, mentioning therein that the accident had taken place and list of those injured passengers was required with regard to compensation cases. Copy of this letter was also sent to Shri B.N. Khanna, Advocate. Exhibit P10 is a letter written by Shri B. N. Khanna to the Regional Manager, Una, whereby photostat copies of the journey tickets were sent to General Manager at Shimla.

4. From the above correspondence it is quite clear that the respondents had entertained the claim submitted by the appellant, and for looking into it, getting details of the accident and the injuries as well as to satisfy if the claimant was a bona fide passenger in the bus at the time of the accident steps were taken. However, expressly letters written by the respondents may not amount to acknowledgment of liability, but they do suggest implied acknowledgment of their liability. The factum of accident having not been denied, the respondents only wanted information from the hospital regarding the details of the injured or their injuries, otherwise the claimant had submitted the copies of the journey tickets to the respondents.

5. When State is a party respondent, it is not expected of it to raise questions of limitation, more so, in the cases of the like nature, that is accident claims cases. Not only that it is the legal duty of the State to compensate the passengers using public vehicles for the injuries suffered in accident, it is also the moral duty of the State of do so. The State should not force the victims of the accident to move the Courts to take legal proceedings for getting relief, i.e. compensation, for the injuries suffered Such like cases should have been promptly settled by the State at its own end, after getting verification of the particulars. When the State had entertained the claim on behalf of the present appellant and asked for details of the accident, journey tickets etc, and was looking into the matter, that was sufficient cause for the claimant not to approach the Tribunal promptly or within the period of limitation. Section 110-A(3) of the Motor Vehicles Act reads as under: --

"110-A(3). No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident.

Provided that the Claims Tribunal may entertain the application after expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time."

The aforesaid provision is to be construed liberally. The Hon"ble Supreme Court in The State of West Bengal Vs. The Administrator, Howrah Municipality and Others, , while considering the scope of Section 5 of the Limitation Act, 1963,

observed that it should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. When the appellant was bona fide pursuing the matter with the respondents claiming compensation for the injuries suffered in the accident, and the respondents, at no stage denied their liability or refused to pay the same, that would be a sufficient cause for condoning the delay u/s 110-A(3) of the Act. Finding of the Tribunal on issue No. 3 is, therefore, reversed and the delay in filing the claim application is condoned

6. PW 1 Dr. C. P. Sahni, Professor and Head of Department of Plastic Surgery, Post Graduate Institute, Chandigarh, deposed that Jodha Mal was admitted in the Post Graduate Institute on May 10, 1982. He had the following injuries : --

1. Lacerated wound on the left side of forehead above the eye brow size 4 cms X 0.5 cms.
2. A transverse full thickness lacerated wound over the nose at the junction of alar cartilage with nasal bone. Lower part of nose was hanging down exposing the nasal cavity.
3. Full thickness lacerated wound right side of upper lip 3 cms long.
4. Lacerated wound left side of lower lip 3 cms long.
5. Compound fracture nasal bones.
6. Fracture maxilla lefort II.
7. Palate split in the middle.
8. Lacerated wound soft plate 4 cms long.
9. An irregular lacerated wound buccal mueosa.
10. Lacerated wound inner aspect of lower lip.
11. There was loss of five teeth in the mandible.

Jodha Mal was discharged on 26-5-1982 and he was advised to attend Post Graduate Institute for check up. His last visit was on June 23, 1982. He further stated that Jodha Mal was operated upon with respect to the injuries. He verified from the mark of identification that it was the claimant who was treated by him in the hospital. No cross-examination was conducted on behalf of the respondents. PW 2 Jodha Mal stated that he remained in the hospital, that is, Post Graduate Institute. He suffered injuries on his face including the nose and he lost six teeth (although doctor stated about five teeth). He further stated that he was twice operated on during his stay in the Post Graduate Institute, and after his discharge he was getting treatment and attending Post Graduate Institute as out-door patient. He had also to get a new denture of six teeth in the lower jaw. He was feeling difficulty to take food in the normal way. His speech was also affected During cross-examination he stated that he was not entitled to

reimbursement of the expenditure and in fact he did not get any reimbursement. He had to pay at the rate of Rs. 5/- per day at the Post Graduate Institute. He did not have the vouchers of the expenditure made by him. No evidence on the aforesaid factor under this issue was produced by the respondents.

7. Taking into consideration the evidence produced by the claimant and his stay in the Post Graduate Institute from May 10, 1982 to June 23, 1982 and that he was operated upon twice, it is reasonable to believe that he must have spent about Rs. 5000/- on his treatment etc., which amount is not at all on the higher side. Further-more, on account of the injuries suffered, he remained in pain and suffering for which a sum of Rs. 3000/- is considered just compensation payable to him. Thus, under issue No. 2, the finding of the Tribunal is set aside, and it is held that the claimant is entitled to a sum of Rs. 8000/- as just compensation for the injuries suffered.

8. Finding of the Tribunal on issue No. 1 was not challenged. The same is, therefore, affirmed.

9. For the reasons recorded above, this appeal is accepted. The award of the Tribunal is set aside. The appellant is allowed a sum of Rs. 8000/- as compensation against the respondents who will pay the same jointly and severally. The appellant will also be entitled to interest on the amount awarded at the rate of 12% per annum from the date of institution of the claim application that is May 24, 1983, till realisation. There will be no orders as to costs.