

(2013) 02 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No's. 997 and 998 of 1996

Karam Singh and Another	Vs	APPELLANT
Mobin Khan and Others		RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Citation : (2014) 2 ACC 145 : (2014) ACJ 246

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : S.N. Chopra, for the Appellant; Rakesh Chopra and Mr. R.K. Bashamboo, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The appeals are at the instance of the claimants seeking for enhancement of compensation. The awards had been passed only against the owner exonerating the insurance company on the ground that the owner has not shown that his driver had been duly licensed. It was a case of amputation of the hand above elbow and the claimant is a police personnel drawing a monthly salary of Rs. 2,596. The claimant had also suffered a fracture on his leg and he was operated on 30.3.1993 and an iron rod had been inserted. He gave evidence to the effect that he used to hire taxi on every visit to the hospital and the Tribunal, therefore, observed that he should have spent at least Rs. 10,000 on transportation. He had also purchased an artificial limb, which was said to have cost Rs. 13,000. He had given evidence to the effect that he was getting training for using the artificial limb. The doctor had prescribed him a special diet and the Tribunal observed that he must have spent about Rs. 20,000 for special diet. All the same, the Tribunal did not provide for separate heads of compensation but had provided for a lump sum amount of Rs. 1,00,000.

2. I find the assessment of compensation to be wholly inadequate. A privation of organ above elbow, which was assessed by the doctor at 70 per cent, must have been also taken as a like percentage of loss of earning capacity considering the

fact that he was in a settled employment in the Police Department where the use of a hand was vital. His chances of promotion would also have been seriously hampered. I would make the provision for prospect of future increase by 50 per cent by the fact that he was less than 30 years of age and take the average monthly income at Rs. 3,984. I will apply 70 per cent loss of income as resulting in monthly loss of Rs. 2,725.80 and will apply a multiplier of 17. I find the loss of earning capacity as Rs. 5,68,915, say Rs. 5,69,000. I will also make appropriate provision towards hospital charges, transportation and loss of amenities of life resulting by the amputation individually and tabulate the same as follows:

3. The total compensation that would become payable will be Rs. 7,59,000. The amount in excess of what has already been provided will attract interest at the rate of 7.5 per cent from the date of petition till the date of payment and will be borne by the insurance company. It shall have a right of recovery of the same from the owner in terms of the law laid down by the Hon"ble Supreme Court in National Insurance Co. Ltd. v. Swaran Singh, 2004 ACJ 1 (SC).

4. As regards the claim for compensation in F.A.O. No. 998 of 1996, the compensation has been assessed at Rs. 25,000 towards fracture and pain and suffering. Jaswinder Singh had deposed that the barrel of rifle hit his right knee and his leg was broken and he remained admitted for about a day in the hospital. The Tribunal found that he might have spent about Rs. 50,000 for his treatment and must have spent Rs. 15,000 for special diet. He also gave evidence to the effect that he used to hire taxi to go to Chandigarh from his place of residence for follow-up treatment. The evidence was that he had remained on medical leave for 4? months and after his accident he was not in a position to perform his activities in the same manner. He could not walk briskly nor was he able to appear in the departmental training for promotion and chances of his promotion itself had become dim.

5. It is not very clear from the evidence given as to what really was the nature of treatment undertaken by him and what was the actual state of disability to consider the fact that he was on leave for 4? months and he was nursing an injury with fracture in his leg. I would provide for compensation at Rs. 15,000 for pain and suffering, Rs. 15,000 for transportation and special diet and Rs. 10,000 for attendant charges for five months. I will also provide another Rs. 15,000 towards the medical expenses. The total compensation payable would be Rs. 55,000. The amount in excess of what has already been provided by the Tribunal will attract interest at the rate of 7.5 per cent from the date of petition till the date of payment.

6. In terms of the reasoning already given in the above appeal, liability shall again be on the insurance company but the insurance company, however, will have a right of recovery from the owner for violation of terms of policy in allowing a person to drive the vehicle without a valid driving licence. The awards are modified and the appeals are allowed to the above extent.