

(2009) 04 SHI CK 0019
In the High Court Of Himachal Pradesh

Krishan Kumar Sharma

APPELLANT

Vs

Waryam Singh and Others
 Waryam Singh and Raj
Kumar Vs Surinder Kumar and Others

RESPONDENT

Date of Decision : 24-04-2009

Acts Referred:

Citation : (2009) 3 ShimLC 237

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—The aforesaid four appeals are being disposed of by a common judgement since they arise out of one accident. The claimants Waryam Singh and Raj Kumar filed two separate claim petitions. The allegations made in these claim petitions were that on 14th June, 2000 they were engaged as labourers and were travelling in truck No. HP-20-0199 as labourers. This truck met with an accident due to the rash and negligent driving of respondent No. 1, Surinder Kumar, alleged to be the driver of the truck. The truck was owned by Krishan Kumar Sharma. The driver contested the claim petitions. He took up two pleas. His first plea was that in fact he was not the driver of the truck on the day when the accident occurred. According to him, he had already left the job of respondent No. 2 and had joined service at Kumarsain or at Shimla. He also simultaneously took up the plea that he had been instructed by the owner not to ply the vehicle till all documentation was completed. Respondent No. 2 on the other hand took the plea that no accident had taken place. He also pleaded that he had been informed by respondent No. 1 that some accident had taken place. According to him, it was the respondent No. 1 who was the driver of the truck and he also averred that he had directed the driver not to ply the vehicle unless it is got passed from the competent authority. According to the owner, the truck was lying with the respondent No. 1 at village Baruhi for more than one month prior to the accident and had not been deployed for carrying any goods. The owner also placed on record an Insurance Policy. The Insurance Company took various pleas including the plea that the policy of insurance had already expired

on 13th June, 2000 and as on 14th June, 2000, the date on which the accident took place the truck was not covered by any policy of the Insurance. The learned tribunal framed a number of issues. Both the claim petitions were disposed of by a common judgement. It was held that the accident occurred due to the rash and negligent driving of the driver of the truck. The owner was held liable to pay the compensation. The Insurance Company was exonerated from paying the compensation as on the date of the accident there was no valid policy of Insurance. The learned tribunal awarded compensation of Rs. 1,20,728/- in favour of the petitioner Waryam Singh and Rs. 1,34,777/- in favour of petitioner Raj Kumar. The claimants were also held entitled to interest @ 9% per annum from the date(s) of filing of the claim petitions till realization of the whole amount.

2. Aggrieved by this award dated 10th June, 2005 passed by the learned Motor Accident Claims Tribunal, Una, the claimants have filed two appeals being FAO No. 407 of 2006 and 408 of 2006 for enhancement of compensation. The owner has filed two appeals being FAO No. 363 of 2005 and 364 of 2005 challenging the award.

3. I have heard Shri Ajay Shrama, learned Counsel for the claimants, Shri Sanjeev Sood, learned Counsel for the owner, Shri Shubhash Sharma, learned Counsel for the driver and Ms. Madhu vice Mr. Ashwani K. Sharma, learned Counsel for the insurance company.

4. As far as the accident is concerned, the evidence led by the claimants clearly proves that the accident had taken place. The F.I.R. in respect of the accident was lodged and proved on record. The driver of the truck admits that he is facing a criminal trial in respect of the same accident. The driver while appearing as RW-1 states that he had gone to Shimla about 3-4 months earlier and when he came back then he was told by his family members that one day prior to his coming home the police officials had come looking for him and it was thereafter he came to know that he had been wrongly involved in this case. According to the driver no accident had taken place and he was not even in his village when the accident took place. This testimony of the driver is totally contradicted by the testimony of the owner that he had handed over his truck to the driver and the driver had taken the truck to his village Baruhi. The stand of the driver is totally falsified by the statement of the owner. The F.I.R. was proved on record by PW-3 Trilok Chand, Criminal Ahlmad in the Court of Additional C.J.M. Una. PW-4 Jagan Nath states that about four years back when he was sitting in his home he heard a loud noise and then saw that the truck had fallen down from the road. He saw two labourers who were in the truck had been injured.

5. The statement of the driver that he was not at the spot does not inspire confidence. The driver has not cared to examine the person with whom he was employed at Kumarsain or at Shimla. The stand of the owner is diametrically opposite. According to the owner, the driver was engaged on the truck. The owner further states that it was the driver who used to get all the documentation

of the truck completed. In view of the contradictory stand taken by the owner and the driver their statements cannot be believed. There is no reason as to why the statements of PW-3 and PW-4 should not be believed. Therefore, the finding of the learned Tribunal that the accident occurred due to the rash and negligent driving of Surinder Kumar is upheld.

6. Coming to the quantum of compensation, reference may first made to the statement of PW-6 Dr. Rajdeep Singh. He has stated that Waryam Singh was admitted in Govt. Hospital Chandigarh on 15th June, 2000 with history of having suffered injury in a road accident. According to him, Waryam Singh was operated on 19th June, 2000 and his right leg was amputated below the knee and fixture was affixed on the left leg. He also states that after his discharge Waryam Singh visited the hospital on five occasions. In respect of Raj Kumar the statement of this witness is to the similar effect. The operation was conducted on 18th June, 2000 and his left leg below the knee was amputated. He was discharged on 26th June, 2000 and he visited the hospital four times after his discharge. According to him, Raj Kumar was referred to Nevedac Prosthetic Centre for artificial limb. This doctor has proved the disability of Raj Kumar at 70% in respect of his lower limbs.

7. PW-7 Dr. D.K.Sharma, has proved the disability in respect of Waryam Singh and his disability is also 70% in relation to his lower limbs. In both cases the disability in relation to the body has been taken as 17- 1/2% by the learned Tribunal. It is apparent from the evidence of the medical experts as well as two claimants that they were under treatment for about four months. Though the claimants claimed that they were under treatment thereafter but no doctor has been examined in this regard though certain documents have been placed on record by the claimants.

8. The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act are well settled. Injuries cause deprivation to the body which entitle the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in the accident. On account of the injuries, the claimant may suffer consequential losses such as, (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. The damages can be pecuniary as well as non-pecuniary, but all have to be assessed in Rupees and Paise. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Motor Vehicles Act enjoins upon the Courts to do. The Court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by him. Such compensation is what is termed as just compensation. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the

claimant. The Court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. The compensation or damages assessed for the personal injuries should be substantial damages to compensate the injured for the deprivation suffered by him throughout his life. They should not be only token damages.

9. There are numerous cases where the principles for grant of compensation have been enunciated. It would be relevant to quote pertinent observations from a few.

10. The following observations of Lord Morris in his speech in *H. West & Son Ltd. v. Shephard* 1958 ACJ 504 (HL, England), are very pertinent:

Money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards.

11. Lord Denning while speaking for the Court of Appeal in the case of *Ward v. James* (1965) 1 All ER 563, laid down the following three basic principles to be followed in such like cases:

Firstly, assessability: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases; otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good.

12. The assessment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guess work and conjecture. An assessment, as best as can, in the circumstances, should be made. In the case of *Mediana* (1900) AC 113, Lord Halsbury held:

Of course the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a

wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. But, nevertheless, the law recognizes that as a topic upon which damages may be given.

13. In *Perry v. Cleaver* 1969 ACJ 363 (HL, England), Lord Morris of Borth-y-Gest held thus:

To compensate in money for pain and for physical consequences is invariably difficult but no other process can be devised than that of making a monetary assessment.

14. In *Phillips v. Western Railway Co.* (1874) 4 QBD 406, Field, J., while emphasizing that damages must be full and adequate, held thus:

You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all. He has done no wrong, he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered.

15. Besides, the Tribunals should always remember that the measures of damages in all these cases "should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure". The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to "hold up his head among his neighbours and say with their approval that he has done the fair thing", should be kept in mind by the court in determining compensation in personal injury cases.

16. *McGregor on Damages*, 14th Edn., para 1157, referring to heads of damages in personal injury actions states:

The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the courts have sub-divided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life.

17. In *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, speaking about the heads of compensation, the Apex Court held thus:

Broadly speaking, while fixing the 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 shall include: (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in the 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 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.

18. In *Concord of India Insurance Co. Ltd. v. Nirmala Devi* 1980 ACJ 55 (SC), the Apex Court held:

The determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.

19. This Court in *Brestu Ram v. Anant Ram and Ors.* 1989(2) S L.C.298, held:

It is pecuniary loss, i.e. capable of calculation in terms of money, and non-pecuniary loss i.e. loss that cannot be easily assessed with accuracy-Pecuniary loss is the loss suffered by the victim due to the loss of earnings or other profits which he had been earning and was to earn in future at the same rate or at same promoted scale. Non-pecuniary loss consists of damages awarded for pain and sufferings, loss of amenities and loss of enjoyment of life and prospects. Under non-pecuniary loss, for want of accurate assessment, a global figure could be arrived at and paid as compensation. Under pecuniary loss the assessment can be made easily by taking into consideration at least the monthly income actually earned by the victim and the difference between what he would be capable to earn on disablement.

It is well settled that in disablement cases compensation has always to be higher than even in cases of death since it is given to the living victim of the accident both for his personal loss and for economic loss. It can be said that the bodily injury is to be treated as a deprivation which entitled the victim to claim damages, which vary according to the gravity of the injury. Further, due to this injury, there can be loss of earnings, completely or partial due to the accident on his capacity to earn the same. Another consequence may be the loss he suffers on account of the enjoyment of life or full pleasures of living.

20. Applying the aforesaid principle, it is apparent that compensation has to be awarded to the claimants under various heads. The approach of the learned Tribunal to say the least has been totally pedantic. The learned Tribunal has not

applied the well settled principles of assessment of damages while deciding the case. Taking into consideration, the principles laid down in the aforesaid judgements the compensation in the present case can be assessed as follows:

Medical Expenses.:

In the case of Waryam Singh the medical expenses have been assessed by the learned Tribunal at Rs. 29,248/- and in the case of Raj Kumar at Rs. 35,736.90 paise. This has been done solely on the basis of the bills actually produced and proved on record. This Court cannot loose sight of the fact that when a person is hospitalized some of the bills may not be kept. It is also in the evidence of the claimants that even after they were discharged from the hospital they are under treatment. Therefore, it would be reasonable to award a sum of Rs. 35,000/- as medical expenses in the case of Waryam Singh and Rs. 40,000/- in the case of Raj Kumar.

Transportation Charges:

The learned tribunal has awarded a sum of Rs. 6000/- to each of the claimants as transportation charges. This amount appears to be just and reasonable calling for no interference.

Special diet and attendant:

The learned tribunal has awarded a sum of Rs. 3600/- + Rs. 4200/- i.e. Rs. 7800/- to each of the claimants as special diet and attendant charges. This amount is reasonable calling for no interference.

Pain and suffering:

Under this head both the claimants have been awarded a sum of Rs. 7,000/- each. This amount is ridiculously low. Both the claimants remained admitted in hospital at Chandigarh. Thereafter, they were bedridden for three to four months. They have both suffered amputation of one leg below the knee and therefore the assessment of Rs. 7,000/- is not at all proper. Each of the claimants is held entitled to Rs. 25,000/- for pain and suffering.

Loss of enjoyment of life:

The learned Tribunal does not appear to have understood the concept of loss of enjoyment of life. This loss of enjoyment of life encompasses within its meaning the loss for the amenities of life. Here we are dealing with young men who are aged 22 years and 38 years. Waryam Singh was aged about 38 years and Raj Kumar was aged about 22 years. Both the claimants have to live for rest of their lives with one amputated leg. They cannot walk or run like a normal human being. Their agony will continue for the rest of their life. This loss of leg will not only cause financial loss but will make them unable to take part in a number of activities which a normal human being can undertake and enjoy. The amount of compensation of Rs. 3,000/- awarded is a mere pittance. In my considered opinion, Waryam Singh is entitled to Rs. 25,000/- under this head and Raj Kumar

is entitled to Rs. 40,000/- under this head. Different amounts are being awarded since Waryam Singh is aged 38 years and Raj Kumar is only 22 years.

Actual loss of Income:

The learned Tribunal has assessed the income of both the claimants at Rs. 60/- per day. This was the minimum wage at the relevant time. This assessment calls for no interference. The learned Tribunal has held that for about four months the claimants were not able to do any work whatsoever and had awarded Rs. 7200/- to each of the claimants for actual loss of income. This portion of the award calls for no interference.

Future loss of Income:

While assessing the future loss of income, the learned tribunal has taken the disability in relation to the entire body at 17-1/2% and has also held that this is the amount of loss of income. This Court has repeatedly held that the percentage of disability cannot be necessarily equated with loss in earning capacity. If a person is doing a desk job, even a major, disability to his leg may not result in any loss of income. On the other hand if a person is doing physical work then even a small injury may lead to much higher loss in earning capacity. Unfortunately, in the present case though two doctors were examined, they have not been asked any question as to what work the claimants can do and what work they cannot do. The claimants allege that they are unable to do any work. The bald statements of the claimants cannot be accepted. On the other hand, keeping in view the fact that the claimants are labourers and are not trained for any other work, the amputation of one leg below the knee, in each case, would lead to a much higher loss of income. Even if the claimants can work after putting a prosthetic leg there capacity to work and earn would be reduced by a much larger extent. This Court in the absence of medical evidence will have to enter into the field of conjecture and calculated guess work. Keeping in view all these factors, I feel the loss of earning capacity should have been assessed at least at 50%. Therefore, in the case of Waryam Singh, who is aged about 38 years, the compensation under this head is calculated to $1800/2 = 900 \times 12 = 10,800 \times 13 = \text{Rs. } 1,40,400/-$. In the case of Raj Kumar the compensation is worked out to $1800/2 = 900 \times 12 = 10,800 \times 18 = \text{Rs. } 1,94,400/-$. The claimants are also held entitled to interest at the rate of 7-1/2% from the date of the filing of the claim petition till deposit/payment of the amount. Needless to say, the amount if any already paid/deposited by the owner shall be taken into consideration while calculating the enhanced amount.

21. In view of the above discussion, claimant Waryam Singh is held entitled to compensation of Rs. 2,46,400/- + interest @ 7-1/2% per annum from the date of the filing of the claim petition till payment of the deposit thereof whereas claimant Raj Kumar is held entitled to compensation of Rs. 3,20,400/- + interest @ 7-1/2% per annum from the date of the filing of the claim petition till payment of the deposit thereof.

22. In view of the above discussion, FAO No. 363 of 2005 and 364 of 2005, being the appeals filed by the owner, are dismissed and FAO No. 407 of 2006 and 408 of 2006 being the appeals filed by the claimants are allowed. The claimant Waryam Singh in FAO No. 407 of 2006 is held entitled to compensation of Rs. 2,46,400/- + interest @ 7-1/2% per annum. The claimant Raj Kumar in FAO No. 408 of 2006 is held entitled to compensation of Rs. 3,20,400/- + interest @ 7-1/2% per annum.

23. All the appeals are disposed of in the aforesaid terms. No order as to costs.