(2004) 12 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : F.A.O. No. 104 of 2004

Lal Singh APPELLANT

Vs

Himachal Road Transport Corporation and Another RESPONDENT

Date of Decision : 29-12-2004

Acts Referred:

Citation : (2006) ACJ 482

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : Parkash Thakur, for the Appellant; H.S. Rawat and Dinesh Sharma, for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, J.—The present appeal has been filed for enhancement of the compensation awarded by the Motor Accidents Claims Tribunal, Shimla in M.A.C. Case No. 127-S/2 of 1998, decided on 4.6.2003.

2. Facts giving rise to filing of this petition are that claimant was travelling in bus No. HP 25-0710 on 11.12.1997. This bus was owned by respondent No. 1 and driven by respondent No. 2. The same met with an accident and the claimant suffered serious injuries in the accident. He filed a claim petition claiming compensation for the loss suffered by him on account of the injuries sustained by him in the accident. The Claims Tribunal has awarded a sum of Rs. 1,48,000 as compensation. Claiming that the compensation awarded is too meagre, the appellant has filed the present appeal in this Court.

3. The facts relevant for determining the compensation are that due to the accident the claimant suffered fracture in pelvis and his urethra was also damaged considerably. His leg has been shortened by 2 cm and the disability on account of the injury to pelvis and leg has beeri assessed to be 10 per cent by the doctors. After the accident, the claimant remained in and out of hospital for almost 3 years. Firstly, he was admitted in Indira Gandhi Medical College and

Hospital, Shimla on 13.12.1997 and discharged on 13.2.1998. Thereafter, he was again admitted on 13.3.2000 and discharged on 11.4.2000. Finally, he was admitted on 1.8.2000 and discharged on 2.9.2000. During this period he has undergone a number of operations.

4. Mr. Parkash Thakur, learned Counsel appearing for the appellant, has taken me through the evidence and has contended that in view of the fact that the appellant was working as a tailor and agriculturist and is now unable to do this work any longer, the disability should be assessed at 100 per cent. He also submitted that the income of the deceased should be taken at Rs. 6,000 per month as per his statement, which has not been subjected to any crossexamination. He also urged that his client should be awarded reasonable amount for pain and suffering, loss of enjoyment of marital life, shortening of leg and that he should also be awarded special damages and medical expenses for the medication, special diet, attendant, etc.

5. Claimant appeared as his own witness as PW 2. His statement was recorded twice on 5.1.2000 and 20.11.2000. He has stated that he is still under treatment and has not fully recovered. According to him he has spent a total sum of Rs. 1,60,000 on his treatment till that time. He has stated about the various periods of hospitalisation, as mentioned above. According to him he used to work as a tailor and earn Rs. 6,000 to Rs. 7,000 per month. He states that after the accident he cannot work as a tailor since he cannot sit down and operate the sewing machine. He also stated that he was doing agricultural work and has proved the jamabandi of the land. He also stated that he cannot urinate and pass urine normally and has to urinate through a pipe (catheter).

6. PW 3, Premo Devi, has stated that the petitioner was working as a tailor prior to the occurrence and had a separate tailoring shop.

7. PW 4, Dr. Manoj Kumar, Registrar, Department of Orthopaedics, has proved the disability certificate, Exh. PI 13, which shows that the disability suffered by the claimant-appellant on account of orthopaedic injury is 10 per cent.

8. Dr. Sanjeev Prasad, PW 5, has stated that because of the injury suffered by the petitioner in the urethra he cannot sit for long time and cannot do the job of tailoring. He has, however, admitted that the petitioner can sit for an hour or two for doing the tailoring job. He has also stated that the petitioner is still under treatment and he may require further operation. According to him no disability certificate is normally issued with regard to the injuries of this nature.

9. In addition thereto the appellant has produced on record various bills, vouchers, etc., to prove the expenses of approximately Rs. 23,000. These are Exhs. P3 to P108. Firstly, taking up the issue with regard to the income of the claimant. It is no doubt true that he in his statement has stated that he was earning Rs. 6,000 to Rs. 7,000 per month from tailoring and agricultural work. He has admitted that his wife is still looking after the agricultural operations. He has denied the suggestion that he can still do the work of tailoring. At best what

can be assumed is that claimant was a tailor. He has not produced any record with regard to his income. He has also not even whispered about the place where he used to run the tailoring shop. No customers have been examined. However, the petitioner was a young man and he was doing the work of tailoring. In the villages and small towns, tailors do not have enough work to occupy the whole day and, therefore, they also do other manual or agricultural work. The Tribunal has assessed the income of the claimant at Rs. 2,000 per month. Taking into consideration the fact that he was working as a tailor and could also have been doing the agricultural work in his orchard (the revenue record whereof is on record as Exh. P109) his income at the said time is assessed to be Rs. 2,500 per month.

10. Now coming to the loss on account of the income. Firstly, the claimant has been in and out of hospital for a period of almost three years. During this period he had to urinate through a catheter. He was operated upon twice. During this period he could not have worked at all. Therefore, for a period of 3 years his loss of income is taken to be 100 per cent and he is awarded Rs. 90,000 on this account. With regard to loss of future income, the submission of Mr. Parkash Thakur, Advocate, cannot be accepted that the disability is 100 per cent. On the other hand, the submission of Mr. Rawat, learned Counsel for the respondents that the future loss of income be assessed by taking the disability only by 10 per cent also cannot be accepted. The disability as assessed, relating to loss of bodily functions can impair the earning capacity of different persons differently. This will depend on the nature of work being done by that person. For a person having desk job, physical disability in the leg of even high percentage may not affect his earning capacity. On the other hand, the same disability may affect the earning capacity by 100 per cent if the injured is a manual labourer. In the present case, the claimant was doing the work of tailoring and also handling some portion of the agricultural job. PW 5 has clearly stated that he is unable to do the work of tailoring and can only sit for an hour or so at a stretch to do such a work. A tailor''s work requires him to be sitting for a long period of time and obviously the earning capacity of the claimant has been affected to a much larger extent. The disability with regard to the orthopaedic injury, i.e., fracture and shortening of leg has been assessed at 10 per cent. The leg of the claimant has also been shortened by 2 cm. PW 5 has stated that with regard to injury of urethra, the disability has not been assessed. On the other hand, it is not proved on record that claimant is unable to do any work. He can do the work, but his capacity to do the work has been affected substantially. Keeping in view all the facts and circumstances, especially the medical evidence on record I assess the loss of earning capacity of the claimant at 40 per cent or Rs. 1,000 per month, i.e., Rs. 12,000 per annum. Keeping in view the age of the injured which is proved to be 33 years at the time of accident, a multiplier of 17 is deemed just and reasonable. The claimant on account of loss of future income is held entitled to Rs. 2,04,000.

11. The claimant is also entitled to loss for the amount spent by him. According

to the claimant he has spent Rs. 1,60,000 on his treatment. He has proved on record the bills, vouchers, etc., for about Rs. 23,000 only. The fact, however, remains that the claimant has been under treatment for three years. He needed an attendant, especially during the period when he was hospitalised. He would also require to eat special diet, etc. The claim for Rs. 1,60,000 cannot be accepted, but it would not be unreasonable to assume that during this period of three years the claimant must have spent at least Rs. 50,000 for medical expenses, special diet, transportation, etc.

12. It has also come in evidence that the claimant is still under treatment and he may require further operation. Therefore, he is awarded Rs. 15,000 for future medical expenses.

13. Claimant is also entitled to general and special damages for pain and suffering, loss of amenities of life, loss of expectation of life, discomfort and inconvenience. In the present case, as already mentioned above, the claimant at the time when his statement was recorded for the second time had already been under treatment for three years. He had been operated twice and there are chances that he might have been/ or may be operated upon again. For almost three years from December, 1997 till his operation in September, 2000, he had to pass urine through a catheter. Even now he cannot sit properly. As per statement of the doctor he still has difficulty in passing the urine. As regards compensation for loss of marital pleasure, there is no evidence on record. However, keeping in view the nature of injuries suffered by the claimant it can be assumed that he could not have led a normal marital life for at least three years and in future also he may have some discomfort and inconvenience. Keeping in view all these facts and circumstances, a sum of Rs. 75,000 is awarded to him on account of pain and suffering, for loss of amenities of life, discomfort, loss of marital pleasure, etc.

14. The total compensation, therefore, works out to Rs. 4,34,000. The award of the learned Tribunal is, therefore, modified and it is held that the claimant is entitled to a total compensation of Rs. 4,34,000 from the respondents. Claimant is also held entitled to interest at the rate of 9 per cent per annum on an amount of Rs. 2,15,000, w.e.f. 13.7.1998, the date of filing of the petition. The interest is not being awarded on the amount of Rs. 2,19,000 relating to loss of future income and future medical expenses. However, he will be entitled to interest at the rate of 9 per cent per annum on this amount also from 4.6.2003, the date when the petition was decided by the Tribunal. Both the respondents are jointly and severally liable to pay the said amount. However, as respondent No. 1 is the owner of the bus, it is directed to deposit the entire enhanced amount along with interest in the Registry of this Court on or before 29.2.2005.