

(1987) 08 P&H CK 0110
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No's. 558 and 559 of 1983

Lt. Col. Om Adhar and Another

APPELLANT

Vs

Bhushan Kumar and Others

RESPONDENT

Date of Decision : 31-08-1987

Acts Referred:

Citation : (1989) ACJ 508

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : H.S. Hooda and Shish Pal Lather, for the Appellant; K.P. Bhandari, A.G. and K.B. Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This judgment will also dispose of F.A.O. No. 559 of 1983 as both these appeals arise out of the same award of the Motor Accidents Claims Tribunal, Rupnagar, dated 2nd June, 1983.

2. In an accident between the bus of the Punjab Roadways and a truck on 17th September, 1981 both the claimants, who are husband and wife, were travelling in the bus of Punjab Roadways, suffered injuries. As a result thereof they filed two separate claim petitions claiming compensation. Lt. Col. Om Adhar claimed a sum of Rs. 21½ lacs as compensation on account of the injuries sustained by him in the accident in question, contending that the same have resulted in his permanent disability, whereas his wife Roshni Sobha claimed a sum of Rs. 31½ lacs as compensation, contending that the injuries caused to her have resulted in permanent disability necessitating the engagement of domestic help of attendants etc. apart from suffering mental agony and pain. Both the claim petitions were contested by the Punjab Roadways and on the pleadings of the parties the Motor Accidents Claims Tribunal framed the following issues:

(1) Whether the accident in question in which the claimants sustained injuries was caused by rash and negligent driving of bus PJQ 1202 by its driver

Respondent No. 2 and whether driver of truck No. PUE 9763 was also guilty of contributory negligence for causing accident? OPA

(2) Whether the claimant is entitled to compensation, if so, to what amount and extent of liability for the payment of the same by Respondents? OPA

Under issue No. 1 the Tribunal found that inevitable conclusion that follows from the discussion is that the accident in question was caused purely by the rash and negligent driving by Bhushan Kumar, driver of the bus, in which the two claimants sustained serious injuries. That finding is no more contested in these appeals on behalf of the Respondents. Under issue No. 2 the learned Tribunal allowed a sum of Rs. 26,000/- as compensation to Lt. Col. Om Adhar, detailed as under:

(i) For pain and suffering Rs. 10,000/-

undergone by him on
account of the injuries
including his inability
to move freely and
drive scooter or any
other vehicle

(ii) For loss in earning Rs. 16,000/-

capacity on account of
partial permanent disability
in the movements
in his right arm
resulting from the
injuries sustained by
him.

Total: Rs. 26,000/-

As regards the wife Roshni Sobha, the Tribunal allowed a total sum of Rs. 53,000/-, the details of which are as under:

(i) For pain and Rs. 20,000/-

suffering

(ii) For loss of earning Rs. 28,800/-

capacity

(iii) For loss in salary Rs. 1,700/ -

during the period of

treatment

(iv) Expenses incurred on Rs. 2,500/ -

her treatment

Total: Rs. 53,000/ -

3. Learned Counsel for the claimants contended that the compensation awarded to both, the husband and wife, was inadequate. The prospects for better job after retirement of the husband have not been taken into consideration. Even certain material facts, which were relevant for determining the compensation, have not been taken into consideration. Similarly in the case of wife, her leg had been shortened by 2" and therefore, she cannot stand without support. She was aged 36 at the time of accident and on account of the permanent injury her future career had been impaired. Thus, argued the learned Counsel, in both the cases the compensation should be adequately enhanced. In support of his contention he referred to *Lt. S.K. Ganguli Vs. State of Haryana*,

4. On the other hand, learned Counsel for the State of Punjab submitted that the injuries suffered by the husband were not serious. He is still continuing in service without any deduction in his salary and, therefore, the injuries caused to him are not such which in any way affected his future prospects. For the little handicap, which has been caused to him on account of the injuries, adequate compensation has already been awarded to him. He referred to *Pepsu Road Transport Corporation Vs. Satinder Sharma*, which is a judgment of this Court, and a Supreme Court judgment which is reported as *C.K. Subramonia Iyer v. T. Kunhi Kuttan Nair 1970 ACJ 110 (SC)*.

5. I have heard the learned Counsel for the parties and have also gone through the relevant evidence on the record. The learned Tribunal has taken into consideration all the relevant material facts while awarding compensation under each head. While determining the compensation on account of the loss in earning capacity of the husband the learned Tribunal has rightly observed:

... However, it is equally well settled that the loss in earning capacity is to be judged with reference to ability of the claimant to undertake any other job which he was capable of taking before he sustained the injuries if he were thrown out of the job which he was doing immediately before the accident. If the claim of the Petitioner in this case is examined in this perspective then it is obvious that partial permanent disability in the movement of his right arm resulting from the injuries sustained by him is bound to affect his capacity to engage himself in any work involving physical exertion usefully and effectively as he could before the accident and this will persist even after his retirement.

Having come to this conclusion the learned Tribunal assessed the loss in earning

capacity to be of Rs. 1,000/ - per annum and by applying the multiplier of 16, he determined the amount to be Rs. 16,000/ - on this count.

6. Similarly, in the case of the wife the permanent disability on account of the injury sustained by her was that her leg was shortened by 2?" because of the fracture suffered in the accident and besides there is bowing of the leg and restrictions in the movements of the ankle and she is unable to walk without support. Taking these factors into consideration, learned Tribunal observed:

Having regard to the nature of the injuries, more particularly, the fracture of her right fibula which has not fully healed even uptil now, and the shortening of her leg by about 2?" in the process of treatment of the same, the pain and discomfort suffered by her on that account for a considerable period and the loss of amenities and pleasure of life, both past and prospective, resulting from that disability, a sum of Rs. 20,000/ - may, in my view, reflect just and reasonable amount of compensation.

7. Since all the relevant facts were taken into consideration by the learned Tribunal while awarding the compensation to both the claimants, the scope for interference in appeal is very little. In a given case the amount of compensation may be enhanced in appeal if it is found that it was most inadequate and the necessary facts, which were material for determining the compensation, were not taken into consideration. In C.K. Subramonia Iyer's case 1970 ACJ 110 (SC), the Supreme Court observed that "where the courts below have on relevant material placed before them ascertained the amount of damages under the head of pecuniary loss to the dependants of the deceased, such findings cannot be disturbed in second appeal except for compelling reasons". No such compelling reasons could be brought out as regards the facts of the present case. All the necessary material and relevant facts have been duly considered by the learned Tribunal and the compensation was determined accordingly. Thus the amount awarded could not be said to be inadequate to such an extent which may justify interference in appeal.

8. Consequently, both the appeals fail and are dismissed with no order as to costs.