

(2008) 11 P&H CK 0073
In the Punjab And Haryana At Chandigarh

Major Bhupinder Singh Grewal	Vs	APPELLANT
Punjab Roadways Pathankot and Others		RESPONDENT

Date of Decision : 05-11-2008

Acts Referred:

Citation : (2009) ACJ 2437 : (2009) 153 PLR 164 : (2009) 4 RCR(Civil) 485

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahesh Grover, J.—This is an appeal by the claimant against the award dated 1.2.1986 passed by the Motor Accident Claims Tribunal, Karnal.

2. The appellant was injured in an accident which occurred on 8.3.1984. He was traveling in a Punjab Roadways bus which collided with an oil tanker belonging to respondent No. 3 and driven by respondent No. 4. The said tanker was insured with respondent No. 6.

3. The Tribunal came to the conclusion that the accident was caused due to the negligence of the driver of the tanker and after considering all the factors determined the compensation of Rs. 1,50,000/- to be awarded to the claimant/appellant.

4. Dissatisfied with the award of the Tribunal, the appellant is in appeal praying for enhanced compensation.

5. It was contended by the learned Counsel for the appellant with reference to the facts and material on record that the appellant was a Major serving in the Indian Army on the date of the accident. He suffered the following injuries in the accident in question:

1. Multiple comminuted fracture of both legs;
2. Comminuted fracture left thigh bone.

3. Fracture shaft radius (Lt) with dislocation of left elbow joint.

4. Fracture upper end of ulna left and dislocation of head of radius left.

PW5 Lt. Col. B.P. Rao, Surgeon, Army Hospital, Delhi Cantonment, who carried out the surgeries on the appellant testified as follows:

Initial emergency operation was done in the form of wound toilet (cleaning of the wounds and excision of dead tissues). The fractures were immobilized in plasters. Initially he was given four bottles of blood. Subsequently, at different occasions the fractures were re-reduced because of their bad nature and plastic surgical procedures were carried out to make good the soft tissue losses. At a later date on 8th Feb. 1985 left elbow joint was operated when excision arthroplasty was carried out removing the damaged elbow joint. The claimant was discharged from the Hospital in August 1985 in medical category A-3 (fit shaltepeld appointments only) for six months and to be reviewed periodically. Latest examination reveals that the claimant is able to walk only with two walking sticks and leather support for both legs and left elbow. There is a gross wasting of both legs and left elbow. The left elbow function is markedly reduced and he is not fit to take any active and strenuous exercises required of a serving soldier in the defence forces. His future is likely to be guarded. With the present condition the claimant is not likely to be promoted to the higher rank. The claimant has got 50 to 60% disability permanently. This disability is total. I cannot say if the claimant is likely to be retained in service or not because it depends upon the future improvements. Five to six operations have been performed upon the claimant at different dates. For personal needs the claimant might have been looked after by his wife, mother or some other relations but in the Hospital the claimant was looked after by our staff. The claimant had other injuries on his person when he was admitted in the Hospital and he was treated for those injuries also. I have only given the major and the relevant injuries....

6. The appellant is thus said to have suffered 55% disability. He was aged 40 years. It was pleaded that because of the serious injuries that he had received he was placed in a lesser medical category and was also deprived of the promotions which he was entitled to. In the normal course of his service he would have retired as a Major General at the age of 58 years but he was retired at the age of 52 years because of his physical condition. It was next contended that the appellant was a promising soldier who had earned his diploma from Russia which would have put him in good stead vis-a-vis his other colleagues and probably would have got him promotion as a Brigadier because persons similarly situated like the appellant already stood promoted as Brigadiers.

7. It was then contended by the learned Counsel for the appellant that all these factors have been ignored by the Tribunal while assessing the amount of compensation to be awarded to the appellant.

8. No one appears for respondent No. 3, 4 and 6 despite service.

9. The State of Punjab is represented by Mr. N.S. Virk, Additional Advocate General, Punjab who has stated that the liability to satisfy the award has been fastened upon respondent No. 6 which was the insurance company of the tanker belonging to respondent No. 3.

10. I have heard the learned Counsel for the parties and have perused the record.

11. The factum of the accident and the consequent negligence has not been challenged by the respondents, therefore the only question that is to be determined is as to what is the amount of compensation which should be awarded to the appellant.

12. The undisputed fact which emerged from the perusal of the evidence on record is that the appellant was serving as a Major in the Indian Army and he suffered extensively because of the injuries that he had sustained. His career was adversely affected. In the normal course of his service he would have risen in his ranks. The law of compensation entails the consideration of such factors while determining the quantum. The injuries that a person sustains if they have an adverse impact on the normal enjoyment of life of a person who is given to an active way of leading a life, then such factors form a valid consideration at the time of assessment of compensation, particularly so if the career of a person such as that of a person belonging to armed forces, active para-military forces, sportsmen, etc. is cut short because of the injuries which are result of a negligent act of an individual. The compensation in such cases is to be assessed liberally for the simple reason that not only does a person suffer adversely in his career prospects but also suffers in his own esteem, as it is difficult for a person to come to terms when he sees his brethren excelling in the field and he being left behind simply because of the negative impact of the injuries. Such considerations therefore ought to be evaluated at the time of determining the quantum of compensation.

13. Accordingly, this Court is of the considered opinion that the amount awarded by the Tribunal is grossly inadequate.

14. The appellant is said to have suffered 55% disability which has been established on record. Applying the principle of Rs. 2,000/- per percentage of disability he is held" entitled to an amount of Rs. 1,10,000/- for the permanent disability that he has suffered.

15. He is said to have undergone 5 to 6 operations which have been established by the testimony of PW5 Lt. Col. B.P. Rao. This would have naturally caused him considerable pain and agony apart from the suffering that has been caused because of career prospects. The amount under this head is, therefore, determined at Rs. 90,000/- @ Rs. 15,000/- per surgery (this amount shall also include the expenses for the surgeries which the quantified on the basis of some guesswork).

16. For loss of future prospects in service, the appellant is held entitled to a sum

of Rs. 3,00,000/-.

The total compensation in this manner works out to Rs. 5,00,000/-.

The enhanced amount of compensation shall be paid to the appellant along with the interest @ 9% per annum from the date of filing of the claim petition till the date of realization.

17. The liability to satisfy the award shall be the same as has been determined by the Tribunal.

18. With the aforesaid modification in the impugned award, the appeal stands allowed.