
(1988) 09 P&H CK 0119
In the Punjab And Haryana At Chandigarh

Mangal Kishore Kaul

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-09-1988

Acts Referred:

Citation : (1989) 2 ACC 291 : (1989) ACJ 786 : (1989) 95 PLR 576

Hon'ble Judges : Manmohan Singh Liberhan, J

Bench : Single Bench

Judgement

Manmohan Singh Liberhan, J.—The only question raised in this appeal is with respect to the quantum of compensation awarded to the injured-appellant.

2. The above question arises in view of the following facts. The claimant Mangal Kishore Kaul was a pillion rider on scooter No. CHH 5757. It was going from the Railway Station towards Chandigarh when it was struck by Bus No. CHW-9088, coming from the opposite direction which was being driven negligently by the respondent's driver. The accident resulted in multiple injuries to the appellant. His right leg was shortened by two inches and resulted in disability to the extent of 70 to 80%. The Tribunal found that the accident was due to the negligent driving of the respondents driver. The compensation was assessed as under :

1. Pain and suffering past, present and future Rs. 40,000.00
2. Compensation for shortening of leg by two inches. Rs. 30,000.00
3. Compensation for disability involved in the leg which is about 70 to 80% Rs. 25,000.00
4. Compensation for hospital expenses Rs. 6,000.00
5. Compensation for expenses incurred on hiring house by claimant's father and incidental expenses, including special diet for the claimant Rs. 10,000.00
6. Compensation for loss in earning and loss of one year Rs. 15,000.00

7. Compensation for conveyance charges, past, present and future, considering the claim ants" disability to drive a vehicle in future Rs. 10,000.00 _____ Total Rs. 1,36,000.00 _____ The Tribunal, however, allowed a total compensation of Rs. 1,31,000/-. The claimant had claimed Rs. 5,00,000/- as the compensation.

3. The finding that the cause of accident was negligent driving of the respondent's driver has not been challenged.

4. It is not disputed that the claimant was a young man of twenty-one years of age at the time of the accident. He was a student of M.Sc. in the Punjab University.

5. Learned Counsel for the appellant contends, that nothing has been awarded for his future activity, for disability of 70 to 80% only a paltry sura of Rs. 25,000/- has been awarded which is not comensurate with the disability, nothing has been awarded for loss in earning capacity for future. The compensation awarded for conveyance amounting to Rs. 10,000/- is too low. It is contended that the compensation for the expenses incurred on hospitalisation amounting to Rs. 6,000/- is disproportionate to the expenses proved on the record amounting to Rs. 52,000/-. There is no rebuttal to the same. The expenses stand proved from the documentary evidence which has not been takes into consideration while awarding the compensation. The compensation awarded for pain and Buffering, past, present and future, is again on the lower side as compared to the suffering undergone.

6. In order to support his contentions, the learned Counsel for the appellant has relied upon the following judgments :

(1) Chander Kumar Phawa v. State of Haryana and Ors. 1985 ACJ 500 : 1985 ACC 327 .

(2) Gursharan Singh Sandhu v. State of Haryana and Ors. 1985 ACJ 641 : 1985 ACC 396.

(3) Raghbir Singh and Ors. v. Harbans Kaur and Ors. 1985 ACJ 676 : 1985 ACC 136.

(4) Inderjit Kaur v. Punjab State and Ors. 1985 (1) PLR 521.

(5) Jasbir Kaur v. Harbans Singh and Ors. 1985 (1) PLR 590 : 1985 ACC 446.

(6) Tejinder Singh Gujral Vs. Inderjit Singh and Another,

The learned Counsel contends that the Tribunal has not taken into consideration the future operations required to be undertaken by the appellant. He has taken me through the statements of PW 1 Dr. O N. Kaul Negi, Orthoepareics Department P.G.I. P.W. 7 Dr. K.C. Kanwar, Department of Bio Physics, Punjab University PW 9 Shri Onkar Nath Kaul and PW 10 Mangal Kishore, claimant himself to buttress his submissions made above.

7. In Chander Kumar Phawa's case (supra), while assessing the compensation to the injured for the amputation of his right leg above the knee, crush injury and multiple fractures of both tibia and fibula and extensive muscle damage of left leg, the claimant having been operated upon eleven times, with 90% disability on account of amputation, Rs. 1,00,000/- were awarded for pain and suffering and physical disability, Rs. 30,000/- were awarded for conveyance, Rs. 40,000/- for loss of salary and future prospects of the injured, apart from the compensation qua the expenses for medical treatment.

8. In Gursharan Singh Sandhu's case (supra), for shortening of the leg of 28 years old boy by one inch, drawing Rs. 760/- per month, and having been hospitalised for 510 days, undergoing six major and three minor operations, with disability of 40% compensation under various heads was granted in all amounting to Rs. 1,25,000/-. It was observed that the broad principle to be kept in view while awarding compensation to the injured party should be award such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries through no award of money can possibly compensate a man for such grievous injuries. While fixing compensation for the impairment which results from such injuries, endeavour should be made to arrive at a fair estimate taking into account all the relevant considerations like age, future loss of income, permanent disfigurement, loss of future, enjoyment, pain and shock etc.

9. In Raghbir Singh and Ors. v. Harbans Kaur and Ors. (supra), the compensation awarded for loss of income and prospects of further advancement in life was Rs. 1,92,000/- wherein claimants right leg above knee was amputated. He was hospitalised for months and the total disability was 80%. He was thirty years of age and the loss of income was assessed at Rs. 900/- per month. All the factors which had impaired his physical condition, that is, early death, disability arising out of illness and other natural calamities were taken into consideration.

10. In Inderjit Kaur v. Punjab State (supra), for the loss of right arm a twenty-seven years old lady employed as a lecturer with a salary of Rs. 500/- per month was awarded a total compensation of Rs. 2,00,000/- which constituted Rs. 1,00,000/- for pain and suffering Rs. 25,000/- for loss of prospects of marriage, Rs. 25,000/- for cost of an attendant, Rs. 40,000/- for expenses incurred for obtaining artificial limb, Rs. 7,000/- for loss of income and Rs. 3,000/- for treatment.

11. Similarly, in Jasbir Kaur v. Harbans Singh and Ors. (supra), a twenty-six years old house-wife suffered injuries resulting in her right hand being amputated. She was awarded general damages to the extent of Rs. 70,000/- and Rs. 25,000/- for domestic help Rs 5,000/- for medical expenses and Rs. 50,000/- for artificial arm. Thus, a total compensation of Rs. 1,50,000/- was awarded.

12. The counsel for the appellant further relied upon Tejinder Singh Gujral v.

Inderjit Singh and Ors. (supra), wherein the learned Judge after taking into consideration the various precedents cited and the injuries suffered by the claimant awarded Rs. 1,00,000/- as compensation for pain, shock and continuous agony suffered by the claimant. A total sum of Rs 2,90,000/- was awarded under various heads.

13. Against the background of the decided cases cited above, an attempt was made to apply the neighbourhood test for determining the compensation to the claimant. The learned Counsel has taken me through the statement of Dr. O.N. Negi (PW 1), who had stated that the claimant had suffered the following injuries :

(1) There was deformity, crepitus (sensation of rubbing of bone pieces) with abnormal mobility in the middle and end lower 1/3rd of right thigh.

(2) There was 4 inch x 1 inch lacerated wound present over the right knee joint and with evidence of comminuted fracture patella.

(3) There were multiple superficial abrasions present over the anterior aspect of the right leg.

(4) There was 1/2 inch x 1/2 inch lacerated wound present over the medial malleolus (lateral part of ankle).

(5) X-ray of the femur and the tibia showed multiple fracture of the femur involving lower and middle third (There were about 16 to 17 pieces of the segments of bones) X-ray of the knee confirmed comminuted fracture of patella whereas X-ray of right leg showed comminuted segmental fractures of both bones legs.

It was further stated by him that in addition to the above injuries the claimant has suffered fracture of the lateral malleolus on the right side.

There was a huge haematoma inside the thigh, skin grafting was done for weeks together, that is, for almost three months. He was admitted on 18-11-1981 and was discharged on 16-2-1982. The plaster cast bracing was changed four times, weight was applied a number of times, the realignment is not in the natural form and they are not in the normal alignment. There is a shortening of leg by two inches. The knee cap was also fractured. There is a disability of 80% due to suffering of leg, wastage of muscle and ankylosis of knee joint. There is a limitation of flexion of the hip joint. He further opined that the total replacement of knee at a later stage may be required and it will require major surgery. The claimant has to remain on callipers for a year or so. He has to wear special type of shoes. The said statement of the doctor was not challenged. No cross-examination was directed. The facts stated were taken to be correct.

14. PW 7 Dr. K.C. Khawar stated that the claimant was a final year student of M.Sc. Biophysics. His academic career was good. There was a loss of studies for more than five months.

15. The statements of the above witnesses are corroborated by PW 9 Shri Onkar Nath Kaul, father of the claimant, who stated that the claimant was earning Rs. 800/- per month by taking tuitions. He stated that when the claimant was admitted in the hospital a room was hired at a rent of Rs. 500/- per month and the boarding and lodging for him and his wife for looking after the claimant cost Rs. 1200/- per month. He had produced receipts Exhibits P.4/1 to P. 4/92 and the account register P. 4/93 which shows the expenditure incurred by the claimant as Rs. 17,000/- and a further sum of Rs. 12,000/- for board and lodging. He had further proved the expenses incurred for his coming from Srinagar to Chandigarh including the trunk call bills etc. amounting to Rs. 6,000/-. Nothing much has been elicited in his cross-examination with respect to the expenditure.

16. The claimant himself appeared as P. 10 and corroborated the above said evidence. It had been further stated that he had been deprived of his physical activity, he used to participate in games, which gets corroborated by Exhibits PW 10/1 to PW 10/7. Nothing much had been directed in the cross-examination towards the quantum of damages claimed by him.

17. The position which emerges from the evidence may be summed up to the effect that the claimant has suffered a disability to the extent of 80% his leg has been shortened by two inches and a further operation for replacement of knee cap which is a major operation. He remained hospitalised for three months. The expenses incurred on his medicines and special diet amount to Rs. 35,000/- and a loss of income was of about Rs. 700/- per month.

18. On the principles enunciated and the precedents cited at the bar and taking into consideration the totality of the circumstances, the facts, injuries suffered, the age of the claimant, the circumstances, in which he has been placed on account of the accident, the expenses incurred on medicines and the future operation etc. I assess the compensation payable to the claimant as under:

(1) Pain and suffering past, present and future. Rs. 50,000.00 (2) Compensation for shortening of leg by 2 inches. Rs. 30,000.00 (3) Compensation for disability of 80%. Rs. 40,000.00 (4) Compensation for hospital expenses. Rs. 15,000.00 (5) Compensation for expenses paid on hiring of house by his father. Rs. 10,000.00 (6) Compensation for loss in the earning and loss of one year in studies, and future earning. Rs. 30,000.00 (7) Compensation for conveyance charges. Rs. 15,000.00 (8) Compensation for future activity. Rs. 10,000.00 (9) Compensation for future knee cap replacement operation. Rs. 10,000.00
_____ Total Rs. 2,10,000.00 _____ I, accordingly, assess the total compensation payable to the claimant at Rs. 2,10,000/- with interest at the rate of 12% per annum from the date of application till the payment.

19. In view of my above observations, this appeal is allowed and the award of the Tribunal is modified to the above extent. No order as to costs.