
(2014) 05 P&H CK 0401
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 1352 of 1997 (O&M)

Mehar Singh

APPELLANT

Vs

Jodh Singh

RESPONDENT

Date of Decision : 07-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 151

Citation : (2014) 05 P&H CK 0401

Hon'ble Judges : Lisa Gill, J

Bench : Single Bench

Advocate : Ashok Khubbar, Advocate for the Appellant; Manoj Kumar, Advocate for Respondents No. 1 and 2 and Mr. Vivek Singal, Advocate for Respondent No. 3 - insurance Company, Advocate for the Respondent

Judgement

Lisa Gill, J.

CM No. 13476-CII of 2001

1. Misc. application had been filed by the appellant under Order 41 Rule 27 of CPC read with Section 151 CPC for producing Annexures A1 and A2 as additional evidence. Annexure A1 is a Disability Certificate issued on 13.06.1998 by the Medical Board, Command Hospital (W/C), Chandimandir. Annexure A2 deals with the medical categorization of the appellant.

2. It has been averred that during the pendency of the claim petition, an application dated 12.01.1996 was moved before the Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as, the Tribunal") for issuance of a direction to the CMO, LNJP Hospital, Kurukshetra to issue disability certificate qua the claimant.

3. It is seen from the record that vide order dated 12.01.1996, Civil Surgeon, LNJP Hospital was directed to do the needful. That pursuant to the direction of the Tribunal, it had been recorded by the Orthopedic Surgeon on 20.01.1996 that the claimant was still under treatment and is to be reviewed only after the

treatment is over.

4. The disability certificate has been issued on 20.02.2001 i.e., after the decision of this clam petition on 05.05.1997. Therefore, the said disability certificate could not be produced on record earlier.

5. Reply to this application has been filed on behalf of respondent No. 3 - insurance company. However, no serious objection has been raised at the time of arguments. The authenticity and the genuineness of the certificate has also not been questioned by the respondents.

6. Be that as it may, it is a matter of record that the appellant took due care for the production of the said disability certificate but the same was not forthcoming at that time. Keeping in view the aforesaid, it would not be in the interest of justice to remand the case at this stage, on the limited question of proving the aforementioned certificate. The said certificate having been issued by the Command Hospital, Chandimandir and there being no challenge to the authenticity or genuineness, the same can be looked into for the purpose of assessment of the compensation.

7. The application stands disposed of in the abovesaid terms.

Main

8. The claimant-appellant has filed the present appeal for the enhancement of compensation of Rs. 1,00,000/- awarded to him by the Tribunal on account of the injuries suffered by him in an accident that occurred on 07.01.1995. The accident was caused due to rash and negligent driving of the truck bearing registration No. HYR-8365 being driven by respondent-Jodh Singh. The appellant was aged 35 years at the time of accident and was working as a Havaladar in the Indian Army. He suffered a fracture of the right patella, tibia, with lateral popliteal nerve paralysis. He was admitted in the hospital of Dr. Bhola at Kurukshetra and he remained there upto 09.01.1995. On 10.01.1995, he was referred to Chandimandir Hospital, Panchkula where he remained under treatment upto 07.12.1995. Thereafter he was sent to his unit and then to the Army Hospital, Jalandhar. As the doctors at Chandimandir Hospital were of the opinion that his leg should be amputated, he was referred to the Military Hospital, Pune from Jalandhar and he got his treatment from there. He was operated upon and external fixator was applied.

9. The Tribunal allowed an amount of Rs. 15,000/- on account of medical expenses; Rs. 50,000/- on account of pain and suffering; Rs. 25,000/- on account of loss of further earnings and Rs. 10,000/- on account of special diet and transportation i.e., a total amount of Rs. 1,00,000/- has been awarded to claimant-appellant as compensation.

10. It has been contended by learned counsel for the appellant that in view of the assessment of his disability at 40%, the appellant is entitled to a much higher compensation especially on account of future earnings.

11. It has come on the record that the disability certificate was not forthcoming at the time of the trial before the Tribunal as the appellant was still under treatment at that time and, therefore, the disability could not have been assessed at that time. Ultimately, his disability certificate has been assessed to be 40%. It has also been noted by the Tribunal that the claimant-appellant was still on crutches when he tendered his evidence.

12. The Hon''ble Supreme Court in Syed Sadiq etc. Vs. Divisional Manager, United India Ins. Company, has held that where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. It has further been observed that while determining the disability of the claimants in motor accidents cases, this Court might be sensitive about the functional disability involved and nature of occupation. While quoting an earlier decision in case of Mohan Soni Vs. Ram Avtar Tomar and Others, , the method of ascertainment of effect and permanent disability is stated as under:-

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Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to be first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

13. The appellant was undoubtedly working as Havaladar in the Army at the time of accident and was 35 years of age. Due to the said injury, his avenues of advancement within the service and post retirement would definitely be affected. The income of the appellant is accepted to be Rs. 4000/- as mentioned in the claim petition. Applying the guidelines laid down by Hon''ble Supreme Court in Syed Sadiq's case (supra), the functional disability of the appellant is assessed at 25% and keeping in view his employability, the increment on his future income is assessed at 35%. As per the principles laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, upheld in the judgment of Sayed Sadiq's case (supra), a multiplier of 16 is applicable. The appellant is, thus, entitled to a sum of Rs. 2,59,200/- ($4000 \times 25/100 + 25/100 \times 35/100 \times 4000 \times 12 \times 16$) on account of loss of future income. A sum of Rs. 25,000/- has already been granted by the Tribunal on account of loss of future earnings.

Therefore, the appellant is entitled to a further sum of Rs. 2,34,200/- (2,59,200 - 25,000) on this count.

14. The amount on account of medical expenses, pain and suffering, transportation, and special diet has been correctly awarded and do not call for any further enhancement.

15. Therefore, the total compensation amount payable to appellant comes to Rs. 3,34,200/- [2,34,200 + 1,00,000 (already awarded by the Tribunal)] alongwith interest at the rate of 6% from the date of petition till the date of payment.

16. The award is modified in the above terms and the appeal is allowed to the abovesaid extent.