

(2007) 09 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 1516,1517,1518 of 2004

Om Parkash and another

APPELLANT

Vs

Mehar Chand and others

RESPONDENT

Date of Decision : 12-09-2007

Acts Referred:

Citation : (2009) 2 AICJ 105 : (2008) 1 RCR(Civil) 440

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Mr. Amit Jaiswal, Advocate.For the Respondent Nos. 4 and 6 (in FAO No. 1516), Mr. V. Ram Saroop, Advocate.For the Respondent Nos. 4 and 5 (in FAO No. 1517), Mr. V. Ram Saroop, Advocate.For the Respondent Nos. 4 and 7 (in FAO No. 1518), Mr. V. Ram Saroop, Advocate.For the Respondent Nos. 5 and 6 (in FAO No. 1516), Mr. Amit Kaushik, A.A.G., Haryana.For the Respondent Nos. 4 and 5 (in FAO No. 1517), Mr. Amit Kaushik, A.A.G., Haryana.For the Respondent Nos. 5 and 6 (in FAO No. 1518), Mr. Amit Kaushik, A.A.G., Haryana., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J. (Oral)

1. This order shall dispose of the three appeals mentioned above as they arise out of common award passed by the learned Motor Accident

Claims Tribunal, (Fast Track Court), Ambala (for short the Tribunal).

FAO No. 1516 of 2004

2. Deceased claimant Smt. Kamlesh along with other injured claimants were travelling by Bus No. HR06PA0441 from Karnal to Ambala. At

about 6.30 p.m., when the bus reached near Tarawari District Karnal a tractor bearing registration No. HR02A9138 loaded with paddy driven

rashly and negligently in a zig zag manner at a high speed by the driver of the tractor came from the opposite side i.e. Ambala side and hit against

the bus, as a result whereof passengers of the bus suffered injuries. The driver of

the bus also expired on account of injuries suffered by him in the accident. The claimants claimed that the accident had occurred due to the negligence of both the drivers i.e. the driver of the bus and that of the tractor.

3. Numerous claim petitions by the legal heirs of the deceased and injured travellers were filed which were consolidated by the learned Tribunal.

4. Learned tribunal held that the accident had occurred due to the contributory negligence of the bus driver as well as the driver of the tractor and it

was held that the bus as well as the tractor were insured with Oriental Insurance Company.

5. It was claimed by the claimant that she sustained grievous injuries on her head and right arm, on account of which she could not move her arm.

She also proved on record disability certificate Ex. P145 wherein permanent disability of 5 per cent was assessed. It was claimed that she spent a

sum of Rs. 45,000/ on her treatment including special diet and transportation etc. However, in the cross-examination it was admitted that she was

discharged from the hospital after first aid.

6. The disability certificate was not taken into consideration by the learned Tribunal on the plea that the same was not proved in accordance with

the law, as the author of the certificate has not been examined by the claimant. Similarly, the bills produced in support of the medical expenses

were also not taken into consideration for want of proof in accordance with the Evidence Act. Consequently, the claim petition filed by Smt.

Kamlesh was dismissed.

7. Learned counsel for the appellant appearing on behalf of the appellant has challenged the findings of the learned Tribunal with regard to the non

consideration of evidence duly exhibited on record. He further contended that the learned Tribunal in assessing the compensation payable to the

deceased/injured is to follow summary procedure and strict provisions of the Evidence Act are not to be insisted upon. The contention of the

learned counsel for the appellant was that keeping in view the authenticity of the disability certificate coupled with the bills which were duly

exhibited without any objection, it was not open to the learned Tribunal to have subsequently rejected the same and dismissed the claim petition. In

support of this contention, learned counsel for the appellant has placed reliance

on the judgment of Hon"ble Rajasthan High Court in the case of

Rajasthan State Road Transport Corporation v. Nand Kishore and others, 2002 ACJ 1564 and judgment of this Court in the case of Raghbir

Singh v. Sarita Sharma and others, 2004 ACJ 903. In both these judgments it has been held that the learned Tribunal is to follow summary

procedure for making award and the evidence produced on record is not to be ignored because strict rules as laid down in the Evidence Act were

not followed to exhibit the same as those are not applicable in the summary trial.

8. Learned counsel for the appellant also placed reliance on the judgment of Hon"ble Supreme Court in the case of R.V.E. Venkatachala Gounder

v. Arulmigu Viswesaraswami and V.P. Temple and others, 2003(2) RCR(Rent) 579 : 2003(4) RCR(Civil) 705 wherein it has been held that if no

objection is raised at the time when the documents are tendered in evidence, marked and exhibited by the Court, the same have to be read in

evidence. The reason given is that in case any objection to the admissibility is raised at the proper time then it is always open to a party to get the

same proved in accordance with law.

9. I find force in this contention raised by the learned counsel for the appellant and it is held that the learned Tribunal was not justified in rejecting

the documentary evidence produced on record. Once the evidence produced on record showed that the claimantappellant had spent a sum of Rs.

1,993.65 rounded off to Rs. 2,000/ and further that there was permanent disability of 5 per cent the claim petition filed by the claimant cannot be dismissed.

10. Consequently, findings of the learned Tribunal are reversed and it is held that the claimant would be entitled to the compensation to the tune of

Rs. 27,000/ i.e. Rs. 25,000/ towards 5% permanent disability suffered by her and a sum of Rs. 2,000/ spent by her on her treatment qua which

bills were duly proved on record.

11. Consequently, it is held that the claimant shall be entitled to a sum of Rs. 27,000/ on account of injuries suffered by her. In addition, she would

also be entitled to interest at the rate of 9 per cent per annum on this amount of compensation from the date of claim petition till realisation. The

liability of payment of compensation shall be joint and several.

FAO No. 1518 of 2004

12. The claimantappellant Om Parkash Kashyap had also suffered grievous injuries as a result of accident in question. He claimed that he incurred

Rs. 1,293/ on the medical treatment. He also proved on record medical bills worth Rs. 1,293/ (rounded up to Rs. 1,500/). It was held by the

learned Tribunal that the bills produced by the claimant in support of medical expenses have not been proved in accordance with the Evidence Act.

Consequently, the claim petition filed by the claimant was dismissed.

13. In view of my discussion above, findings of the learned Tribunal are reversed and it is held that the claimant would be entitled to the

compensation to the tune of Rs. 15,000/ spent by him on his treatment qua which bills were duly proved on record and another sum of Rs.

25,000/ on account of 5% disability suffered by him in the accident.

14. Consequently, it is held that the claimant shall be entitled to a sum of Rs. 26,500/. In addition, he would also be entitled to interest at the rate of

9 per cent per annum on this amount of compensation from the date of claim petition till realisation. The liability of payment of compensation shall

be joint and several.

FAO No. 1517 of 2004

15. The claimantappellant Sudarshan Kumar had suffered a fracture of his right thigh and other parts of the body in the accident in question. He

was operated upon twice. A rod and a plate was inserted in his thigh and he remained under the treatment for 4 months and had to remain on

medical leave for the said period. He claimed compensation on account of disability, pain and suffering, special diet, transportation charges etc.

and medical expenses on medical treatment. The learned Tribunal granted a sum of Rs. 1,03,000/ as compensation on account of disability, pain

and suffering, special diet and expenses towards attendant. Another sum of Rs. 2,500/ was granted towards future medical expenses. However,

the claim of the petitioner for a sum of Rs. 1.5 lacs towards medical treatment and special diet was rejected merely on the ground that in the

crossexamination he has stated that he was entitled to reimbursement from the department.

16. The claimant in order to claim this amount had duly proved on record bills for medical expenses incurred by him to the tune of Rs. 57,353/.

17. The contention of the learned counsel for the appellant was that the learned Tribunal was not justified in denying the medical expenses actually incurred and proved by him merely because in the suggestion to him he had admitted that he was entitled to reimbursement of medical expenses from his department. The contention of the learned counsel for the appellant is that the suggestion given to him stood disproved by a positive evidence brought on record by him by way of departmental official who by way of documentary evidence produced on record proved that no reimbursement for the medical expenses were claimed by him from the department. In view of this, the contention of the learned counsel for the appellant is that the learned Tribunal was not justified in ignoring this claim of the appellant.

18. I find force in this contention. Once a positive evidence was brought on record showing that no amount was claimed from the department towards the medical expenses though he may have been entitled to, the learned Tribunal was not justified in rejecting the said claim. Accordingly, the compensation awarded to the claimant appellant is enhanced to Rs. 1,61,000/ i.e. Rs. 1,03,000/ granted earlier and in addition thereto he is held entitled to Rs. 58,000/ towards medical expenses incurred by him on the treatment.

In view of my discussion above, findings of the learned Tribunal are modified and it is held that the claimant would be entitled to the compensation to the tune of Rs. 1,61,000/. In addition, he would also be entitled to interest at the rate of 9 per cent per annum on the enhanced compensation from the date of claim petition till realisation. The liability of payment of compensation shall be joint and several.

Consequently, all the three appeals are allowed as stated above.

Appeals allowed.