
(1977) 02 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 249 of 1976

P.S. Bhatnagar

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 10-02-1977

Acts Referred:

Citation : (1977) ACJ 213 : AIR 1978 P&H 166 : (1977) 79 PLR 300

Hon'ble Judges : Prem Chand Jain, J;K.S. Tiwana, J

Bench : Division Bench

Judgement

Prem Chand Jain, J.—P. S. Bhatnagar has filed this appeal under Clause 10 of the Letters Patent against the judgment of a learned single Judge of this Court, D/-7-4-1976, by which his appeal (F. A. O. No. 203 of 1972) was dismissed.

2. The facts of the case may briefly be stated thus:

The appellant, who was posted as Chief Design Engineer of Bhakra and Beas Projects and B. R. Palta, the then General Manager of the Bhakra Control Board, were travelling in the Beas Project Car NO. PNH--1424, which was proceeding from Nangal via Jullundur towards Talwara on July 5, 1967, when at about 4 P. M. on the intersection of Jullundur by--pass G. T. Road and Hoshiarpur--Jullundur Road, there was collision between the said car and the Punjab Roadways Bus No. PNQ--906, which was proceeding towards Jullundur City from Jandu Singha and Bhakra. The car was driven by Sulakhan Singh and Kashmira Singh peon was sitting on the front seat while P. S. Bhatnagar and B. R. Palta were sitting on the rear seat. As a result of the accident all the occupants of the car sustained injuries. The bus was driven by Shankar Singh driver. Both P. S. Bhatnagar and B. R. Palta received serious injuries in the accident and had to be removed to the hospital. The appellant filed a claim application before the Motor Accident Claims Tribunal, Jullundur, on Nov. 23, 1967, which was later on amended on Feb. 5. 1968, claiming Rs. 9,55,000/-as compensation from the respondents on account of expenses incurred by him on the medical treatment of the injuries sustained by him and the effects thereof. It was alleged in the application that he had

sustained a fracture of left arm and injury to the head, as a result of which he was completely disabled for the rest of his life and that the accident had primarily occurred due to rash and negligent driving of bus by Shankar Singh. The respondents resisted the claim of the appellant. On the pleadings of the parties, the Tribunal settled the following issues:--

"1. Is the claim application within time and if not, are there sufficient reasons to condone the delay?

2. Was the accident due to any negligent act of the driver of the car, or that of both drivers and with what effect?

3. What should be the quantum of compensation due, if any, and from whom to whom?

4. Relief."

3. The parties led their evidence. Issues Nos. 1 and 2 were answered in the negative while on Issue No. 3 the Tribunal held that the appellant could claim compensation to the tune of Rs. 7,000/-only. As a result of the findings on Issues Nos. 1 and 2, the claim of the appellant was dismissed.

4. Feeling aggrieved from the award of the Tribunal, the appellant preferred an appeal which, as earlier observed, was dismissed by a learned Single Judge of this Court, leaving the parties to bear their own costs. Hence the present appeal.

5. The first contention raised before us by Shri Suri, learned counsel for the appellant, was that the finding of the learned Single Judge of Issue No. 1 affirming that of the Tribunal that the appellant was unable to make out "sufficient cause" for condoning the delay in making the claim application could not legally be sustained. According to the learned counsel, the physical disability suffered by the appellant was such which by itself was sufficient to condone the delay in filing the claim application. It was further submitted by the learned counsel that the learned Single Judge accepted the explanation of delay up to Nov. 1, 1967, and that those very circumstances continued to exist which prevented the appellant from filing the application later on with the result that even the period from Nov. 1, 1967 to Nov. 28, 1967, had also been satisfactorily explained by the appellant for not making the application. On the other hand, the learned Advocate--General submitted that the finding of the learned Single Judge was based on the appreciation of the entire evidence, and that such a finding could not legally be disturbed in appeal.

6. After giving our thoughtful consideration to the entire matter, we are of the view that there is considerable force in the contention of the learned counsel for the appellant. As earlier observed, the learned Single Judge found that sufficient cause existed up to Nov. 1, 1967, for not making the application as it was on that date that the appellant was discharged from All-India Medical Institute of Delhi. After recording that finding the learned Single Judge held that there was no sufficient cause for condoning the delay between Nov. 1, 1967 and Nov. 29,

1967, when the claim application was made. In the claim application, the explanation given for the delay reads as under:--

"As a result of the numerous injuries (which will be proved later), the applicant became unconscious. He was removed to Civil Hospital, Jullundur. As his case was very serious, he was removed to Post--Graduate Medical Institute, Chandigarh in unconscious state. He was admitted there till 20-8-1967 when he was removed to All India Medical Institute, New Delhi for further treatment. He had severe fracture of left arm and head. His left side was completely paralysed. He was admitted to All India Institute, New Delhi for about 2 months. He is still in bed half--paralysed hovering between life and death. He has been completely disabled for the rest of his life for any activity. One person is needed to look after him all the 24 hours. He was offered a United Nations assignment at Rs. 8,000/- P. M. Which he could not accept due to this accident. The injury was so severe that he is still in bed completely disabled. This is the reason for delay in filing the claim application. Claim application was not filed earlier as even the doctors were not sure whether the applicant will live."

7. From the perusal of the aforesaid reasons which have been enumerated by the appellant, there can be no manner of doubt that the severity of the injury was such which made him completely disabled. The plea of condonation of delay has to be judged in the light of the serious injuries which were suffered by the appellant in the accident. It is correct that in the original application it had not been mentioned that it was loss of memory that had prevented him from making the application in time or that he had come to know about the particulars of the accident from his wife, daughter or from any other person, including the doctors, only a few days prior to the filing of the claim application. But these omissions by themselves would not be sufficient to hold that no sufficient cause was shown by the appellant for the condonation of delay. It is correct that the appellant had come out of the hospital on Nov. 1, 1967, and had been permitted to resume his duties on Nov. 2, 1967, but there is no gainsaying, as it was admitted at the bar, that the appellant was allowed to join duty on compassionate grounds and that after joining the duties he did not do any active work. If the question of limitation is judged considering the seriousness of the injuries suffered by the appellant, then the irresistible conclusion that can be arrived at is that a person who would suffer such serious injuries would first think of getting back to his normal health rather than of thinking to file a claim application. The appellant had suffered great mental shock on the receipt of the serious injuries. The wife, the daughter and other relations in the ordinary course must not have thought it proper to tell him as to how and under what circumstances did he suffer those injuries. Dr. D. R. Gulati, Professor of Neurosurgery, was examined as A. W. 5, and he, in cross--examination, stated :--

"In the present case, complete recovery is not possible, but Mr. Bhatnagar might be able to walk without a stick. As far as his arm is concerned, it will be useless for all practical purposes."

It was very vehemently contended by the learned Advocate--General that it sounds very improbable that after having come out of the hospital, the appellant would not like to know the cause of the injuries or that he would not think of filing a claim application. The argument, in the circumstances of the case, is not sustainable. As earlier observed, in the instant case the nature of the injuries and the disability caused as a result of those injuries was such which must not have allowed the appellant or the attendants to think of giving preference to the filing of the claim application over the recovery of the injured. We have to take into consideration the overall circumstances and while deciding the question of "sufficient cause" a too technical view does not deserve to be taken. It may be observed at this stage that we are not adverting to the amended application at all and have tried to confine ourselves to the allegations made in the original claim application in support of the plea for condonation of delay.

8. Further, we find great force in the contention of Mr. Suri, learned counsel, that if delay upto Nov. 1, 1967, could be condoned, there was no reason for not condoning the delay upto Nov. 29, 1967, as those very reasons continued to exist upto Nov. 29, 1967. Thus viewed from any angle, we are unable to agree with the learned Single Judge that the appellant had not made out a case for condoning the delay from Nov. 1, 1967 till Nov. 29, 1967, and accordingly, reverse that finding and hold that sufficient cause has been shown by the appellant for not making the application till Nov. 29, 1967, and accordingly condone the delay.

9. This brings us to the merits of the controversy. Mr. Suri, learned counsel for the appellant, contended that the amount of compensation awarded was grossly inadequate and that the appellant was entitled to more compensation. On the other hand, the learned Advocate--General submitted that the learned Single Judge has assessed the compensation correctly and that no ground had been made out for the enhancement of the compensation.

10. After giving our thoughtful consideration to the entire matter in the light of the various decisions cited at the bar, we are of the view that the amount of compensation awarded by the learned Single Judge is inadequate and that the same deserves to be enhanced. The Tribunal fixed the amount of compensation at Rs. 7,000/-, while the learned Single Judge enhanced the same to Rs. 14,200/-. The learned Single Judge made three heads under which the compensation for injuries sustained in an accident could be claimed, which read as under:--

(a) Pecuniary compensation amount, i.e., which had been spent by the injured on the medical treatment.

(b) Compensation for pain and agony which had been caused by the injury or injuries to the injured, and

(c) Ordinary compensation, i.e., the damage to be suffered by the injured due to the effects including the deformity caused by the injury or injuries.

11. So far as the first head is concerned, the learned Single, Judge awarded an amount of Rs. 2,000/-which was proved to have been incurred by the appellant for obtaining treatment from Dr. P. Chamchani. Mr. Suri, learned counsel, could not persuade us to enhance the amount to which the appellant might be found entitled to under head (a) as he was a Government employee and even after retirement he is entitled to reimbursement for the medical bills. In this situation, we are not inclined to award any more amount in respect of head (a).

12. This brings us to the amount of compensation that the appellant is entitled under heads (b) and (c).

13. It may be observed at the outset that the proper compensation of damages is a question of fact in each case. Singleton L. J., observed in *Waldon v. War Office*(1956) 1 WLR 51, that "no one knows what is the right sum of damages in any particular case, and no two cases are alike." The Earl of Halsbury L. C. in *Owners of the Steamship "Mediana" and Owners, Master and Crew of the Lightship "Comet". The "Mediana".* (1900) AC 113, observed thus:--

"Take the most familiar and ordinary case, how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. In truth, I think it would be very arguable to say that a person would be entitled to no damages for such things. What manly mind cares about pain and suffering that is past? But nevertheless the law recognises that as a topic upon which damages may be given."

14. The broad general principle which should govern the assessment of damages in cases such as this is that the Tribunal should award to injured party such a same position as he would have been in if he had not sustained the injuries. The principle is sometimes referred to as the principle of *restitutio in integrum*; but it is manifest that no award of money can possibly compensate a man for such grievous injuries as the appellant in this case has suffered. The principle, therefore, affords a little guidance in the assessment of damages for the pain and suffering undergone and for the impairment which results from the injuries and in fixing such damages the Judge can do no more than an endeavour to arrive at a fair estimate taking into account all the relevant considerations. On the date of occurrence, the appellant was quite energetic and healthy man. As a result of the accident, he has been reduced to a powerless and helpless person with every enjoyment of life destroyed. There can be no gainsaying that money cannot renew a shattered human frame. Still, the law has said that pain and suffering is a head of damage for which monetary compensation can be awarded and so the Court must do the best it can to be of assistance to it. As is evident from the injuries, the appellant's health has been irreparably injured to such a degree as to render life a burden and source of utmost misery. He has undergone a great amount of pain and suffering. The probability is that he will never recover. His condition is at once helpless and hopeless. Keeping in view all these

circumstances, we are of the view that the amount of Rs. 4,000/-awarded for pain and suffering was wholly inadequate. From the evidence present on record, it is clear that the appellant had to remained unconscious for about 6 days after the occurrence and he had to remain as indoor--patient in hospitals including the Post--Graduate Institute, Chandigarh, and All India Medical Institute, Delhi, from July 6, 1967 upto Nov. 1, 1967. The injuries received by him included a fracture of the left arm and injury to the head which had caused paralysis of his left side. The learned Single Judge has rightly observed that this must have caused an extreme pain and agony which not only persisted for about four months during which period the appellant remained in the hospitals but it still continuing as the disability still continues. Taking into consideration the aforesaid factors, we find that the amount of compensation of Rs. 4,000/-for the said pain and agony suffered by the appellant is wholly inadequate. As has been observed repeatedly, there can never be arithmetical computation of money which would represent such a thing as pain and suffering, but taking into consideration all the facts, we find that a total amount of Rs. 10,000/-would meet the ends of justice and would be a reasonable amount for the pain and agony suffered by the appellant.

15. The next contention raised by Mr. Suri, the learned counsel for the appellant, was that in addition to an amount of compensation in respect of pain and suffering, the appellant was entitled to an amount of compensation for the loss of income which he had suffered because of the disability suffered owing to the injuries caused in the accident. The precise contention of the learned counsel was that because of the permanent disability caused, the appellant had lost the earning power in the future. The appellant was an able--bodied man and after retirement he was likely to get a suitable job being an efficient, intelligent and hard working, engineer throughout his career. The learned counsel submitted that for a moment it could not justifiably be argued on behalf of the respondents that after retirement the appellant was only entitled to the pension which he was getting and that he was not entitled to any amount of compensation in respect of the loss of earning power in the future. We find considerable force in this contention of the learned counsel. There can be no gainsaying that but for this accident the appellant would have done some job after retirement and atleast would have continued in the job for a period of five years safely with the good health which he had at the time of accident. It was contended by the learned Advocate General that there is no evidence on the record, nor has any statement been made by the appellant that after retirement he would have done some work or that he would have been offered a job. In our view such a contingency could not arise as it has only to be envisaged that an able--bodied man even after retirement would like to utilise his energy by taking some job of or doing business especially when a person is a skilled worker, i.e., an efficient engineer. In this view of the matter, we find that the appellant is entitled to compensation for loss of earning power in the future. Having arrived at this finding, the next question that requires determination is as to what amount the appellant is entitled to in the future. At the time of retirement, the appellant was getting

about Rs. 2,700/-. After retirement there was every likelihood that the appellant would have got a job in which he would have got a handsome salary and if not more, then equal to the salary which he was getting at the time of the accident. As earlier observed the appellant being an able-bodied person would have at least continued in service for five years after his retirement. Taking into consideration this period and in the light of the fact that the appellant is getting pension after his retirement, we find that an additional amount of Rs. 40,000/- would meet the ends of justice as an amount of compensation for loss of earning power in the future and accordingly, award this amount in favour of the appellant.

16. The other item, to which our attention was drawn was the amount to which the appellant was entitled i.e. for keeping an attendant. From the evidence on the record, it is evident that the appellant needs support of a person before he can walk and that this disability of his is permanent. In this situation, considering the status of the appellant, he is certainly entitled to keep an attendant for himself. Accordingly, we award an additional amount of Rs. 5,000/- as compensation for the attendant in addition to the one allowed by the learned Single Judge.

17. This brings us to the contention that was raised by the learned Advocate General that the findings of the learned Single Judge on issue No. 2 was erroneous. It was sought to be argued by Mr. Wasu that the accident was due to the negligence of the driver of the car and that the finding of the learned Single Judge that the occurrence had taken place due to the negligent driving of the bus by Shankar Singh is erroneous. We are afraid, we are not inclined to agree with the contention of the learned counsel. The learned Single Judge, after considering the entire evidence, has come to a firm finding that the occurrence had taken place due to the negligent driving of the bus driver and we do not find any ground to take a contrary view other than the one arrived at by the learned Single Judge.

18. No other point was urged on either side.

19. For the reasons recorded above, we allow this appeal to the extent that in addition to the amount awarded by the learned Single Judge, the appellant would be entitled to an additional amount of Rs. 51,000/-, the details of which have been given in the earlier part of the judgment, with proportionate costs.

20. Appeal Allowed.