

(2003) 04 SHI CK 0013

In the High Court Of Himachal Pradesh

Case No : F.A.O. (MVA) No's. 131 and 356 of 1996

Pyar Chand

APPELLANT

Vs

Himachal Pradesh Road Transport Corporation and Another

RESPONDENT

Date of Decision : 07-04-2003

Acts Referred:

Citation : (2003) ACJ 1249 : (2003) 2 ShimLC 91

Hon'ble Judges : L.S. Panta, J;A.K. Goel, J

Bench : Division Bench

Advocate : Sanjay Dutt Vasudeva and B.N. Misra, for the Appellant; M.S. Chandel and Rakesh Jaswal, for the Respondent

Judgement

Arun Kumar Goel, J.—Both these appeals are filed against the award passed by the learned Motor Accidents Claims Tribunal, Shimla in M.A.C. Case No. 43-S/2 of 1994 dated 23.2.1996. We propose to dispose of these appeals by this common judgment.

2. In F.A.O. No. 131 of 1996 appellant, (hereinafter referred to as "the claimant"), wants the compensation to be enhanced, whereas in F.A.O. No. 356 of 1996 the appellants (hereinafter referred to as "the H.R.T.C. and driver"), want the award to be set aside and thus exonerating them from the payment of compensation awarded by the learned Claims Tribunal to the claimant.

3. Admitted facts as those emerge from the records of the learned Tribunal below are that bus bearing registration No. HP 07-1097 of H.R.T.C. was being driven by its driver on 27.11.1993. It was on its way from Shimla to Junga. It met with an accident at a place known as Suinta. The bus went down the road. Number of persons were injured and there were two casualties also. Claimant was admittedly travelling in this bus on the fateful day and time. He also sustained injuries. Claimant alleges that accident was the result of rash and negligent driving on the part of the driver of the bus and as a direct result of it the same fell into the nallah. Stand of the H.R.T.C. and the driver on the other hand is that

though accident did take place but it was not due to alleged rash and negligent driving of the bus in question at the time of its accident. Rather, it was due to the sudden bursting of the tyre of the bus, and the bus went down the nallah. Claimant pleaded that he is entitled to compensation of Rs. 5,00,000 because of injuries sustained to his right leg and also keeping in view the extent of his disability.

4. As per him, he had already spent Rs. 2,00,000 when claim petition was filed and he was under continuous treatment. He remained as an indoor patient from 27.11.1993 to 20.1.1994 at Shimla. Since there was no improvement so he went to Christian Medical College Hospital, Ludhiana. There he remained admitted as an indoor patient for treatment from 22.1.1994 to 5.3.1994. Despite numerous operations he was not cured when petition was filed. His disability was then certified to be 50 per cent.

5. Stand of the H.R.T.C. as well as the driver of the bus has been briefly noted hereinabove. On the basis of the pleadings of the parties following issues were framed by the learned Tribunal below:

(1) Whether the petitioner suffered injuries on account of rash and negligent driving of respondent No. 2 an employee of respondent No. 1, while driving bus No. HP 07-1097 who caused this accident on 27.11.1993, near Junga, if so, its effect? OPP

(2) If issue No. 1 is proved in the affirmative, to what amount of compensation the petitioner is entitled? OPP

(3) Relief.

6. After recording the evidence of the parties and hearing them, learned Tribunal below passed an award in the sum of Rs. 3,00,000 in favour of claimant and against the H.R.T.C. together with interest at the rate of 12 per cent per annum on this sum with effect from 26.5.1994 till the amount was paid by the H.R.T.C. This was inclusive of interim compensation, if any, already paid to the petitioner.

7. We will now make brief reference to the evidence examined by the parties during trial before the Tribunal below.

8. P.W. 1 is Bhagat Singh. He was posted as Senior Auditor in the office of Accountant General where claimant was also working as Senior Auditor. He had brought the summoned record. According to him pay of the claimant was Rs. 3,671 per month and salary certificate to that effect is Exh. PW-1/A, was correct as per the record. Date of birth of the claimant is 7.3.1955. On the date of accident his age works out 38 years. According to this witness claimant was on leave till that date, his statement was recorded on 27.7.1995. This witness further stated that from 9.12.1994 onwards claimant was on leave without pay.

9. P.W. 2 is Ramesh Chand, Head Constable. He has proved on record F.I.R. No. 285 of 1993 vide its copy Exh. PW-2/A. He was the scribe of the said F.I.R.,

which was in his hand.

10. P.W. 3 is Dr. Yogesh Mahendru, resident Orthopaedic, CMC, Ludhiana. As per his statement claimant was admitted on 22.1.1994 for his treatment with compound fracture in his right leg. Skin had not come over the bone and it was an open fracture. During his treatment he was operated upon 10 times and for union of bones. Claimant was still under treatment. A gap had developed because of fracture and bone had become dead. The same was removed. Dr. Mani was the member of the team, which had issued Exh. PW-3/A. According to this witness and in terms of this certificate claimant may need further operations. Other certificate Exh. PW-3/B had been issued by Dr. Sanjay Pal who was also a member of the team. In the opinion of P.W. 3, in case bones do not join, disability will be about 70 per cent. Shortening of right leg will be about 3 inches. This disability will continue. In case bone is not joined properly, amputation may have to be undertaken. Treatment may continue for one year or more also.

11. P.W. 4 is Balalan. He is an official from Christian Medical College, Ludhiana. He has given the details of the expenditure incurred by the claimant while under treatment. He has also proved bills and receipts Exh. PW-4/A to Exh. PW-4/J and Exh. PW-4/A-1 to Exh. PW-4/A-5.

12. P.W. 5 is Pyar Chand claimant himself. He has stated that the bus was being driven in a rash and negligent manner at a speed of 60-70 kilometre by the driver. He was asked by the bus passengers to slow down, but without any consequence. As a result of accident in question number of persons were injured and the conductor died at the spot. Bone of his right leg was fractured. He was carried by other persons to the road and from there he was taken to I.G.M.C. for treatment. He remained as an indoor patient in I.G.M.C. from 27.11.1993 to 20.1.1994. He was operated twice but without any consequence.

13. Per, this witness amputation was advised at I.G.M.C. As such, in these circumstances on 20.1.1994, he went to PGI, Chandigarh who referred him to CMC, Ludhiana. He went to Chandigarh in a taxi and from there also to Ludhiana in the same taxi. Now the witness has to travel in a taxi. He was admitted in CMC, Ludhiana, hospital on 22.1.94 and was operated upon 10 times. After discharge he returned home and went for follow-up to CMC at Ludhiana. He has placed on record Exh. PW-5/1 to Exh. PW-5/7. Per him, three dressings were being undertaken and it would cost Rs. 90 daily. He could not resume his duty. All type of leave available to him, had been exhausted during the year 1994. And since September, 1994 he was on leave without pay. In case there was any leave available to his credit he would have been able to get it encashed. He has suffered substantial financial loss. Amount in lieu of leave without pay worked out to Rs. 45,623, and for the leave available on account of accident in question the amount worked out to Rs. 45,784. Per this witness, it will take one year to resume his duty. He was advised to take special diet. He has engaged one person who is being paid Rs. 500 per month. Per this witness, he will not be entitled to the expenditure incurred at CMC at Ludhiana. In cross-examination nothing

substantial has been extracted so as to dislodge his stand, so far treatment and expenditure part therein is concerned. He has further stated that in the government hospital amputation was advised. According to him, he is being looked after by his wife and a servant. He admitted that from 9/1994 no salary was received by him. He denied the suggestion that if he was in a government hospital he would not have incurred such a huge expense.

14. On the other hand, Ramesh Kumar, driver, has appeared as RW 1. He has supported the stand of the H.R.T.C. as well as his own that accident was not due to rash and negligent driving on his part, but was due to sudden bursting of the tyre, as a result of which bus went down 60-70 ft. in the nallah. Per this witness, Works Manager of H.R.T.C. had inspected the spot and had also confirmed that accident was due to bursting of front tyre. He had denied the suggestion that the bus was being driven at a high speed negligently or having been advised by the passengers to drive it slowly. He admitted that two persons died as a consequence of the accident, whereas number of others received injuries.

15. This is the entire evidence examined by the parties in this case with a view to support their respective pleadings. On the basis of the aforesaid evidence learned Tribunal assessed compensation as aforesaid:

For treatment at Christian Medical College Hospital, Ludhiana Rs. 1,31,000 On account of loss of earnings Rs. 45,000 Taxi charges Rs. 9,000 On account of pain and suffering Rs. 20,000 For treatment that the petitioner is undergoing Rs. 45,000 Towards loss of future earnings Rs. 50,000 _____ Total amount Rs. 3,00,000 _____

16. In addition to this some interest and cost has also been levied by the learned Tribunal below as per the impugned award.

17. Mr. Chandel learned Counsel for H.R.T.C. and driver submitted that his clients are not liable for payment of compensation in the facts and circumstances of this case. Per him there is no rash and negligent driving attributable to the driver of the bus which can be said to have resulted in the accident in question. According to him accident was purely due to unforeseen circumstances which were beyond the control of either the H.R.T.C. or the driver of the bus, i.e., RW 1. In this behalf he laid great emphasis on the statement of RW 1 as well as document mark-K, the so-called report of the Works Manager of H.R.T.C. filed by the driver during his examination before the Tribunal below. Per him, on this short ground alone while dismissing the appeal of the claimant, his appeal deserves to be allowed. On the other hand, learned Counsel for the claimant has seriously contested and resisted this plea urged by Mr. Chandel. It was urged on behalf of the claimant that doctrine of *res ipsa loquitur* is clearly applicable to the facts of this case and F.A.O. No. 356 of 1996 deserves to be dismissed while allowing the appeal of the claimant (F.A.O. No. 131 of 1996) and thus enhancing the compensation.

18. Before dealing with the respective contentions, it may be noted that in F.A.O.

No. 131 of 1996, CMP No. 389 of 1997 was filed on behalf of the claimant for leading additional evidence with a view to bring the facts which came into existence after the decision of the learned Tribunal below. This application was allowed and consequently claimant examined as many as five witnesses to which a reference is being made hereinafter. No evidence was examined in rebuttal on behalf of H.R.T.C. or the driver of the bus. A brief reference is also being made to such evidence to these witnesses.

19. First witness is Dr. Sunil Kumar Singh from CMC, Ludhiana. Per him, he was working as Professor of Surgery on the date of examination and presently was also officiating as Medical Superintendent. Exh. A-1 had been issued by Dr. Yogesh Mahindru, the then resident doctor, Department of Orthopaedic. It was signed by the then Medical Superintendent Dr. Kin Mammen. According to this witness, the claimant remained admitted in the hospital at CMC Ludhiana from 28.1.1997 to 4.2.1997. His right leg below knee was amputated on 29.1.1997. According to him Rs. 8,851 was charged from the claimant. In addition to this, bills Exhs. A-2 to A-6 were for other expenses of the hospital and were paid for by the claimant.

20. Next witness is Rattan Chand. He is an officer from Accountant General (Audit), Himachal Pradesh. According to this witness appellant remained on leave without pay from 27.1.1997 to 21.2.1997 for 26 days. His basic pay was Rs. 5,300 on 1.1.1996 and Rs. 5,450 on 1.1.1997.

21. Next witness is Pyar Chand, claimant, himself. According to him he was on leave up to 4.8.1996 and resumed his duty on 5.8.1996. He could only join the duty with the help of two persons. His leg below knee was amputated on 29.1.1997 at Ludhiana. He was on leave without pay from 27.1.1997 to 21.2.1997. At Ludhiana he was attended by his wife and brother-in-law. He was prescribed special diet by the doctors. Expense of Rs. 300 per day was incurred on all of them. He appeared before the Medical Board constituted by the Chief Medical Officer, Shimla, who had issued certificate dated 30.5.1997. He also appeared before the Review Medical Board on 27.7.1998. He got artificial limb fixed from Nevedac Prosthetic Centre, Chandigarh and paid Rs. 25,905 for the same. In cross-examination, on behalf of H.R.T.C. he denied the suggestion that no special diet was prescribed. He, however, stated that he does not have any record to prove that such diet was prescribed to him.

22. The next witness is Dr. Ravinder Mogta. He has proved on record disability certificate Exh. AW-9/A. He was a Member of the Board that issued this certificate. As per this board estimated disability in case of the claimant, right lower limb was 70 per cent. In his cross-examination he stated that disability is determined as per the criteria given in the physical disability book issued by the Government of India. He, nowhere, admitted that the disability in the present case is that of the right lower limb, but as per instructions, certificate is given to whole of the body. The disability being 70 per cent of the right lower limb, the witness was unable to say how much percentage of leg represents the entire

body.

23. Next witness is Narotam Chand, Accountant in Nevedac Prosthetic Centre, near Airport, Chandigarh. Witness is accountant in the said Centre. He has proved on the record cash memo Exh. AW-10/A, dated 22.1.1998 having been issued in favour of claimant for Rs. 25,905. This amount was paid in cash. He has identified the signature of Raman on Exh. AW-10/A, and its having been countersigned by Col. D.S. Vohra because of having worked under Col. D.S. Vohra and with Raman.

24. So far as the plea of the bus having met with accident because of unforeseen circumstances raised by Mr. Chandel is concerned, for the reasons to be recorded hereinafter it does not hold good. Vehicles which are properly maintained as well as attended to from time to time, will not ordinarily roll down the road and cause accident. In the instant case, driver, RW 1, stated that the front tyre of the bus suddenly burst and this caused the accident. There is no evidence produced by the H.R.T.C. or the driver of the bus in question to substantiate that the timely and proper maintenance of the bus was undertaken by the H.R.T.C. at regular intervals. Its tyres were roadworthy so as to enable the bus driver to undertake journey. All these facts could be established from the contemporaneous official records maintained by H.R.T.C.

25. In addition to this it had also to be established by leading legally acceptable evidence, that all possible care was taken to rule out all patent defects and that the bus was in a roadworthy condition. If the maintenance register or any other record had been produced by the H.R.T.C. to establish these facts, probably it could substantiate its plea that the accident was due to unforeseen circumstances despite due care. Nothing in that behalf has brought on record by the H.R.T.C. in the present case, except for word of mouth regarding so-called sudden accidents noted hereinabove. Therefore, this plea it may be observed appears to have been raised simply to be rejected, and it is ordered accordingly.

26. Now coming to the appeal of the claimant for enhancement of compensation. Age of the appellant on the date of the accident was approximately 38 years. Thus, he had a long way to go so far his career was concerned. There is evidence that he remained on leave without pay for quite some time. He made all out efforts to ensure that he is cured of the fracture and was in a position to come back on to the rails, if not as a normal person, as far as it was possible. All his efforts failed and finally on 29.1.1997 his right leg below knee was amputated. It is on record that this is the direct result of the accident in question. His disability is certified after amputation at 70 per cent in terms of the Exh. PW-9/A by a member of the board who had issued the said certificate.

27. There is also positive evidence on the record, that right from the date of accident the petitioner had been under constant pain and suffering besides mental agony which is also attributable directly to the accident in question. The claimant having undergone two operations at Shimla and 10 at Ludhiana further

multiplied his pain and agony as well as suffering. In addition to this he had to incur substantial expenses, i.e., on his treatment firstly at Shimla then twice at Ludhiana and lastly in purchasing artificial limb after amputation as noted hereinabove. In addition to this his life would not be normal with an artificial limb. He will not be able to walk swiftly like a normal man. He will find difficulty while boarding a bus or a train and even while climbing stairs or while on ascent. These are such hard facts of life which we cannot overlook. Still claimant will have to bear with these during his lifetime.

28. Claimant had admittedly remained for leave without pay for sufficiently long period. By exhausting his leave during treatment, he has stated that he sustained a loss of Rs. 45,784. According to him, benefit of loss on account of leave without pay was Rs. 44,623 when he appeared in court on 28.10.1995. He also till then had incurred an expenses of Rs. 9,000 on his transportation.

29. He had also remained without pay when he went to Ludhiana in the month of January, 1997 for check-up and when on 29.1.1997 his leg below knee was amputated and he was attended upon by his wife and his brother-in-law. It has also come in his statement he had also engaged a servant on Rs. 500 per month.

30. Keeping in view overall facts and circumstances we feel that the claimant is entitled to the following compensation:

(a) On account of leave without pay and for utilisation of leave so as to undergo treatment Rs. 1,25,000 (b) Medical expenditure incurred at CMC Hospital before filing of this appeal, i.e., F.A.O. No. 131 of 1996 Rs. 1,31,000 (c) Expenditure incurred after filing of appeal, Rs. 8,851 +900 = Rs. 9,751, rounded off to Rs. 10,000 (d) Cost of artificial limb, (as per Exh. AW-10/A) Rs. 25,906 however, rounded off to Rs. 26,000 _____ Total Rs. 2,92,000

31. In addition to the aforesaid, claimant is entitled to further compensation for special diet that has been declined by the learned Tribunal below as for want of evidence. Suffice it to say in this behalf, that looking to the age of the claimant and the nature of injuries sustained by him we cannot overlook the fact that nourishing diet was required, so that claimant was able to withstand the effect of injuries, and also of 12 operations besides 13th which resulted in the amputation. This is a matter of common knowledge that in such circumstances not only nourishing diet, but even tonics, etc., are also required to be taken to ensure that the health of an injured person like claimant, as far as possible is restored. In the circumstances of this case, therefore, we feel that a sum of Rs. 58,000, needs to be allowed to him from the time of accident up to date.

32. As already noted the pain and suffering of the petitioner cannot be mitigated but still he needs to be compensated for his agony that he underwent after accident due to numerous operations and by being shifted to hospital at Shimla then to Chandigarh, then to Ludhiana and thereafter again to Ludhiana in January, 1997, where he underwent amputation and as already noted he will never be able to live a normal life because he will have to be dependent on the

artificial limb. Thus, taking an overall view in the circumstances of this case, we feel that a sum of Rs. 1,50,000 on account of pain and suffering being allowed to the claimant will sub-serve the ends of justice.

33. In view of the aforesaid discussion, it is held that claimant is entitled to total compensation of Rs. 5,00,000 on the basis of evidence which is there on the record as also keeping in view other facts which are there on the record of this appeal in the following manner:

(a) Expenses incurred during treatment before passing of the award by the Tribunal below Rs. 1,31,000 (b) On account of loss suffered by him due to being on leave without pay as well as due to entire leave of the claimant being exhausted while undergoing treatment from time to time, as also his loss of future earnings Rs. 1,25,000 (c) Cost of artificial limb (round figure) Rs. 26,000 (d) Expenses incurred while undergoing amputation (round figure) Rs. 10,000 (e) Special diet as well as expenditure of transportation of the petitioner Rs. 58,000 (f) On account of pain and suffering Rs. 1,50,000 _____ Total: Rs. 5,00,000

34. On this amount the claimant is entitled to interest at the rate of 12 per cent per annum from the date of filing of the claim petition, i.e., 26.5.1994 till the date of payment/deposit of the award amount incurred. This sum of Rs. 5,00,000 is inclusive of amount, if any, paid/deposited under no fault liability. Similarly, any amount already paid/deposited will be deducted out of Rs. 5,00,000. The balance amount has to be deposited by or before 30.6.2003, on such deposit being made it will be remitted in the bank account of the claimant Pyar Chand which he will furnish on or before the said date. F.A.O. No. 356 of 1996 filed by H.R.T.C. and another is dismissed, and that of claimant, i.e., F.A.O. No. 131 of 1996 is allowed in the aforesaid terms by modifying the award passed by the learned Tribunal below. H.R.T.C. will pay one set of costs in these appeals to the claimant, quantified at Rs. 3,000.

35. Since compensation of Rs. 5,00,000 as aforesaid includes a sum of Rs. 45,000 towards loss of future income, as such interest as ordered in this judgment will only be payable on Rs. 4,55,000.