
(1999) 09 P&H CK 0165

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1079 of 1989

Raj Kumar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 22-09-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2000) 124 PLR 526

Hon'ble Judges : Amar Dutt, J

Bench : Single Bench

Advocate : S.D. Bansal, for the Appellant;

Final Decision : Dismissed

Judgement

Amar Dutt, J.—This judgment will dispose of F.A.O. Nos. 1079, 1077 and 1080 of 1989 which have been filed by S/Shri Raj Kumar, Jatinder Kumar and Bhagwan Dass respectively for enhancement of the compensation awarded to them through award dated 16.5.1989 by the Motor Accident Claims Tribunal, Rohtak, in the separate claim petitions filed by them.

2. Briefly stated the facts which lead to the filing of the claim petitions are that on 19.1.1988 Bus No. HYR 9327 belonging to the Haryana Roadways had left Rohtak for Jind. The claimants with many other passengers were travelling therein. Kanwar Singh, respondent No. 3 was driving the bus at high speed and at about 7.45 p.m. when it reached near its destination and was near the Gohana bye-pass road, it started moving in a zig zag manner and ultimately dashed into a tree on the side of the road. Due to rash and negligent manner in which the bus was being driven, the passengers including the claimants received injuries on account of which three separate claim petitions were filed before the Tribunal in which Raj Kumar claimed Rs. 2 lakhs, Jatinder Kumar asked for Rs. 1.00 lakh and Bhagwan Dass prayed that he be given Rs. 5.06 lakhs.

3. In the written reply the respondents denied that the accident had taken place

on account of rash and negligent driving of respondent-3. It was pleaded that the bus was being driven at normal speed with full care. There was a culvert on the road near the place of accident. When the bus reached near this place, it took a jerk and as a result, thereof, the main leaf and second leaf of the bus on the driver's side were broken with the result the bus dragged towards right side. The driver tried his best to control the bus but it struck against a tree which was just on the right side of the road. So, the accident was purely a matter of chance. It was on this account that no FIR was even lodged in the case against the driver as the accident had taken place on account of a mechanical defect which was beyond the control of the driver.

4. As the petitions involved similar questions of law and facts and pertain to the same accident these were consolidated and tried together. In view of the stand taken by the parties, the parties went to trial on the following issues:-

1. Whether the accident took place on account of rash and negligent driving of bus HYR 9327 by respondent No.3 resulting in the injuries to the claimants? OPP

2. To what amount of compensation, if any, are the petitioner entitled and from whom? OPP

3. Whether it is a case of accident due to mechanical defect. If so, its effect?

4. Whether the claim petitions are bad for mis-joinder of necessary parties?

5. Relief.

5. After recording of the evidence of both the sides, the Tribunal heard arguments and decided issue No. 1 in favour of the claimants. While disposing of issue No. 2, the Tribunal, after considering the claim of Raj Kumar, came to the conclusion that he was entitled to receive compensation of Rs. 40,000/- instead of amount of Rs. 2.00 lakhs claimed by him. Jatinder Kumar who had claimed Rs. 1.00 lakh was awarded Rs. 10,000/- as compensation and in the case of Bhagwan Dass who had claimed Rs. 5.06 lakhs, the compensation awarded was restricted to Rs. 21,000/-.

6. I have heard learned counsel for the appellants and have given my thoughtful consideration to the submissions made.

7. The broad principle well recognised by judicial precedents regarding the assessment of compensation by the Tribunals for the injuries received in accident requires the Tribunal to award such sum of money which would place claimant in the same position as he would have been had he not sustained the injuries. The principle is known as restitution in intergrum and involves the assessment of the compensation broadly in three categories for general damages (i) consolatory damages; (ii) compensatory damages; and (iii) damages for loss of expectation of life. Consolatory damages are awarded for pain and suffering (past, present and future) on account of accident while compensatory damages are provided to cover the expenses on account of services required for the claimant which he

would not have needed for the accident. In *V.M. Koye v. A.R. Mohan* 1991(1) A.C.J. 140 it has been held:

"that, infact, it is inaccurate to describe this head of damages as damages for loss of amenities of life". The amputation of a hand preventing a plaintiff from playing cricket would merit consolatory damages; the same loss preventing a man from carrying on his employment would merit compensatory damages. Consolatory damages and compensatory damages represent different elements in an award for general damages for personal injuries and are exhaustive except for the third head of damages for loss of expectation of life which is a sui generis."

8. Their Lordships of the Supreme Court in *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, while dealing with the subject of fixing amount of compensation payable to a victim of an accident held that damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are in respect of the expenses which the victim has actually incurred. These damages are capable of being calculated in terms of money, whereas non pecuniary damages are those which are incapable of being assessed by arithmetical calculations. Their Lordships further observed:

"that to appreciate two concepts, pecuniary damages may include:

- "i) medical attendance;
- ii) loss of earning of profit upto the date of trial; and
- iii) other material loss.

So far as non pecuniary damages are concerned, they may include-

- i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future;
- ii) damages to compensate for the loss, of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit;
- iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened;
- iv) inconvenience hardship, discomfort, disappointment, frustration and mental stress in life".

9. In the present case Raj Kumar had claimed that he spent Rs. 15,000/- on his medical treatment during the period he remained as indoor patient from 19.1.1988 to 9.3.1988. He had also sought compensation for the reduction in his income from the Mendhiratta General Store being run by him from Rs. 1,500/- p.m. to Rs. 300/- p.m. The Tribunal had restricted the compensation payable to him on account of medical treatment to Rs. 5,000/- only because the claim was not supported by any bills evidencing the amount actually spent by him. The

vouchers which had been produced in support of the claim had aggregated to Rs. 542.20. Faced with this situation, the Tribunal had made an adhoc assessment of the amount which might have been spent by him on the basis of the averment that he had been hospitalised from 19.1.1988 to 9.3.1988 and had suffered 35 per cent disability. Although no claim on account of special diet had been made, the Tribunal taking into consideration the possibility of the claimant having been put on special diet had assessed the amount spent by him under this head at Rs. 2,000/-. While dealing with the claim for compensation on account of loss of business the Tribunal found that the claimant had not brought on record any evidence in support of his assertion that his income had been reduced from Rs. 1,500/- to Rs. 300/- or that any of the agency with regard to certain items had been cancelled. In view of this, the bald assertion has not been accepted. However, taking into consideration the overall view of the case of the claimant, the Tribunal has granted him Rs. 10,000/- on this account and had also given him a sum of Rs. 3,000/- on account of the gratuitous services which might have been rendered to him by his friends and members of the family. The tribunal also awarded a sum of Rs. 20,000/- for the pain and agony suffered by the claimant.

10. In the case of Jatinder Kumar, compensation of Rs. one lakh had been sought by the appellant on account of the injuries suffered by him on his knee and head on the treatment of which he claimed to have spent Rs. 10,000/-. The claimant is proved to have been admitted in the hospital at Narwana on 21.1.1988 and was discharged on 24.2.1988. In the evidence there was no proof of his having suffered any permanent disability. Taking into having suffered any permanent disability. Taking into view the fact that it would have taken sometimes before he could completely recover from the after effects of the accident as also the fact that he had not brought on record any voucher or bill to prove the amount that according to him had been spent on his treatment, the Court below allowed compensation of Rs. 2,000/- only to him on this count and Rs. 1,000/- on account of special diet and Rs. 6,000/- for pain and suffering and Rs. 1,000/- for gratuitous services bringing the total compensation payable to Jatinder Kumar to Rs. 10,000/-.

11. The last claimant Bhagwan Dass had claimed Rs. 5,06,000/- as compensation payable to him. He had asserted that he had spent Rs. 40,000/- on his treatment but has not produced any voucher or bill in support of his claim. On account of the permanent disability suffered by him which was assessed at 15 per cent, the Tribunal has awarded Rs. 5,000/- for the medical expenses incurred by this claimant and has also allowed him Rs. 3,000/- on account of special diet that he might had to take. Taking into consideration the disability that had been suffered by the claimant and the pain and agony he had undergone, he was awarded Rs. 10,000/-. There being no evidence with regard to the loss of income he was awarded only Rs. 1,000/- under this head. The claimant was also awarded a sum of Rs. 2,000/- on account of gratuitous services rendered by his relations and conveyance charges bringing the total compensation to Rs. 21,000/-.

12. Shri S.D. Bansal, Advocate appearing for all the three claimants has urged that the Tribunal had acted with material irregularity in restricting the claims put forth by his clients in relation to the medical expenses incurred by them and the compensation which has been awarded to them on account of the pain and suffering which they had on account of the injuries sustained in the accident. While it is natural for the sympathy of the Courts to be always with the victims and as such the Courts try to be liberal in their assessment the compensation to be awarded to the claimants who had suffered injuries on account of the negligence of the drivers of the motor vehicles but the claimants cannot be absolved of their obligation to bring on record some material on the basis of which they are putting forth their claim for compensation. In the instant case, none of the three claimants has made any such attempt to produce before the Tribunal the evidence which would help the Court to work out the compensation. While Raj Kumar has produced medical bills aggregating to Rs. 542.20P. only others have not cared to produce any bill. In these circumstances it would not be possible for the Court to grant the appellants any further relief on account of medical expenses for want of adequate evidence. The position regarding compensation sought by them on account of pain and suffering is no different. Learned counsel for the appellants has not been able to pin point any circumstance that might have been brought on the record or to point out any evidence, after perusal whereof, I may be able to conclude that the compensation awarded to the claimant was inadequate and therefore, the award warrants interference. Amounts of Rs. 40,000/-, Rs. 10,000/- and Rs. 21,000/- which have been awarded as compensation to the three claimants may look to be partly sums when compared with what is being awarded now a days but while scrutinizing the prayer for enhancement, this Court cannot loose sight of the fact that this compensation was awarded in the year 1988 i.e., more than a decade back.

13. In view of the above discussion, I do not consider the amounts awarded S/ Shri Raj Kumar, Jatinder Kumar and Bhagwan Dass to be inadequate as compensation for the injuries sustained by them so as to warrant any enhancement.

14. For the reasons recorded above, all the three appeals fails and are accordingly dismissed.