
(2004) 03 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 249 of 1999

Rashila Ram Kaushal

APPELLANT

Vs

Ranjit Singh and Others

RESPONDENT

Date of Decision : 05-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Motor Vehicles Act, 1988 — Section 166

Citation : (2004) 3 ACC 224 : (2004) ACJ 1891 : (2004) 1 ShimLC 387

Hon'ble Judges : V.K. Gupta, C.J

Bench : Single Bench

Advocate : R.D. Kaundal, for the Appellant; Manoj Chandel, Rajiv Jiwan, G.C. Gupta and Mohinder Gautam, for the Respondent

Judgement

V.K. Gupta, C.J.—This appeal has been filed for the enhancement of the compensation amount awarded by the Tribunal in its judgment dated 29.4.1999 whereby a total compensation amount of Rs. 50,000 has been awarded by the Tribunal in favour of the appellant-claimant along with 12 per cent interest and costs. The only point which after hearing learned counsel for the parties I feel worthy of consideration is with respect to the non-determination and non-awarding of any amount of compensation under the head "permanent disability" suffered by claimant-appellant. Other contentions raised by the appellant have not been accepted by me for the simple reason that there is no evidence whatsoever on record which can entitle the appellant for enhancement of compensation under any head. Even though the appellant had filed C.M.P. No. 124 of 2004 and even if I allow that application, it does not help the case of appellant at all because what the appellant seeks through this application is the placing on record of some receipts with respect to taxi charges. Receipts filed along with the application are pure private documents allegedly executed by private persons. Their being placed on record would not amount to "evidence" as such. Unless these documents are proved by leading cogent evidence and these are also duly admitted in evidence, these are worthless pieces of paper, not

worthy of any credence at all. Since the appellant did not ask for permission to lead additional evidence and only confined his prayer for placing on record these documents, these documents cannot be taken into consideration.

2. Had the appellant filed an application in terms of Order 41, Rule 27, CPC for allowing him to lead additional evidence, the situation would have been different because in that event, after allowing such an application, this court would have considered the issue of permitting the appellant to lead additional evidence. That course of action not having been adopted by the appellant, the application being an attempt in futility cannot be of any help to the appellant.

3. The Tribunal based on the medical evidence did come to a positive finding that the appellant had suffered permanent disability to the extent of 20 per cent, even though in the same breath he did observe that as per statement of the doctor, the aforesaid disability would have no affect on his profession as a teacher.

4. Whenever, in a petition filed u/s 166 of the Motor Vehicles Act, 1988, it comes out as an admitted fact that a person has suffered permanent disability on account of an injury caused to him by or through an accident involving a motor vehicle, whether such permanent disability has a direct or indirect bearing, or it has no direct or indirect bearing, or relation, or any adverse influence on his profession, the fact remains that on account of suffering of a permanent disability the person becomes entitled to the grant of some amount of compensation. Undoubtedly, if the suffering of permanent disability results in some adverse consequence on the profession of the person injured, the compensation amount necessarily has to be higher, but that does not detract the court from awarding compensation, of course, of a lesser quantum if the permanent disability has been suffered, even though it may not have any adverse affect on the professional capability of the injured. I am saying so because suffering of a permanent disability is a physical liability which the injured has to carry for the rest of his life and for that he is to be adequately compensated. Of course, if the permanent disability has an adverse affect on the profession or occupation of the injured, apart from having to suffer for the rest of his life on account of this permanent disability, he also suffers in discharge of his professional obligations and for that additional suffering he has to be additionally compensated.

5. Based on the aforesaid observations, therefore, I am clearly of the opinion that the Tribunal erred in ignoring the aforesaid aspect of the matter and committed a material omission in not awarding compensation to the injured for his suffering on account of permanent disability.

6. The award, therefore, is modified to the extent that in addition to compensation already awarded, the appellant-claimant shall also be entitled to an additional compensation of Rs. 37,000 on account of his having suffered the aforesaid permanent disability. However the additional compensation shall not

carry with it any interest liability at any rate for any period and this (Rs. 37,000) shall be the total lump sum amount payable by the respondent No. 3 to the appellant-petitioner within thirty days from today. However, if this amount is not paid within 30 days, it shall carry with and upon it the interest liability at the rate of 6 per cent per annum from the date of filing of the claim petition, i.e., 22.3.1997 till the date of actual payment.

7. Appeal is allowed partly. No order as to costs.

C.M.P. No. 124 of 2004:

8. In view of the disposal of the main appeal, the present application shall stand disposed of.