
(1999) 01 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 673 of 1986

S. Jagjit Singh

APPELLANT

Vs

Haryana Roadways and Others

RESPONDENT

Date of Decision : 22-01-1999

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (2000) ACJ 772 : (1999) 122 PLR 106 : (1999) 3 RCR(Civil) 105

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : Maharaj Singh and C.S. Pasricha, for the Appellant; R.S. Chahar, Adl. A.G. and N.S. Bhinder, DA, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—This is claimant's (appellant herein) first appeal directed against Award dated 20.3.1986 of Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as the Tribunal).

2. The brief facts giving rise to present appeal are that when claimant Jagjit Singh was standing at the Bus Stand, Karnal on 28.11.1984 at about 5.00 p.m., Bus No. HYK-4671 driven by Gurdial Singh, Driver came at a very rash speed. The bus struck against the claimant, as a result of which he fell down and his right foot was run over by the wheel of the bus. The claimant received serious injuries. According to the claimant, two fingers and thumb of his right foot had to be amputated having been crushed. In his claim petition, the claimant averred that he was about 65 years of age, doing business and agriculture and farming. He further stated that he was partner of Messers Singh Rice Mills and Sole Proprietor of Singh Rice Traders. He had a farm at Gwalior and was earning Rs. 2,00,000/- per annum. He stated that he had come from Delhi and was going towards his residence when his foot was run over by the bus. He averred that he was brought to Civil Hospital, Karnal wherefrom he was shifted to P.G.I. Chandigarh. He further averred that he has spent Rs. 31,000/- on his treatment

which was continuing. He stated that he had suffered great pain and agony and that there was loss of enjoyment of life and that he had been permanently disabled and would not be able to do his business and agriculture. He contended that after the accident there was loss of income as he would not be able to earn in future on account of permanent disability. He also prayed for interest at the rate of 12 per cent per annum from the date of petition till realisation.

3. The claim petition was resisted by respondents No. 1 and 2. Respondent No. 3 also adopted the written statement filed on behalf of respondents No. 1 and 2. Respondents contended that the claimant absent mindedly without caring for the bus, came running and put his foot under the front wheel of the bus. They further averred that the Driver of the bus stopped the bus there and there. Respondents thus denied that the accident took place due to rash and negligent driving of Gurdial Singh, Driver.

4. The Tribunal framed the following issues on the pleadings of the parties:-

1) Whether the petitioner sustained injuries as a result of rash and negligent driving of Bus No. HYK-4671 by driver, Gurdial Singh as alleged? OPA.

2) To what amount of compensation, is the claimant entitled and from whom? OPA

3) Whether the petition is bad for non-joinder of necessary party? OPR.

4) Relief.

5. On appreciation of evidence brought on record by the parties, the Tribunal held that the claimant sustained, injuries as a result of rash and negligent driving of Bus No. HYK 4671 by its driver, Gurdial Singh. The Tribunal granted a sum of Rs. 19,150/- as special and general damages under the following heads:-

(i) Reimbursement of expenses incurred on purchase of medicines : Rs. 2,900.00 (ii) Expenses incurred for stay in the Rest House of the University : Rs. 1,250.00 (iii) General expenses for pain and Agony : Rs. 15,000.00

6. The Tribunal also awarded interest at the rate of 12 per cent per annum from the date of the institution of the petition till realisation.

7. Learned counsel appearing on behalf of the claimant has contended that the Tribunal has completely given a go-by to the well settled principles laid down for assessment of compensation in these types of cases and erred in not granting the full amount of compensation claimed by the claimant in his claim petition.

8. In answer to these submissions, learned counsel appearing on behalf of the State, Mr. N.S. Bhinder, District Attorney, Haryana, contended that in the circumstances of this case, compensation awarded to the claimant by the Tribunal was adequate and no case of enhancement has been made out.

9. The broad general principle which governs the assessment of compensation in cases of bodily injuries is that the Tribunal should award to injured party such a

sum of money as would put him in the same position as he would have been had he not sustained injuries. The principles sometimes referred to is the principle of *restitutio in integrum*. But it is manifest that no award of money can possibly compensate a man and renew the shattered human frame.

10. In *Valiyakathodi Mohammed Koya Vs. Ayyappankadu Ramamoorthi Mohan and Others*, , Division Bench of Kerala High Court held that in personal injury cases, there are three categories of general damages; (i) consolatory damages; (ii) compensatory damages; and (iii) damages for loss of expectation of life. Consolatory damages are awarded on the basis of plaintiff's pain and suffering (past, present and future) and mental distress in order to console the plaintiff for the enforced acceptance of a state of affairs which cannot be altered, the cause of which is the accident. Compensatory damages are awarded to provide the good services of a plaintiff, but for his injuries, would either have been able to provide for himself or would not have needed. This is what is commonly known as pecuniary loss. This is in the nature of *restitutio in integrum*. The Division Bench held that, in fact, 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*."

11. In *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and Ors.* (1995)110 P.L.R. 298 (S.C.), their Lordship of the Supreme Court while dealing with the subject of fixing amount of compensation payable to a victim of an accident held that the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order 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 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 of life.

12. The claimant, at the relevant time, was nearly 70 years of age. AW-1, Dr. N.K. Mehta, Medical Officer, Civil Hospital, Karnal, deposed that the claimant was brought to Civil Hospital on 28.11.1984 at 5.30 P.M. and on examination, he found the following injuries on his person:-

1) Bleeding was present from both the nostrils. X-rays and surgeon's opinion was sought.

2) Right foot in distal 2/3rd portion was lacerated, skin was avulsed, under-lying muscles were crushed. Fresh bleeding was present. X-rays and Orthopaedic Surgeon's opinion was sought.

13. AW-2 Dr. K.L Sachdeva, Medical Officer, Civil Hospital, Karnal deposed that the claimant was operated upon for his foot injury on 28.11.1984 and after operation back plaster was applied and he was referred to P.G.I. Chandigarh for further treatment. AW-7 Dr. C.P. Sahni, Professor and Head Plastic Surgery, P.G.I., Chandigarh deposed that the claimant was admitted in the P.G.I. on 29.11.1984. Having been referred from Civil Hospital, Karnal, he underwent three operations i.e. on 30.11.1984, 27.12.1984 and 18.1.1985. Dr. Sahni deposed that during this period, the non-viable skin on the foot was excised and non-viable toes were removed and raw area was skin-grafted. At the time of healing, he had amputation of the great toe at meta tarso phalyngeal joint; amputation of second toe through base of proximal phalynx, third toe was amputated through the base of proximal phalynx. There was a skin graft on the dorsum as well as on the planter aspect of distal foot along with contracture and stiffness. Dr. Sahni assessed the disability at 22 per cent. He also opined that because of permanent disability and consequent upon this injury sustained by him, the clamant would never be able to walk normally.

14. The claimant appeared himself as AW-9 and deposed that he remained admitted in the P.G.I. for four months and for another 7-8 months, he had to visit PGI on every second or third day for further treatment. He has further stated that even now he has to come to the P.G.I. for consultation. He deposed that he is a graduate from Lahore. He, in his statement, proved receipts for the expenditure incurred on medicines, hospital charges, diet charges, taxi charges and charges on account of stay in the guest house. He further deposed that during the period he was hospitalised, he did not earn any thing whereas a year prior to the accident, he had earned a profit of Rs. 1,75,000/- from the business of rice sheller. He deposed that he used to earn a sum of Rs. 2,00,000/- from his land but in the year of accident, he suffered a loss of Rs. 2,00,000/- as he could not look after his farming. He stated that he kept an attendant in the P.G.I. and the guest house at Chandigarh and the attendant is still with him. He further

stated that he paid nearly Rs. 500/- to Rs. 600/- per month to the attendant.

15. The claimant, in order to prove his disability which has by now increased to 45 per cent, has placed on record certificate dated 7.12.1998 given by the Chairman, District Involving & Medical Board-cum-Civil Surgeon-cum-Chief Hospital Superintendent, Gwalior (M.P.) by filing Civil Miscellaneous No. 15661CII-1998 under Order XLI Rule 27 of the C.P.C. The certificate reads as under:-

D.N.11283 8.12.98.

"Examined Sri Jagjeet Singh S/o Menghga Singh, 78 years M by Dist. Medical Board on 7.12.98.

His Rt. foot has been amputated partially, c-flattening of the foot, c-makes him incapacitated and handicap.

The disability is 45% (forty five)"

16. After hearing the learned counsel for the parties and on going through the record, I am of the view that the compensation awarded to the claimant is too low and meagre and the various considerations as noticed by the Division Bench of Kerala High Court in V.M. Koya's case (supra) as also by the Apex Court in R.D. Hattangadi's case (supra) have not been taken into account. Dr. Sahni had assessed the disability at 22% which has increased to 45% by now.

17. The claimant, in order to prove that he had spent Rs. 11,915/- on account of hospital charges, placed on record receipt, Ex.A-43 but the Tribunal has denied this amount on the ground that the claimant stated in his statement that being a freedom fighter, he has applied for reimbursement of these expenses from the Freedom Fighters' Funds and he has been assured that he would be paid a sum of Rs. 10,000/- from the said Fund. To claim diet charges, the claimant proved on record bills, Exhibits A-37 to A-42, A-42/1 and A-42/2 but the Tribunal disallowed the claim in toto by stating that even if the accident had not taken place, the claimant would have taken the meals. The Tribunal also denied a sum of Rs. 20,713/- claimed by the claimant on taxi charges from April, 1985 to September, 1985 for going to the hospital for follow up treatment. Tribunal has denied this amount stating that "if the claimant was staying in Chandigarh, he could have used cheaper means of conveyance. He cannot lead luxurious life at the cost of others." The claimant also claimed certain other amounts due to loss of income but none has been allowed.

18. Having regard to the contention of learned counsel for the claimant that | the claimant did not receive any amount from the Freedom Fighters' Fund though the claimant had applied for reimbursement of Rs. 10,000/- out of the said Fund, I am of the view that the claimant is entitled to Rs. 11,915/- which he incurred towards hospital charges. There also seems to be no justification to deny Rs. 20,713/- which the claimant spent as taxi charges from April, 1985 to September, 1985 for going to the hospital for follow up treatment and the

expenses which the claimant incurred towards food taken by him during his stay in the guest house simply on the ground that he could have used cheaper means of conveyance or he would have taken food had he not met with an accident. These expenses are the actual expenses and the claimant is entitled to the reimbursement of the same. Since the claimant is yet undergoing treatment, he is also entitled to the expenses which he may have incurred after the award of the Tribunal or may incur in future towards purchase of medicines.

19. Thus, considering all the circumstances of this case, I am of the view that the claimant is entitled to the following amounts of compensation:-

(i) Rs. 10,900/- Reimbursement of expenses towards the purchase of medicines (past and future). (ii) Rs. 11,950/- Expenses incurred as hospital charges, (iii) Rs. 21,000/- Expenses incurred as Taxi Charges. (iii) Rs. 1,250/- Expenses incurred towards stay in the Guest House. (iv) Rs. 8,500/- Expenses incurred towards food while staying in the Guest House. (v) Rs. 60,000/- For pain and suffering injuries affecting his day to day life (past, present and future).
----- Rs. 1,13,600/- ----- Total

20. Resultantly, this appeal is allowed and a compensation of Rs. 1,13,600/- is awarded to the claimant which shall be paid by the three respondents jointly and severally. The claimant shall also get interest at the rate of 12% p.a. on the amount of compensation from the date of application till payment minus the amount of compensation already paid to him. The claimant is further held entitled to costs of this appeal which are quantified at Rs. 1,000/-.

21. The Award of the Motor Accidents Claims Tribunal shall stand modified to the extent indicated above.