
(1969) 08 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 159 of 1968

State of Himachal Pradesh and Others	APPELLANT
Vs	
Jagdip Singh Pathanian	RESPONDENT

Date of Decision : 07-08-1969

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110B, 110D

Citation : (1970) ACJ 216

Hon'ble Judges : Gurdev Singh, J

Bench : Single Bench

Advocate : B.S. Dhillon and Rattan Singh, for the Appellant; K.M. Kaushal, Ashok Bhan and Bhan Singh, for the Respondent

Final Decision : Dismissed

Judgement

Gurdev Singh, J.—This appeal u/s 110-D of the Motor Vehicles Act, 1939, is directed against the order of the Motor Accidents Claims Tribunal Punjab, Chandigarh, dated 6th June, 1969, whereby the Respondent Jagdip Singh Pathanian has been awarded Rs. 75000/- as compensation u/s 110B of the Act with costs against the Appellants for the injuries sustained by him in the course of motor accident that took place on 29th July, 1966, Involving a truck owned by the Public Works Department of the Himachal Pradesh Government.

2. The relevant facts briefly stated are as follows ;--

The Respondent Jagdip Singh Pathania, who was about 35 years of age on the day of the accident, was then serving as Executive Officer, Municipal Committee, Pathankot On the fateful day of 29th July, 1966, he was coming from Dalhousie to Pathankot on his motor cycle No. PNP. 6537. After he had crossed Dunera and had gone 2\$ miles downwards truck No. HIM 1658 owned by the Himachal Pradesh Government came from the side of Pathankot at a rash speed without blowing a horn and struck against Jagdip Singh Pathania because of the negligence of its driver Rattan Singh. As a result of the impact Jagdip Singh

Pathania alongwith his motor cycle was thrown to the hill side and suffered serious injuries on various parts of the body including his head., shoulder and legs.

3. Fortunately, at that time Dr. Kewal Krishan A.W. 4, was coming behind in his car. He at once stopped and rendered first aid to Jagdip Singh Pathania after removing him to Dunera in a bus. Because of the serious injuries which Jagdip Singh Pathania had sustained he was ultimately taken to the V.J. Hospital Amritsar, where he was put under the expert treatment of eminent medical men, including Orthopaedic Surgeon Dr. Karam Singh, A.W. 9.

4. Dr. Karam Singh Grewal found that Jagdip Singh Pathania had sustained fracture of his right femur, compound fracture of both bones of the right leg and fracture-dislocation of the right shoulder, besides fracture of the skull. After undergoing the necessary treatment and operations, the victim of the accident was discharged from the Hospital on 10th September, 1966. He was, however, still not in a position to move about and had to remain in bed until 19th December, 1966. During this period, besides undergoing considerable pain and mental agony because of the head injury, he also used to remain in anxiety always thinking of his misfortune, of his family, of his prolonged illness and the expenditure involved. After discharge from the hospital he remained under the treatment and medical care of Dr. M. Malhotra, A.W. 15, Senior Medical Officer, Pathankot. Because of the mental upset and condition of the brain consequent upon the head injury suffered by Jagdip Singh Pathania, he was ultimately on 19th December, 1966, advised to rejoin his post as Executive Officer to avoid thinking about his illness, expenditure and the family and to divert his attention. This was purely an experimental measure as the doctors concerned were still not satisfied that he had become normal. For a few days from 19th December, 1966 to 21st January, 1967 he went to his office but could not devote his full attention to his job and often the routine paper which could be disposed of only by him were brought to him home.

5. On 22nd of January, 1967, Jagdip Singh Pathania, made an application for compensation, out of which this appeal has arisen, to the Motor Accident Claims Tribunal Punjab claiming in all Rs. 75,000/- against the State of Himachal Pradesh etc. This application which was sent by post actually reached the Tribunal's office on 28th January, 1967.

6. Himachal Pradesh Government resisted the claim. Besides denying that the accident was due to the rash and negligent driving of the truck owned by it, it was pleaded that the application being barred by time had to be dismissed.

7. On the pleadings of the parties, the Tribunal proceeded to try the following issues:

(1) Is the claim application in time and if not are there sufficient reasons to condone the delay?

(2) Was the accident due to any negligent act on the part of the driver of the truck involved or that of the Applicant himself or that of both and with what effect ?

(3) What is the quantum of compensation due if any and from whom ?

(4) Relief.

8. The Tribunal found that the application having been beyond the prescribed period of 60 days of the accident "was barred by time but it condoned the delay holding that there was sufficient cause for not making it within the time allowed by law. On consideration of the evidence adduced before it, it came to the conclusion that the accident resulted from rash and negligent driving of the truck by the driver and Jagdip Singh Pathania was not in any way responsible for it Accordingly holding the State of Himachal Pradesh liable, the Tribunal awarded aggregate amount of Rs. 75,000/- as compensation to Jagdip Singh Pathania with costs of the claim application.

9. In assailing this order of the Motor Accidents Claims Tribunal, the learned Advocate General, Punjab, appearing for the Appellants has contended:

(1) that the Respondent's claim should have been dismissed as barred by time and the Tribunal was not justified in condoning the delay;

(2) that the finding that the expenditure was due to rash and negligent driving of the truck owned by the Himachal State Government was based on misappreciation of evidence; and

(3) That the amount of compensation awarded is unduly excessive and not warranted by the facts of the case.

10. It is true that under Sub-section (3) of Section 110A an application for compensation under that section has to be made within 60 days of the occurrence of the accident, but in the same Sub-section it is provided that the Claims Tribunal may entertain an application after the expiry of the said period of 60 days if it is satisfied that the Applicant was prevented by sufficient cause from making the application in time. It is under this proviso that the learned Claims Tribunal exercised its power and condoned the delay finding that there was sufficient cause for Jagdip Singh Pathania's not coming to the Tribunal earlier. The relevant observations of the Tribunal on this point are:

In the present case the Applicant had suffered serious head and leg injuries and had been in plaster and consequently in bed till March 1967 except that in between from 19th December, 1966 to 21st January, 1967 he had been on some days attending office as prescribed by his doctor incharge as an experimental measure which also did not work. The doctor had advised that no body should talk to him about the accident as any reference to it used to upset him mentally.

No inaction, or want of bonafides or negligence on the part of the claimant has been alleged by the Respondents in their written statement.

I am convinced that the Applicant, on account of his serious injuries was prevented by sufficient cause from making the application in time and accordingly condoned the delay.

11. From the facts that have been set out earlier, while giving a narrative of the accident and its aftermath, it is abundantly clear that as a result of the accident the present Respondent was an utter wreck having sustained fracture of the skull, dislocation and fracture of one of his shoulders and fracture of one of his legs. Because of these injuries he had remained confined to bed till 19th December, 1966, and thereafter when he was advised to resume his duty on 19th December, 1966, as an experimental measure to get mental condition consequent upon his head injury, he could attend his office only for a few days and even then could not devote his attention and time to the work he was expected to do. These facts have been proved not only by the evidence of the two doctors under whose treatment he was, namely, Dr. Karam Singh Grewal A.W. 9 and Dr. Malhotra A.W. IS but also from the testimony of Balak Ram A.W. 14, Secretary of the Municipal Committee, Pathankot. Having gone through this evidence with the assistance of the learned Advocate General, I have no hesitation in agreeing with the learned Tribunal that Jagdip Singh Pathania was prevented by physical disability and ailment consequent upon the accident from making the claim application within the prescribed period and he was not at all guilty of any negligence or inaction. In these circumstances, the Motor Accidents Claims Tribunal acted most properly and in valid exercise of its powers to treat the application as within time condoning the delay for which sufficient cause had been made out.

12. This question of extension of time was examined by a Division Bench of this Court in *New India Assurance Co.. Ltd. New Delhi and Anr. v. Punjab Roadways, Ambala City* 1964 P.L.R. 156, to which I was a party. It was held in that case that the words "sufficient cause" used in proviso to Section 110A(3) has to be liberally construed so as to advance substantial justice where no serious negligence or inaction or want of bona fides is imputed to the claimant. It was further emphasized in that case that generally the discretion exercised by the Tribunal in extending the period of limitation, finding that sufficient cause had been made out, is not to be interfered with unless it can be said that in exercising its discretion the Tribunal acted unreasonably or capriciously or had ignored relevant facts and adopted an unjudicial approach. It is complained before me that in extending the time the Tribunal was swayed by extrajudicial considerations on the contrary, as I have observed earlier its decision, and finding that sufficient cause for not making the application in time was made out, is based on undisputed facts. In these circumstances I find no substance in the contention raised on behalf of the Appellant that the claim application should have been thrown out as barred by time.

13. This brings me to the finding of the Tribunal that the accident was caused by rash and negligent driving of the truck in question by its driver Rattan Singh

who, admittedly, was in the employment of Himachal Government On this point, the Applicant, besides himself coming into the witness-box, relied upon the statements of Punim Ram A.W. 1, Dewan Singh A.W. 2, Dr. Kewal Kishan. A.W. 3, Mela Ram, A.W. 4 and Gian Singh A.W. 5. All these witnesses have fully supported the Applicant's case. The evidence of Dr. Kewal Krishan A.W. 3 is of considerable importance as he was proceeding in his own car from Pathan-kot towards Dalhousie and was just following the truck that was involved in the accident. It is in his evidence that the truck had earlier overtaken him and passed by and when he wanted to overtake the truck later, the truck driver did not give him the way. Dr. Kewal Krishan was going at the speed of 30 miles per hour when the driver of the truck overtook him and it was thereafter within his sight that the truck struck against the motor cycle of Jagdip Singh Pathania and knocked him down. From this, it is abundantly clear that the truck was going at a faster speed than 30 miles per hour on that hilly road. His evidence and that of Mela Ram and Gian Singh, who had reached the spot almost immediately, leaves no doubt that Jagdip Singh Pathania was not to blame and it was because of the rash and negligent act of the driver of the truck that he was knocked down and sustained serious injuries.

14. As against this overwhelming and disinterested evidence, the learned Advocate General has relied merely on the statement of R.W. 1, the driver of the truck involved in the accident and its cleaner Sita Ram. They came forward with the allegation that as they came near the scene of the accident Jagdip Singh Pathania was seen coming on his motor cycle at a fast speed and as the driver turned the truck towards the left of the road and stopped the truck on the kacha portion, the motor cyclist struck against the rear side of the truck and fell down. The scene of the accident was inspected by the learned Tribunal and in view of the facts noticed there and the situation of the spot it found that the story put forward by the driver and the cleaner of the truck could not be true and the accident occurred in the manner alleged by the Applicant. In dealing with this matter it must be remembered that while there is overwhelming and disinterested evidence in support of the injured person's version, only the driver and cleaner of the truck have come forward to contradict it They are not disinterested persons. Apart from the fact that the Tribunal found their evidence to be incredible and improbable, no reliance has been placed upon it before me I thus confirm the finding of the Tribunal that the accident had occurred due to the rash and negligent driving of the truck by the driver, who admittedly was in the employment of the Himachal Government

15. This brings me to the question of quantum of compensation to which Jagdip Singh Pathania was entitled. The Tribunal has allowed him the aggregate amount of Rs. 75,000/- though it had found that according to the facts proved, he was entitled to much more viz., Rs. 2,56,824/-. This entire amount however was not allowed to the Applicant because in his claim application he had demanded only Rs. 75,000/-. The aggregate amount of Rs. 2,56,824/- is made up of the following items:

- (i) Rs. Compensation for being deprived of 20 years's service because of the accident @ Rs. 800/-P.M. 1,92,000/-
- (ii) Compensation for 15 years after the age of retirement at 55 years calculated at the rate of Rs. 240/- P.M. 43,200/-
- (iii) Compensation for pain and anguish. 2,500/-
- (iv) Cost of medicines etc. 1,624/-
- (v) Expenses for conveyance from Pathankot to Amritsar and back several times. 1,000/-
- (vi) Special diet. 1,500/-
- (vii) For the loss of enjoyment of life for the possible shortening of life. 15,000/-

16. In contending that the amount awarded (Rs. 75,000/-) was highly excessive, the learned Advocate General, Punjab, has argued that the Tribunal seems to have been oblivious of the fact that the incapacity which the Applicant had sustained was only to the extent of 60 per cent and not total. He urged that Jagdip Singh Pathania was not entitled to claim compensation for a period of 20 years during which he had to serve the Municipal Committee, and which he could not because of the accident, at the rate of Rs. 800/- P.M. but for those years the compensation should have been reduced by 40 per cent. Even if we adopt this measure for this 20 years's period during which Jagdip Singh Pathania would have served the Municipal Committee he would still be entitled to Rs. 96,000/-. Thus it is apparent that ignoring compensation that has been allowed for pain and anguish, expenditure of medical treatment etc., Jagdip Singh Pathania is entitled at least to Rs. 96,000/- as direct loss of his income for 20 years during which he would have served as Executive Officer of the Municipal Committee, Pathankot, calculating compensation for this loss on the basis that the incapacity he had suffered is to the extent of 60 per cent and not total. The learned Advocate General could not wriggle out of this situation. In view of these facts there is no escape from the conclusion that the compensation of Rs. 75,000/- awarded to the Respondent is not excessive, but errs on the side of inadequacy.

17. As a result of the above discussion, I find no substance in this appeal and dismiss with costs.