
(1997) 08 P&H CK 0090

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 192 of 1989

Sukhjot Singh

APPELLANT

Vs

Balbir Singh

RESPONDENT

Date of Decision : 06-08-1997

Acts Referred:

Citation : (1997) 4 RCR(Civil) 616

Hon'ble Judges : G.S.Singhvi, J and M.L.Singhal, J

Judgement

G.S. Singhvi, J.—This is an appeal under Clause X of the Letters Patent against the judgment of the learned Single Judge by which he has enhanced the amount of compensation payable to the respondent from Rs. 25,000/ to Rs. 1,00,000/.

FACTS :

The respondent is a photographer by profession and is proprietor of M/s Photo Centre, Sheranwala Gate, Patiala. He suffered grievous injuries in the accident which took place on 5.11.1981 near Gandanala Chowk, Patiala. Jeep No. PBV5973, driven by the appellant Sukhjot Singh struck Scooter No. CHD2016 on which the respondent and Krishan Lal were travelling. As a result of accident, the respondent suffered multiple injuries including compound fracture of both the bones of right leg and loss of teeth. The respondent filed claim petition and prayed for award of compensation amounting to Rs. 1,00,000/ for injuries and pain, loss of earning, permanent disability and expenses incurred by him for medical treatment. The appellants contested the claim petition and denied their liability.

2. The Motor Accidents Claims Tribunal framed the following five issues :

"1. Whether the injuries sustained by Balbir Singh were due to the rash and negligent act of Sukhjot Singh respondent No.1 ? OPP.

2. To what compensation the petitioner is entitled and from whom ? OPP.

3. Whether the driver of the vehicle was driving the vehicle unauthorisedly ? OPR.

4. Whether the petition is bad for nonjoinder of necessary parties ? OPR.

5. Relief."

3. After recording the evidence of the parties and considering the same, the Tribunal held that the accident in question was caused due to the rash and negligent driving of the Jeep. On the question of injuries and suffering, the Tribunal noticed the evidence produced by the claimants awarded Rs. 25,000/ by way of compensation. In the appeal filed by the claimant, the learned Single Judge enhanced the amount of compensation to Rs. 1,00,000/.

4. The judgment of the learned Single Judge has been challenged on the ground of patent error in the appreciation of evidence produced by the parties and also on the ground that the award of compensation is against the established principles of law.

5. We have carefully gone through the award passed by the Tribunal and the judgment of the learned Single Judge, and in our opinion, there is no ground to upset the judgment rendered by the learned Single Judge.

6. There is no controversy between the parties that in the accident caused by the Jeep, which was driven by the appellant No. 1, the respondent had suffered multiple injuries. Initially he remained in the hospital for a period of 9 days between 10.1.1982 to 18.1.1982. Thereafter, he remained admitted on 18th and 19th May, 1982. He remained away from work for a period of ten months as a result of which his annual income was reduced from Rs. 24,480/ to Rs. 14,482/. He was operated upon twice over as a result of which his leg has been shortened by 1 cm. Movement of his right shoulder has also been restricted affecting his efficiency to work as a photographer. All these facts have been noticed by the learned Tribunal as is evident from the following extract of the award passed by it :

"The onus of this issue was on the petitioner. It has been stated by RW2 Balbir Singh claimant that he remained admitted in Rajendra Hospital, Patiala for 20 days. He sustained a crushed injury on his right shoulder and his 7th and 8th teeth of upper jaw were also broken. He was operated upon in the hospital by Dr. S.P. Mittal. He was also attended by Dr. N.D. Aggarwal. He remained confined to bed for ten months and could not attend his business. He spent Rs. 20,000/ or Rs. 25,000/ on his treatment. He is a photographer and had to employ one servant at his shop. There is no male member in his family who could look after his business. He has no other source of income except the photography. Due to the accident, his business suffered a lot. His income had subsequently decreased. He remained admitted in Aggarsain Charitable Hospital for one month at two occasions under the treatment of Dr. N.D. Aggarwal. His right arm does not function properly nor he can walk properly due to his leg injury. Dr. Ujjagar Singh, PW4, has also stated that the right leg of the claimant has been shortened by 1 cm. and it is a permanent disability, PW5 Inder Dev Chopra, who produced Ex.A1 to A6, the discharge cards, and the medical record of the Aggarsain

Charitable Hospital has stated that the petitioner remained as private patient in the hospital. Dr. Tirath Chand, RW7 has also deposed that he remained assistant to Dr. N.D. Aggarwal and the petitioner remained admitted to Aggarsain Charitable Hospital. At the first instance he was admitted on 10.1.82 and was discharged on 18.1.82. He had suffered a compound fracture which was infected. He was operated upon and infected bone was removed. On the second occasion, he was admitted in the hospital on 18.5.82 and was discharged on 19.5.82. The petitioner on both the occasions was admitted in a private room. On the second occasion, bone grafting operation was done. The bone was taken from the iliac crest and put in tibia. This witness has also confirmed the opinion of PW4 that the right leg of the claimant has been shortened by inch. The movements of the claimant's ankle joint have become limited and there is a permanent disability of the right leg of the petitioner. His movements of right shoulder are also restricted. A perusal of Ex.A8 shows that the claimant had to withdraw Rs. 10,200/ from his business on account of the medical expenses. The balance sheet for the year 198283 shows that the claimant earned gross profit to the tune of Rs. 14,482.16. On the contrary, in Ex. A7 the balance sheet for the year 198081 the profits shown by the claimant were Rs. 27,480.89. A perusal of Ex.A7 and Ex.A8 shows that after the accident, the business of the claimant had suffered because he could not attend his business activities properly. The accident took place on 5.11.81 and upto 19.5.82, the claimant remained under treatment by intervals, firstly, in Rajendra Hospital and later on in Aggarsain Charitable Hospital, Patiala. Although the claimant has stated, in his statement, that he incurred Rs. 20,000/ or Rs. 25,000/ on his treatment, but there is no satisfactory evidence led by him in this regard in the shape of cash memos or the receipts obtained by him from the various private doctors and the receipts issued by the Aggarsain Charitable Hospital, Patiala. Moreover in the claim petition it is stated that he spent Rs. 1,000/ as medical expenses upto 16.2.82, when the claim petition was filed. The fact remains that the petitioner suffered serious injuries on his leg, shoulder and his teeth were also broken. He remained confined to the bed for a period of more than a year. It can be expected that the petitioner must not be attending to his work in a satisfactory manner and he must have spent sufficient amount on the medicines. His leg remained under plaster. He was operated upon twice. There was a grafting of bone. His leg has been shortened by half an inch which is a permanent disability. There is no rebuttal to the aforesaid statements of the witnesses produced by the claimant."

While enhancing the compensation awarded by the Tribunal, the learned Single Judge observed :

"Besides this, it has also come in the evidence of the claimant P.W.2 Balbir Singh that 7 teeth of the upper jaw were also broken in this accident.

The situation of the claimant as a result of the injuries is such that he was now left with permanent disabilities, both on account of the shortening of the leg as also restriction in the movement of the ankle and the right shoulder.

Further, considering the nature and extent of the injuries suffered, as shown earlier, the claimant had also to be admitted to the hospital and had to have several operations performed on him. The medical expenses too must have been considerable. Even though the receipts and the bills of such expenses have not been produced, there is, however, on record Exhibit A/8, the trading account of the claimant's firm for the year 1982-83 where a sum of Rs. 10,200/ has been shown as withdrawals on account of the medical expenses of the claimant.

In addition to all this, there is also loss of income in respect of which the claimant must undoubtedly be held entitled to compensation. The petitioner is a professional photographer and has a photography shop at Patiala. According to the Income Tax Returns Exhibit A/7 for 1981-82, his income was over Rs. 10,000/ per annum but in the next year, as per exhibit A/8, it stood reduced by over Rs. 7,000/. It is reasonable to assume that disabilities that the claimant is now left with which would undoubtedly adversely affect his earning capacity too.

Taking, therefore, an overall view of the nature and extent of the injuries suffered by the claimant, the permanent disabilities that he is now left with and the loss of enjoyment of life and indeed his impairment in his earning capacity besides, of course, the amount that he must have spent on his medical treatment, the claimant must clearly be held entitled to the amount claimed."

7. Although the learned Single Judge has not discussed the principles which should govern the award of compensation in such cases, we have no doubt that the enhanced compensation is not on higher side so as to warrant interference in the appeal.

8. There is another reason why no interference is called for with the impugned judgment. This reason is that the amount of enhanced compensation was never paid to the respondent. On 15.3.1989 i.e. almost eight years and six months ago, the Division Bench had stayed the judgment of the learned Single Judge insofar as it relates to enhanced amount. Thus the amount which the respondent may have got in the form of enhanced compensation in the year 1989 has not been paid to him during this long period and the appellants have indirectly enjoyed the money which was otherwise payable to the respondent. The value of the rupee has been considerably reduced during last 8 1/2 years, it would be wholly inequitable to reduce the amount of compensation awarded by the learned Single Judge.

For the reasons mentioned above, the appeal is dismissed. The respondent shall now be entitled to recover the enhanced compensation and interest in terms of the judgment of the learned Single Judge.