
(1989) 08 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No's. 423 and 570 of 1985

Vijay Kumar

APPELLANT

Vs

Haryana State and Others

RESPONDENT

Date of Decision : 31-08-1989

Acts Referred:

Citation : (1990) ACJ 606 : (1989) 96 PLR 557

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : G.S. Bawa, for the Appellant; B.S. Malik, Addl. A.G., P.N. Makhani, P.S. Rana and Pardeep Bedi, for the Respondent

Final Decision : Allowed

Judgement

G.R. Majithia, J.—This judgment will dispose of F.A.O. No. 423 of 1985 and F.A.O. No. 570 of 1985. These appeals arise out of two awards given by the Motor Accidents Claims Tribunal but arose out of the same accident.

2. The claimants have challenged the award on the ground that the compensation awarded by the Tribunal is inadequate. The claimants were travelling in bus No. HRN 8759 belonging to Haryana Roadways which was being driven by respondent No. 3, Satbir Singh, at a very high speed and in a rash and negligent manner. When it reached near village Ding Maur it dashed against a stationary truck bearing registration No. PBP 5267. The claimants who were the passengers in the bus received injuries.

3. The contesting respondents did not assail the finding of the Tribunal that the accident took place as a result of rash and negligent driving of the bus bearing registration No. HRN 8759.

4. Vijay Kumar, claimant in Claim Petition No. 6 of 1983 giving rise to FAO. No. 423 of 1985, was Senior Technical Assistant, I.A.R.I. PW 8, Dr. Ravi Masili, stated on oath that as a result of the fracture and injuries received by the claimant in the accident his knee joint is permanently disabled and he cannot move about

freely. There is no rebuttal to this evidence.

5. The Tribunal allowed a sum of Rs. 1,800/- on account of loss of enjoyment, shock, pain and sufferings. The Tribunal for reasons not apparent choose to award the compensation at a very low rate. The injury at his knee joint has caused permanent disability restricting the free movement of the claimant. He was a Senior Technical Assistant in the I.A.R.I. and had a good future. May be his future prospects in life are not affected as a result of the accident but he cannot be expected to lead the life as was led by him before the accident. His permanent disablement has vitally affected his movements and as a result he is deprived of reasonable enjoyment in life. He has suffered pain and suffering. He may not be able to move about freely and frequently without transport facilities. In these circumstances it will be just and fair to award him a sum of Rs. 30,000/- under the head of pain, suffering and deprivation of future enjoyment of life. As found by the Tribunal the claimant spent a sum of Rs. 8,000/- on his treatment. The assessment so made by the Tribunal needs no interference. The award of the Motor Accidents Claims Tribunal is modified to the extent that the claimant in FAO. No. 423 of 1985 will be entitled to compensation in the sum of Rs. 38,000/-. The claimant will also be entitled to receive interest at the rate of 12 per cent from the date of the petition till realisation. The compensation amount will be payable by respondent Nos. 1 to 3 jointly and severally.

6. In FAO. No. 570 of 1985, the claimant is a tailor master. Dr. J.C. Khurana who examined the claimant after the accident stated on oath that the claimant received grievous and simple injuries and as a result thereof he has been incapacitated and cannot earn his livelihood. There is no rebuttal to this evidence. The claimant was 62 years of age at the time of the accident. The normal span of life is 70 years and it can reasonably be expected that he would have continued in his profession till that age and would have earned the same amount as before the accident. The Tribunal found that the claimant was earning a sum of Rs. 500/- per month by carrying on his profession of tailoring. He further found that the right hand of the claimant can still move and on this basis he held that the claimant has suffered a loss of earning to the extent of Rs. 250/- per month. He found that the claimant is entitled to a sum of Rs. 15,000/- and reduced it by 15 per cent since the amount was being paid in lump sum. The approach of the learned Tribunal is not justified. The claimant was a tailor and could earn at least a sum of Rs. 1,000/- per mensem. The observations by the learned Tribunal that it is a matter of common knowledge that such type of tailors are able to earn at least Rs. 500/- per mensem is unjustified. The value of the money has decreased considerably. Even an ordinary mason can earn a sum of Rs. 1,500/- per mensem and it can safely be held that a tailor could earn a sum of Rs. 1,000/- per mensem. Even if he is able to move his right hand it cannot be said that his earning capacity has not been impaired. He cannot earn the same amount which he was earning before the accident. Under these circumstances his earning capacity as a result of the accident may have been impaired by 50 per cent. The annual loss of earnings will come to Rs. 6,000/-.

Applying a multiplier of 8 his loss of earnings from the profession will come to Rs. 48,000/-. The claimant has claimed only Rs. 40,000/- in the petition. Under these circumstances, I allow his claim to the extent of Rs. 40,000/-. This amount will represent the loss of earnings on account of permanent disability and compensation for expenses incurred on medical, shock, pain and suffering. The claimant will also be entitled to receive interest at the rate of 12 per cent from the date of filing the claim petition till realisation. The compensation amount will be payable by respondent Nos. 1 to 3 jointly and severally.

7. Both the appeals are allowed accordingly with no order as to costs.