(2007) 02 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Zile Singh — APPELLANT

Vs

Mukesh Kumar and Others — RESPONDENT

Date of Decision : 07-02-2007

Acts Referred:
Motor Vehicles Act, 1988 — Section 149

Citation : (2008) ACJ 1395 : (2007) 147 PLR 559 : (2007) 3 RCR(Civil) 78

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—This order will dispose of F.A.O. No. 1235 of 2000 and X-Objection No. 36-CII of 2004 filed against the award passed by the Motor Accident Claims Tribunal, Jind (for short the ''Tribunal'' in M.A.C.T. Case No. 53 of 20.10.1997.

2. The claimant-appellant filed a petition under the ''Act'') seeking compensation to the tune of Rs. 10,00,000/- (Rs. ten lacs) for the injuries suffered by him in the road accident.

3. The case set up by the appellant-claimant was that while driving Haryana Roadways Bus No. HR-46 0-238 he was coming from Delhi on 27.2.1997 and was going to Sangrur with the passengers. When the bus reached near bus stop Brahaman was at about 7.40 a.m., a Trala No. HR-46-9882 came from Jind side i.e. opposite side which was being driven by respondent Mukesh Kumar in a rash and negligent manner at a very high speed. The appellant in order to avoid the accident slowed down the bus, but the driver of offending trala all of a sudden turned the trala towards its left side and as a result therefore right side of the trala hit the bus and the bus was dragged towards the trala. As a result of the collision, the appellant-claimant and the passengers of the bus sustained grievous injuries. The appellant-claimant had suffered multiple injuries and was admitted at C.H.C. Julana from where he was referred to Civil Hospital, Jind and

from there, he was referred to Medical College and Hospital, Rohtak where he was admitted on 28.2.1997. He underwent three operations and due to the injuries he became permanently disabled. Subsequently, the appellant was declared to be unfit for further service as driver in Haryana Roadways and on account of this he was compulsorily retired w.e.f. 3.6.1991 i.e. 43 months before his date of superannuation.

4. The claim of the appellant was contested by the respondents on the pleadings of the parties following issues were framed:

1. Whether the accident in question had taken place due to the rash and negligent driving of Trala bearing No. HR-46/9882 by respondent No. 1 resulting into the causing of injuries to the petitioner, as alleged? OPP

2. Whether the petitioner is entitled to receive any compensation? If so, how much and from whom? OPP

3. Whether the petition is not maintainable in the present form? OPR

4. Whether the petitioner has no cause of action to file present petition? OPR

5. Whether the petitioner has no locus standi to file the present petition? OPR

6. Relief.

After amendment of the petition, the following additional issue was also framed:

2-A. Whether the petitioner has been declared unfit for driving the heavy vehicle by the medical board and as a result thereof he has been compulsorily retired from service, as alleged and if so to what effect? OPP.

5. The learned Tribunal on appreciation of evidence decided issue No. 1 in favour of the appellant and it was held that the accident had occurred due to rash and negligent driving of trala bearing registration No. HR-46-9882 by the driver which resulted into injuries to the claimant appellant.

6. On issue No. 2, the learned Tribunal was pleased to grant following compensation:

1. Compensation for pain and suffering Rs. 20,000.00 2. Compensation for expenses on medicine Rs. 10,000.00 and treatment. 3. Compensation for adverse effect in the income Rs. 45,000.00 and future career of the petitioner due to 30% permanent disability. 4. Compensation for expenses on special diet, Rs. 15,000.00 conveyance and transport. 5. Compensation for loss of enjoyment of life and Rs. 5,000.00 love and affection. 6. Compensation to meet unforeseen expenses in Rs. 5,000.00 in the hospital. 7. Compensation for pre-mature retirement of the Rs. 20,000.00 petitioner. Total Rs. 1,20,000.00

7. The learned Tribunal, further held that the driving licence produced by the driver of the trala was a fake and forged document and accordingly the Insurance Company was absolved of the liability to pay compensation. It is

pertinent to mention here that cross-objections have been filed by the owner of trala against the findings recorded by the Tribunal absolving the liability of the Insurance Company.

8. Mr. R.K. Malik, learned Counsel appearing on behalf of the appellant claimant challenged the findings of the learned Tribunal on issue No. 2 primarily on the ground that the compensation of Rs. 45,000/- on account of permanent disability assessed at 30% cannot be sustained firstly for the reason that the service of the petitioner was cut short by 43 months and, therefore, there was a direct loss of income. Even otherwise the assessment for the disability was required to be made as per Schedule II of the Motor Vehicles Act and it was to be calculated by taking into consideration the loss of income of 43 months was to be taken into consideration. In addition thereto, he was entitled to such percentage of compensation which would have been payable in case of permanent total disablement as specified in the Schedule. Thus, according to the learned Counsel, there was a direct loss of Rs. 1.50 lacs (Rs. one lac fifty thousand only) as he was only paid pension on account of compulsory retirement in place of complete salary. In addition thereto, he was entitled to compensation by applying a suitable multiplier keeping in view the age of the claimant. Accordingly under this head the appellant was entitled to a sum of Rs. 2,77,000/-. Be that as it may, 1 feel that total compensation payable to the appellant on account of permanent disability is to be assessed at Rs. 3,00,000/-(Rs. three lacs only). In addition thereto, the appellant would be entitled to other benefits granted by the Tribunal. Thus the total compensation payable under issue No. 2 comes to Rs. 3,75,000/- (Rs. three lacs only). The appellant shall also be entitled to interest @ 9% per annum on the enhanced amount from the date of institution of claim petition till realization.

9. Cross-objection No. 36-CII of 2004. By way of this cross-objection, respondent No. 2 has challenged the findings of the learned Tribunal vide which the Insurance Company has been absolved of liability by holding that the driving licence held by respondent No. 1 was fake and forged.

10. The contention of the learned Counsel for the objector was that the driver was appointed after checking the licence Exhibit R-l placed on record. The contention of the learned Counsel was that the findings of the learned Tribunal cannot be sustained in view of the law laid down by the Hon''ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , wherein in sub-paras (vi) and (vii) of para 110, it has been held as under:

(vi) Even where the insurer is able to prove breach on he part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would no! be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed Us the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defenses available to the insurer u/s 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), docs not fulfill the requirements of law or not will have to be determined in each case.

Keeping in view the law laid down by the Hon''ble Supreme Court the findings of the learned Tribunal on the point of absolving the Insurance Company of its liability cannot be sustained.

11. In view of what has been stated above, the appeal as well as the cross-objection are allowed and the compensation payable to the appellant is enhanced to Rs. 3,75,000/- (Rs. three lacs seventy five thousand only) along with interest @ 9% per annum on the enhanced compensation form the date of institution of claim petition till realization. The liability of the respondents shall be joint and several and the Insurance Company is directed to deposit the compensation payable to the appellant-claimant within two months from the date of receipt of a certified copy of the judgment.