

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3218 of 2003 (O&M)
Date of Decision:31.10.2015

Ankur Kapoor

....Appellant

Versus

Prabhu Dass and others

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Argued by: Mr. Parminder Singh, Advocate for the appellant.

Mr. Neeraj Khanna, Advocate for respondent No.4-
Oriental Insurance Company Ltd.

NAVITA SINGH, J.

1. The Motor Accidents Claims Tribunal, Karnal (Tribunal for short) vide award dated 1.4.2003 awarded compensation to the tune of Rs.6,60,000/- for the injuries sustained by him. Finding the compensation inadequate, the appellant came up in appeal for enhancement.

2. Counsel for the appellant argued that the appellant was seriously injured in the accident on 21.3.2000 and it was proved on record that he had been employed by Binniship Management Company Ltd. as Dec Cadet and was getting fifty US dollars per month besides boarding and lodging during the training period and after that he would have earned 1500 US dollars and then later on 3000 US dollars. It was argued that the Tribunal discussed in detail that there was proof of employment of the appellant and also proof of clearing all relevant examinations and further that the appellant was a bright student, who would have joined a good job but he lost his job and there was permanent disability of 50% in the right arm. Despite giving all the details, the appellant was not adequately compensated for loss of income as stated.

3. Counsel for the appellant went on to argue that the amount granted for pain and suffering, special diet and attendant as also for medicines, was

inadequate. There was evidence that the appellant was to spend an amount of Rs.2,00,000/- on plastic surgery but that was also not included.

4. The last argument on behalf of the appellant was that it was a case of composite negligence where liability was fixed to the extent of 50% on the Insurance Company of one vehicle and 50% on the owner and driver of the other vehicle which was not insured. In such circumstances, the appellant would be at liberty to make recovery from any of the tort feasers and the counsel contended that the appellant should not be made to go into the tedious process of making recovery from the owner of the uninsured vehicle. He pointed out that the Tribunal had mentioned that this point would be dealt by the executing court but the executing court held on 27.9.2003 that since this point had been taken up in the grounds of appeal before this Court, the application was not maintainable. So far as the go behind the award is concerned, this aspect was not dealt with by the executing court and also it could not be because it was mentioned in the award itself that the executing court would do so. Counsel for the appellant relied on State of Haryana Vs. Amandeep Singh 2001 (2) RCR (Civil) 1 and judgment passed in C.R. No.6242 of 2009 titled Rachan Singh and others Vs. Surinder Singh and others.

5. Counsel for the Insurance Company argued that the judgments given by counsel for the appellant would not be applicable because in those cases, the extent of liability was not fixed and also in State of Haryana Vs. Amandeep Singh, the issue was only on quantum and not regarding liability though it was held that the compensation could be recovered by the claimants from any of the tort feasers.

6. This Court is not bound to subscribe the view of the Coordinate Bench of this Court. Also the question having been left for decision by the executing court in the award, the appellant can urge the point there and the

executing court shall decide the same. If it is hardship on the appellant to make recovery from the owner of the uninsured vehicle, it would be hardship on the Insurance Company as well, who has nothing to do with the other vehicle at all, to get into the process of making recovery from the owner of the uninsured vehicle.

7. So far as the quantum is concerned, it is felt that adequate compensation according to the value of US dollars at the relevant time was granted for loss of income. However, the appellant was required to be compensated for loss of career prospects in future and loss of marriage prospects. For that, an amount of Rs.2,00,000/- is granted. The amount for pain and suffering is also increased from Rs.20,000/- to Rs.40,000/-, while no change is required to be made under any other heads. Thus, the total compensation is enhanced by Rs.2,20,000/-. Enhanced amount shall fetch interest @ 6% per annum.

8. The appeal is disposed of in the above terms.

**(NAVITA SINGH)
JUDGE**

31.10.2015
Ishwar

Whether to be referred to reporter: Yes