

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.1189 of 1992 (O&M)

Date of decision: 05.08.2015

Raj Kumar Vatsa

..... Appellant

versus

Tasbir and others

..... Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.O.P.Sharma, Advocate for the appellant
Mr.Ayuwan Singh, AAG Haryana
for respondent Nos.2 and 3
Mr.G.D.Gupta, Advocate for respondent No.4

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Appellant has challenged the award dated 2.6.1992, passed by the Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal), vide which regarding the injuries sustained by the present appellant, a compensation to the tune of Rs.2,20,000/- was awarded along with interest @ 12% per annum from the date of filing of claim petition till its realization.

The brief facts of the case necessary for the disposal of the present appeal are that on 18.7.1990 Shri Raj Kumar Vatsa, an advocate by profession, was returning from District Courts Hisar along with the clients to his residence Hansi in a Maruti Van bearing registration No.DDA/2491 belonging to Ms.Kavita Gautam being

driven by the petitioner/ appellant himself. At about 1.15 pm when they reached near village Mayyar, a truck came from the opposite side and the appellant took the van to extreme left side of the road. Then offending bus bearing registration No.HYN/6336 being driven by respondent No.1 Tasbir came in rash and negligent manner from the opposite direction which was in the process of overtaking the truck and by coming on the wrong side, struck against the front right side of the van. The Maruti van turned turtle. In the accident the claimant received multiple grievous injuries and fractures on various parts of his body. He was initially removed to Civil Hospital, Hansi from where he was referred to Medical College Hospital, Rohtak. Three operations were conducted upon the claimant.

In the written statement, respondents denied allegations.

As per disability certificate (Ex.P72), there was 40% permanent disability. The Tribunal awarded Rs.one lac on account of permanent disability, Rs.30,000/- for loss of income, Rs.40,000/- for treatment/ medical bills and Rs.50,000/- for pain and suffering. Claimant is not satisfied with the said compensation.

I have heard learned counsel for the parties and have also carefully gone through the file.

Learned counsel for the appellant has taken this Court through the history of the treatment. He has referred to the statement of the claimant, wherein he has stated that he was first taken to Civil Hospital, Hansi and from there he was taken in Taxi to Medical College Hospital, Rohtak, where he was operated for fractures on right hand and hip joint. Plastering of his right leg was

also done on 20.7.1990 and on 30.7.1990, his right leg was operated and grafting was done. Thereafter, due to trouble by the nails in the right hand, another operation was done on 25.8.1990. Skin grafting was done on his right hand joint and he was discharged from the Medical College Hospital, Rohtak on 15.9.1990. Again for removal of three nails, he was taken to Medical College Hospital, Rohtak on 7.11.1990 and he was operated upon and remained admitted there for a week. For the third time, he was again admitted in February 1991 for removal of the plate implanted in right leg and removal of K.knife and nuts studded in the right hand joint and was hospitalized for ten days in the special ward. He has stated that as per disability certificate, he has suffered 40% permanent disability. He also stated that he has lost the marital enjoyment. He has difficulty in working as his right leg has been shortened by 1- ½” and his hearing capacity has also been reduced.

First of all, taking up the disability part, I am of the view that for the 40% permanent disability, Rs.one lac has been awarded, which, in the circumstances is deemed sufficient. Since the appellant is still practicing as an advocate and though he is having some difficulty, the compensation under the head of permanent disability is also just and proper.

So far as compensation of Rs.30,000/- granted under the head of loss of income is concerned, I am of the view that same is insufficient. The appellant remained admitted in hospital for nearly 2-½ months. Three operations were conducted and the last one was conducted in February 1991. The accident occurred on 18.7.1990.

There was a fracture of hip and right leg and the same was operated upon. Since the leg and hip are weight bearing parts, the appellant was unlikely to resume his ordinary pursuits in profession for next six months. Therefore, he is entitled to loss of income for six months. Taking his income to be as Rs.15,000/- per month, for six months, the amount of compensation for loss of income comes to Rs.90,000/-. Therefore, the compensation under this head is increased by Rs.60,000/-. The medical bills of Rs.20,000/- were produced. However, Rs.40,000/- for the same were allowed, which is deemed sufficient. For pain and suffering, Rs.50,000/- have been allowed, which is also deemed sufficient in the given circumstances. However, certain other heads have been ignored by the Tribunal.

Learned counsel for the appellant has argued that nothing has been awarded for the transportation. Keeping in view the operations and movements of the appellant and treatment as outdoor patient, Rs.10,000/- for the transportation are allowed. On account of his physical disability, the appellant has been partly deprived of the marital bliss, for which, compensation of Rs.50,000/- is awarded. Keeping in view the condition of the appellant, he would have required attendant for at least three months, for which, compensation @ Rs.2500/- per month is allowed, which comes to Rs.7500/-.

Learned counsel for the appellant has further argued that the appellant is an advocate by profession. Therefore, on account of his physical disability, his income has also reduced. Reliance has been placed upon judgment of the Hon'ble Supreme Court in

N.Manjegowda v. The Manager, The United India Insurance Co. Ltd.,

2014(2) RCR (Civil) 666. I am of the view that the instant case is different from the said case. The observations of the Supreme Court reproduced as under will make out the difference:-

“13. In the present case the appellant has been found to suffer weakness of four limbs. He has to work slowly and requires help in climbing steps, cannot run, cannot write sharply and speedily with his right hand. With his left hand he cannot lock the shirt button and has difficulty in holding of spoon for self-feeding. He was having partial sensory loss all over his limbs and lacked proper coordination in all four limbs. It is the medical opinion that for these reasons the appellant requires an assistant for daily routine work. In view of aforesaid medical assessment of appellant's condition after sustaining injuries in the accident and in the light of whole body disability of 50%, it would be certainly very difficult for the appellant to practice as an advocate and compete with others so as to command confidence and acceptability of general clients. Unlike many other professions, legal profession requires not only sharp and focused mind but also good health and ability to put in hard work within a limited time frame. The requirement of impressing the client at the age of 36 is much more. It is only when a young advocate has built a good impression and reputation, then in the evening of his life he may continue to command professional work on the basis of his

acquired knowledge and reputation. A young advocate is bound to suffer huge professional loss on account of injuries as have been sustained by the appellant and the condition in which the doctor found him.”

Learned counsel for the appellant further argued that nothing has been awarded for the functional disability. The ruling in the case of N.Manjegowda's case (*supra*) would show that functional disability was taken to be loss of income. In this case, there is nothing on file to show that on account of the accident and physical disability, his practice has been adversely affected. It being so, nothing is to be awarded for loss of future income. Another sum of Rs.5000/- for special diet is also allowed. Total enhanced compensation comes to Rs.1,32,500/-. The enhanced compensation shall be paid along with interest @ 7.5% per annum from the date of filing of claim petition till its realization.

The appeal stands partly allowed.

05.08.2015
gk

(Kuldip Singh)
Judge