

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-1504-1995

Date of decision: 07.10.2015

Kanwarjit Singh

..... Appellant

Versus

Sukhminder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

1. *Whether Reporters of the local papers 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?*

PRESENT: Mr. AS Sandhu, Advocate for the appellant.

Mr. RM Suri, Advocate
for respondent No. 3-Insurance Company.

Mr. Piyush Kant Jain, Addl. AG Punjab.

RAMENDRA JAIN, J.

The appellant-claimant, has filed the present appeal for enhancement of compensation by modifying the impugned Award dated 15.03.1995, passed by the Motor Accidents Claims Tribunal, Ludhiana (hereinafter referred to as 'Tribunal').

2. Brief facts of the case are that on 05.06.1990, the appellant

-claimant aged 37 years as a Police Inspector, along with three Constables on his official duty was travelling in Gypsy No. PCF-1602, driven by driver Parminderpal Singh, while sitting on its front seat. Around 05.45 a.m., when they reached near Sidhwan Kalan crossing, all of a sudden a truck bearing registration No. PBV-2545 driven by respondent No. 1 came from the opposite side in a rash and negligent manner and struck against their Gypsy. As a result thereof, Parminderpal Singh, driver and Constable Gurmit Singh died at the spot. The appellant-claimant also received grievous and multiple injuries. He was shifted to Mohan Dei Oswal Cancer Hospital, Ludhiana, where he remained admitted as an indoor patient from 05.06.1990 to 05.07.1990. Thereafter, he took treatment as an outdoor patient. He incurred a sum of ₹ 34,828/- on his treatment, besides ₹ 15,000/- on his special diet. His right limb had got fractured resulting into shortening of his leg. Since, he had suffered permanent disability, therefore, was not in a position to do active duty. He was unable to participate in parade/drill and thus, was being deployed on light duty. His promotion chances had also become weak. The accident had taken place due to sole rash and negligent driving of offending truck by respondent No. 1. With these broad allegations, the appellant-claimant filed claim petition under Section 166 of the Motor Vehicles Act.

3. The legal heirs of Constable Gurmit Singh had also filed a separate claim petition for grant of compensation against his death. The said claim petition as well as of appellant-claimant were consolidated vide order dated 02.04.1992 by the learned Tribunal.

4. Upon notice, respondents No. 1 and 2 in their joint written statement denying the rash and negligent driving of the aforesaid truck by respondent No. 1, pleaded that the accident had, in fact, taken place due to rash and negligent driving of Gypsy driver under the influence of liquor as he had brought his gypsy on wrong side.

5. Respondent No. 3-Insurance Company in its separate written statement too denied the negligence of respondent No. 1 in causing the impugned accident. It was also pleaded that a false case was registered against respondent No. 1, because appellant-claimant was a police officer. Respondent No. 4-State took the stand that it was impleaded un-necessarily.

6. The learned Tribunal after framing necessary issues and recording evidence to the satisfaction of parties, awarded compensation of ₹ 75,000/- to appellant-claimant with costs of ₹ 1000/- along with interest @ 12% per annum from the date of filing of petition till its realization vide impugned Award dated 15.03.1995. The legal heirs of Constable Gurmit Singh were also awarded the compensation vide impugned Award dated 15.03.1995. However, they are not before this Court in appeal.

7. I have heard the learned counsel for both the sides and gone through the case file carefully with their able assistance.

8. Learned counsel for the appellant-claimant argued that the learned Tribunal has erred in not granting any compensation towards permanent disability of the appellant-claimant to the extent of 50% suffered by him in the impugned accident as per disability certificate

dated 23.01.1991 Ex. P-3. Even no compensation was awarded towards pain and sufferings, mental agony, special diet, medical expenses and care etc. for the period, the appellant-claimant remained admitted in the hospital for around one month and was operated on 11.06.1990 and I.M. Nailing was done for fracture in his right femur. POP case was applied upon for treatment of fracture of right ankle. The learned Tribunal has also erred in not awarding any compensation towards the loss of future earnings to the appellant-claimant. In support of his arguments, he relied upon **Jakir Hussein Vs. Sabir and others, 2015 (2) RCR (Civil) 141.**

9. On the other hand, learned counsel for respondent No. 3- Insurance Company argued that at the time of accident, the appellant-claimant was posted as a Inspector in Punjab Police and when he appeared in witness-box as PW-5 he had already been promoted as Deputy Superintendent of Police. At present, he is working as Superintendent of Police and, thus, no loss to income has been suffered by him. The learned Tribunal has already awarded just and proper compensation to the tune of ₹ 40,000/- towards medicines, special diet and medical treatment of the appellant-claimant against his total bills of ₹ 28,799/-, besides ₹ 20,000/- towards pain and sufferings and ₹ 15,000/- towards loss of income-future earnings totalling ₹ 75,000/-. There was no scope of any further enhancement. With all these broad submissions, he prayed for dismissal of the appeal.

10. I have given my thoughtful consideration to the rival submissions made by learned counsel for the parties.

11. At the outset, it is pertinent to mention here that respondent

No. 3-Insurance Company, had also filed *FAO-1882-1995, (United India Insurance Company Ltd. Vs. Shrimati Baljit Kaur and others)*, challenging impugned Award, on the ground that since the driving licence of respondent No. 1-Sukminder Singh (driver of the offending vehicle) was fake, therefore, it was not liable to make payment of any compensation. The said appeal was allowed vide order dated 29.07.2010 and the impugned Award was modified to the effect that the Insurance Company would satisfy the claimants at the first instance and then may recover the amount of compensation from the insured i.e. respondents No. 1 and 2.

12. Undisputedly, the appellant-claimant had produced the medical bills to the tune of ₹ 28,799/-. The learned Tribunal has already granted ₹ 40,000/- to him towards medical expenses as well as for special diet. Hence, there is no scope to grant any more compensation towards the medical expenses and special diet to the appellant-claimant.

13. Admittedly, the claimant remained admitted in hospital as an indoor patient for about one month. Therefore, I am of the considered view that there is some scope of enhancement of compensation granted by the learned Tribunal towards pain and sufferings and attendant charges. The fact cannot be lost sight of that even if, the appellant-claimant was taken care of by his family members during his hospitalization at the cost of their personal work, the same had some commercial value. The accident took place in the year 1990 in which the wages of a casual labourer would be around ₹ 120/- per day i.e. ₹ 3600/- per month. Hence, the appellant-claimant is entitled to at least a sum of

₹ 3600/- towards attendant charges for the period of his hospitalization.

14. Besides above, considering the hospitalization of appellant-claimant in the hospital for one month and sufferance of multiple and grievous injuries by him i.e. segmental fracture in his right femur, fracture of right medial malleols (ankle), operation of the same, I.M. Nailing, traction to his leg and application of plaster etc., the compensation of ₹ 20,000/- awarded by the learned Tribunal towards pain and sufferings is enhanced to ₹ 50,000/-.

15. The learned Tribunal has granted a sum of ₹ 15,000/- to the appellant-claimant towards permanent disability which is quite on lower side. Normally, the compensation qua disability is granted @ ₹ 1000/- per per cent. Since, in the instance case the appellant-claimant has suffered permanent disability to the extent of 50% as per disability certificate dated 23.01.1991 Ex. P-3, therefore, he is certainly entitled to compensation of ₹ 50,000/- under this head against ₹ 15,000/- awarded by the learned Tribunal.

16. As far as loss of income is concerned, the appellant-claimant at the time of accident was posted as Inspector in Punjab Police, but when appeared in the witness-box as PW-5, he has already been promoted as Deputy Superintendent of Police and at present, he is posted as Superintendent of Police. From the above factual position, it is evident that claimant did not suffer any loss of income/future earnings. Hence, he is not entitled to any compensation under this head being a permanent police officer.

17. In view of the above discussion, the appellant-claimant is

held entitled to further compensation of ₹ 35,000/- [₹ 50000/- - ₹ 15000/- (already granted by the Tribunal towards permanent disability)] + ₹ 3600/- (towards attendant charges) + ₹ 30000/- [₹ 50000/- - ₹ 20000/- (already granted by the Tribunal towards pain and sufferings)] i.e. totalling ₹ 68,600/- (35000+3600+30000). The enhanced amount of compensation would carry interest @ 9% per annum from the date of filing of the claim petition till its realization, to be paid at the first instance by respondent No. 3-Insurance Company. However, it shall be entitled to recover the same from respondents No. 1 and 2 (driver and owner of the offending vehicle) in view of judgment dated 29.07.2010 passed in **FAO-1882-1995**.

18. No benefit whatsoever can be given to the appellant-claimant of the judgment of Hon'ble Supreme Court in **Jakir Hussein's case (supra)** as the facts and circumstances of the same are different from the case at hand. In that case, the claimant had remained under treatment for about 17 months, whereas in the instant case, the appellant-complainant remained admitted in hospital for one month. In that case a sum of ₹ 40,000/- was granted to the claimant towards attendant charges. The average of which comes to ₹ 2352/- per month whereas this Court has granted a sum of ₹ 3600/- towards attendant charges for one month. The expenditure on treatment in the above cited case was ₹ 2 lacs, whereas in the instant case, the appellant-claimant had been able to produce the medical bills to the tune of ₹ 28,799/-. In that case, the claimant was a driver, whereas in the instant case, the appellant-claimant is regularly getting promotions after the accident from Inspector to Deputy

Superintendent of Police and at present he is working on a coveted post
i.e. Superintendent of Police.

19. With the above modification in the amount of compensation,
the instant appeal is partly allowed.

October 7th, 2015
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(RAMENDRA JAIN)
JUDGE