

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.153 of 2001 (O&M)
Date of Decision: 18.02.2015

Ramesh Chander Sikka

..... Appellant

VERSUS

Sunil Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON

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Present: Mr. Dinesh Arora, Advocate
for the appellant.

None for respondents No.1 and 2.

Mr. Sandeep Suri, Advocate for
respondents No.3 and 5-National Insurance Company Ltd.

Mr. Azad Singh, Advocate for respondent No.4.

S.S. SARON, J.

The appellant Ramesh Chander Sikka aggrieved against the inadequate compensation granted by the learned Motor Accident Claims Tribunal, Rohtak ('Tribunal'-for short) in an accident in which he suffered injuries, has filed the present appeal.

Various passengers including the appellant Ramesh Chander Sikka had boarded a four wheeler vehicle with registration No.HR-46-4659 on 26.09.1995. They were traveling from Octroi Post, Rohtak to Sampla because buses were not plying due to heavy floods and unprecedented rains. Ranbir Singh (respondent No.4) was driving the

ill-fated four wheeler vehicle. The vehicle reached near Chulana Mor in the area of Rohtak. At that time, the offending bus No.HR-46-2802 owned by Naya Bans Transport Co-operative Society (respondent No.2) and being driven by Sunil Kumar (respondent No.1) in a rash and negligent manner came from behind and hit the four wheeler. The four wheeler overturned and all the occupants sustained multiple injuries. Bhup Singh died at the spot. The other injured were taken to PGIMS, Rohtak where they were medically examined and treated. Sudhir Kumar Gupta, another passenger succumbed to his injuries on the next day of the accident while Subhash Chander died on 02.10.1995.

The learned Tribunal held that the accident occurred due to the rash and negligent driving of bus owned by Naya Bans Transport Co-operative Society (respondent No.2) and driven by Sunil Kumar (respondent No.1). It was held that both the drivers of the vehicles involved in the accident were holding valid driving licences.

As regards compensation, the appellant Ramesh Chander Sikka has been awarded compensation of ₹1,10,000/-. It was held on the basis of the disability report (Ex.P-105) given by a Board of three doctors of PGIMS, Rohtak that fifty percent disability of the appellant was provisional. Besides, by taking into consideration the age of the appellant, he was awarded ₹90,000/- as compensation. A further sum of ₹20,000/- was awarded as expenses incurred on the treatment, taking diet and pain and agony as also attendant charges. He was awarded ₹1,10,000/- in all.

Mr. Dinesh Arora, Advocate, learned counsel appearing for the appellant has contended that in fact the disability of the appellant Ramesh Chander Sikka is fifty percent permanent in nature, which has been proved vide report (Ex.P-91) by Dr. N.S. Chadha (PW-27). It is submitted that merely because Dr. N.S. Chadha is a private doctor is

no reason to not rely on his report as he is a qualified Orthopaedician. Therefore, the report of Dr. N.S. Chadha is liable to be accepted and by taking his income to be ₹1500/- per month, which annually comes to ₹18,000/- and discounted by fifty percent, is ₹9000/- per annum. To this, a multiplier of thirteen is to be applied keeping in view the fact that the age of the appellant at the time of accident was 47 years. Therefore, the appellant is liable to be awarded ₹1,17,000/-, besides, he is liable to be awarded ₹25,000/- towards pain and suffering and ₹30,000/- for special diet, attendant and transportation.

In response, Mr. Sandeep Suri, Advocate, learned counsel for the National Insurance Company (respondents No.3 and 5) has submitted that more than substantial compensation has been awarded to the appellant. It is submitted that the learned trial Court has rightly relied upon the report (Ex.P-105) of the board of doctors of PGIMS, Rohtak in which it has been opined that the disability is provisional and can be cured by surgical procedure. It is also submitted that ₹20,000/- has been awarded towards expenses incurred on treatment, taking diet, pain and agony. Therefore, no more compensation is liable to be granted.

Mr. Azad Singh, Advocate, learned counsel for respondent No.4 Ranbir Singh has submitted that the fault in respect of the accident was that of the offending bus. Besides, he does not dispute the compensation awarded.

I have given my thoughtful consideration to the contentions of the learned counsel for the parties. It is not in dispute that the report of a private doctor is not to be discarded or not to be relied upon as he is a private doctor. In fact he is a professional and there is no reason to discard his report merely because he is doing private practice. However, it may be noticed that the board of doctors of

PGIMS, Rohtak have opined that the disability is provisional in nature, which can be cured by surgical procedure. Dr. N.S. Chadha (PW-27) has mentioned the disability in respect of the appellant to be permanent in nature, however, it is not stated by him whether it can be improved by surgical treatment. Therefore, the opinion of the Board of doctors of PGIMS, Rohtak that the disability is liable to decrease after surgical treatment is indicative of the fact that though the disability is fifty percent but the same is not permanent in nature. The appellant has not been able to establish that the disability is permanent in nature, which cannot be improved even by surgical procedure or surgical treatment. It is for the said reason, it is to be taken that the disability is not permanent but provisional in nature as it can decrease by surgical procedure, which is not so stated by Dr. N.S. Chadha (PW-27). Therefore, it is taken that the disability in respect of the appellant is provisional.

As regards the compensation payable, it is to be noticed that the appellant Ramesh Chander Sikka was 47 years of age and his monthly income was assessed to be ₹1500/-. Therefore, if the disability is to be taken as permanent in nature, he would be entitled to compensation of ₹1,17,000/- but since it has been held to be provisional, the amount of compensation of ₹90,000/-, which has been awarded by the learned Tribunal is just and sufficient.

As regards compensation for special diet, attendant and transportation, the appellant claims more compensation of ₹30,000/-, whereas, ₹20,000/- has already been granted. This includes pain and agony as well. Therefore, in the facts and circumstances, it would be just and expedient that a sum of ₹20,000/- more is awarded to the appellant towards special diet, attendant and transportation as also pain and agony which in the facts and circumstances would be just and

proper.

Accordingly, the appeal is disposed of with the modification of the order of the learned Tribunal that the appellant Ramesh Chander Sikka shall be paid a sum of ₹20,000/- as more compensation.

(S.S. SARON)
JUDGE

18.02.2015
G. Bhardwaj

Note: To be referred to reporter: Yes