

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.1895 of 2001
Date of Decision: 18.02.2015

Ramesh Kumar

..... Appellant

VERSUS

Sunil Kumar and others

..... Respondents

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

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Present: Mr. Kulvir Narwal, 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 Kumar aggrieved against the inadequate compensation awarded by the learned Motor Accident Claims Tribunal, Rohtak ('Tribunal'-for short) in terms of its award dated 29.07.2000 has filed the present appeal.

The appellant Ramesh Kumar along with other passengers was traveling in a four wheeler vehicle with registration No.HR-46-4659. The vehicle was proceeding from Octroi Post, Rohtak to Sampla. Due to floods and unprecedented heavy rains, the buses were not plying. Ranbir Singh (respondent No.4) was the owner and driver of four wheeler vehicle. When the four wheeler vehicle being driven by Ranbir Singh (respondent No.4) reached near Chulana Mor in the area of Rohtak, the offending bus with registration No.HR-46-2802 owned by

Naya Bans Transport Co-operative Society (respondent No.2) came from behind in a rash and negligent manner and hit the four wheeler vehicle, which overturned. The offending bus was being driven by Sunil Kumar (respondent No.1). The occupants of the four wheeler sustained multiple injuries. Bhup Singh, one of the travellers died at the spot. The other injured were taken to PGIMS, Rohtak where they were medically examined and treated. The appellant Ramesh Kumar is one of the injured in the case. The learned Tribunal assessed his income at ₹1500/- per month as that of a casual labourer. The appellant was aged 34 years at the time of accident that had occurred on 26.09.1995. He was awarded compensation of ₹60,000/- for loss of earnings, besides, ₹15,000/- as expenses incurred on treatment, diet etc., pain and agony. In all, he was awarded ₹75,000/-.

Mr. Kulvir Narwal, Advocate, learned counsel for the appellant has submitted that the appellant is liable to be granted higher compensation as he had suffered twenty five percent permanent disability on account of trochantric fracture with callus formation with fracture of right ulna and wasting of muscles with shortening of right arm. Certificate (Ex.P-6) issued by Dr. A.P. Sharma bears testimony of the said fact. Besides, it is submitted that compensation for pain and sufferings, treatment expenses and diet etc. is quite inadequate being ₹15,000/- and more is liable to be granted and in any case the income as assessed is liable to be increased by fifty percent towards future prospects and earnings. A reference has been made to the judgment of the Supreme Court in the case of “Arvind Kumar Mishra v. New India Assurance Company Limited and another”, (2010) 10 SCC 254.

In response, Mr. Sandeep Suri, Advocate, learned counsel appearing for respondents No.3 and 5-National Insurance Company Limited has submitted that substantial compensation has already been

granted and no more compensation is liable to be granted.

Mr. Azad Singh, Advocate appearing for respondent No.4 Ranbir Singh does not dispute the compensation awarded. It is, however, submitted that the cause of the accident was that of the offending bus being driven by Sunil Kumar (respondent No.1).

I have given my thoughtful consideration to the matter. The learned Tribunal held that the accident in the present case had occurred due to the rash and negligent driving of bus No.HR-46-2802 being driven by Sunil Kumar (respondent No.1). Besides, the driver of both the vehicles i.e. the four wheeler and the offending bus were having valid driving licenses. Both the vehicles were insured with National Insurance Company Limited, Rohtak (respondents No.3 and 5). The appellant suffered twenty five percent permanent disability because of trochantric fracture and callus formation of right ulna and wasting of muscles with shortening of right arm. This has been disclosed by Dr. B.K. Sharma (PW-21) and is also evident from the disability certificate (PW-26).

The learned Tribunal did not accept the case of the appellant that he was working as a tailor in a garment factory of one Jai Bhagwan at Delhi and was getting ₹2550/- per month as salary or that he was also earning ₹1000/- by overtime. The appellant had not led any evidence with respect to his tailoring work. Therefore, his income was taken at ₹1500/- a month to be that of a casual labourer. The appellant admittedly suffered twenty five percent disability. The monthly income of the appellant being ₹1500/- per month would make his annual income of ₹18,000/- per annum and is liable to be increased by fifty percent towards his future earnings. Therefore, his monthly income is taken as ₹2250/- and the annual income would be ₹27,000/- per annum. This amount is to be discounted by twenty five percent,

which would mean that his annual income is ₹6750/-. The appellant was 34 years of age as mentioned in his application for compensation, which though has been denied by the respondents and it is stated that he is more than fifty years of age. However, in the followup discharge card of Pt. Sita Ram, PGIMS, Rohtak, the age of the appellant is mentioned as 31 years. Therefore, it is taken that he was 34 years at the time of accident, which is also the age recorded in the application for claiming compensation. Therefore, by applying a multiplier of sixteen, the compensation payable works out to ₹1,08,000/-. A sum of ₹60,000/- has already been paid to him towards loss and suffering, which is to be subtracted from the amount of ₹1,08,000/-, which works out to ₹48,000/- as the balance payable. The appellant has been awarded ₹15,000/- towards expenses incurred on treatment, diet etc., pain and agony, which is liable to be increased by another sum of ₹15,000/-. Therefore, a sum of ₹63,000/- more is payable to the appellant towards compensation.

Accordingly, the appeal is disposed of by holding that the appellant shall be entitled to ₹63,000/- as more compensation.

(S.S. SARON)
JUDGE

18.02.2015

G. Bhardwaj

Note: To be referred to reporter: Yes