

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

FAO No.4613 of 2005

Date of decision: July 1 , 2015.

Kuldip Singh

... Appellant

Versus

Krishan Khan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. Whether Reporters of 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. ADS Sukhija, Advocate
for the appellant.

Mr. Suvir Dewan, Advocate
for respondent No.3.

Mr. Abhishek Goyal, Advocate
for respondent No.6.

AMOL RATTAN SINGH, J.

1. The appellant, who lost his arm while travelling in bus bearing registration No.PB-11E-8725, driven by respondent no.4, owned by respondent no.5 and insured by respondent no.6, has filed this appeal against the Award of the learned Motor Accidents Claims Tribunal, Fatehgarh Sahib, by which he was awarded a total sum of Rs.1,25,000/-, payable by respondents no.1 to 3, who were held liable to pay the same jointly and severally.

Respondent no.1 was the driver of a pick-up van bearing

registration No.PB-11-G-4570, owned by respondent no.2 and insured by respondent no.3.

2. The facts of the case, as taken from the Award of the Tribunal, are that on 29.08.1996, at about 5:30 PM, when the appellant was travelling in the aforesaid bus from Patiala to Sirhind, and was sitting on the 3rd seat behind the driver, he had placed his arm on the body of the bus, with the window pane open. One Gurmeet Singh is stated to have been travelling in the same bus and was sitting three seats ahead of him (as stated in the Award). When the bus reached near an electricity grid near village Chaurwala, the tempo/pick-up van aforementioned, came from the opposite side, driven in a rash and negligent manner by respondent no.1, which struck against the bus, thereby leading to severance of the appellants' arm from the shoulder.

3. The factum of the accident not having been disputed, the Tribunal exonerated the driver of the bus, i.e. respondent no.4, of all negligence but held the appellant and respondent no.1 to be equally negligent, inasmuch as, it was held that by keeping his arm on the window pane, the appellant had not taken necessary precautions, whereas, at the same time, respondent no.1 had driven his vehicle too close to the bus, thereby endangering passengers in the bus.

Against the amount of compensation that the appellant had claimed, on account of pain and suffering, permanent disablement, medical expenses incurred, etc., the Tribunal, under all heads, found a total sum of Rs.2,50,000/- payable as compensation, but having held the appellant equally negligent as respondent no.1, eventually held that a sum of Rs.1,25,000/- be paid to the latter, alongwith interest @ 9% per annum.

4. Mr. A.D.S. Sukhija, learned counsel for the appellant, submitted that the Tribunal had erred on all counts, with regard to the attribution of contributory negligence to the appellant, then with regard to not reimbursing medical expenses to him, then by not taking into account the fact that the career prospects of the appellant were completely marred on account of his arm being amputated, and further, because he lost the use of his right arm, and therefore even lost the ability to lead a normal life and, finally, with regard to the extreme pain and suffering that he suffered.

5. Though, in view of the fact that the original record of the case was unfortunately burnt alongwith other cases of the same type, in the record-room of this Court, the exact compensation sought by the appellant before the Tribunal is not known, however, Mr. Sukhija submitted that this Court can come to a conclusion in terms of the suffering and permanent disablement suffered by the appellant and the loss of prospects of his career in the police force, and award compensation commensurate to his overall suffering.

He submitted that the appellant is a Constable in the Government Railway Police, Punjab and had he not been disabled in the accident, he could have reached far greater heights in his career, whereas now he is doomed to remain a Constable for the rest of his service.

Lastly, learned counsel submitted that the appellant had to make do with only a very low quality prosthetic arm, as he could not afford the expense of a higher quality prosthetic arm, the same not being reimbursable by the Government.

6. Though the judgment was initially reserved on 28.05.2014, vide order dated 16.09.2014 it was ordered to be reheard on account of the

fact that no arguments had been addressed with regard to the exact salary drawn by the appellant as a Constable in the Government Railway Police, either at the time of the accident or at the time when arguments were heard, i.e. 8 years after the accident took place. Hence, it was considered appropriate by this Court to rehear the matter, in view of the fact that if the appellant was to be granted compensation for loss of earnings in the future, in terms of the judgment of the Supreme Court in **Raj Kumar v. Ajay Kumar (2011) ACJ 1 (SC)**, then the salary would, naturally, need to be known.

Consequently, learned counsel for the appellant, by way of an application filed under Order 41 Rule 27 CPC, for leading additional evidence, had placed on record the salary certificate of the appellant for the month of August, 1996 as also his current salary certificate (for the month of October 2014), alongwith a quotation for a prosthetic arm with a “myo-electric hand”.

Notice having been issued in the said application, a reply had been filed on behalf of the 3rd respondent, i.e. the National Insurance Company Ltd., that had insured the pick-up van bearing registration No.PB-11G-4570. In the said reply, the respondent company has very fairly admitted, after verification, that the quotation annexed with the application filed by the appellant, was correct and that a sum of Rs.2,60,000/- was actually the cost of the said prosthetic arm.

7. However, Mr. Suvir Dewan, learned counsel for the respondent no.3, submitted that the issue of contributory negligence was correctly decided by the Tribunal, inasmuch as, the appellant was actually negligent in placing his elbow on the window sill of the bus that he was travelling in

and as such, there was no reason to reverse that finding, even if this Court was inclined to enhance compensation to be granted to the appellant, to the extent of the price of the prosthetic arm.

Thus, while actually praying for dismissal of the appeal, Mr. Dewan submitted that even if this Court was to grant enhanced compensation on the above account, the finding on contributory negligence does not deserve to be reversed.

8. Mr. Sukhija, on the other hand, had earlier relied upon a judgment of the Delhi High Court in **Uttaranchal Transport Corporation v. Navneet Jerath 2013 ACJ 1966**, to submit that even if a passenger kept his arm on the window sill of a vehicle, he cannot be held guilty of contributory negligence, as it is the duty of the driver of the said vehicle to ensure that the vehicle does not come too close to any other vehicle travelling on the road. Relying upon earlier judgments of the Delhi High Court itself, (**Delhi Transport Undertaking v. Krishnawanti, 1972 ACJ 423**), of this Court (**The State of Punjab v. Guranwanti, 1958 ACJ 110**) and of the Allahabad High Court in **Ramesh Kumar Awasthi v. The Collector, Saharanpur 1983 ACJ 167 (Allahabad)**, it was held (in Navneet Jeraths' case), that it was the driver of the bus alone, who was negligent in driving.

9. Mr. Abhishek Goyal, learned counsel appearing for respondent no.6, i.e. the New India Assurance Company Ltd., which was the insurer of bus bearing registration No.PB-11E-8725, in which the appellant was travelling, submitted that the Tribunal not having found respondent no.4 guilty of negligent driving, no liability can be fastened on respondents no.4 to 6.

Other than that, learned counsel reiterated that negligence of the appellant and respondent no.2 was, in fact, contributory, as held by the Tribunal. He also, therefore, prayed for dismissal of the appeal.

10. Having heard counsel for the parties, the first question which needs to be considered is as to whether or not, by keeping his arm on the window-sill of the bus that he was travelling in, the appellant is guilty of contributory negligence, as a result of which his arm was amputated upon the impact of pick-up van with the bus in which he was travelling.

The learned Tribunal, while discussing the issue, observed that, normally, a signage/warning is displayed in the bus, cautioning passengers not to keep their arms outside the bus or to rest them on the window sill. Keeping that, and plain common sense in view, of self safety measures normally to be adopted by a prudent person, it held the appellant guilty of equal contributory negligence and thus halved the compensation payable to him.

11. Whereas on first principle, I see no fault with the reasoning adopted by the learned Tribunal, inasmuch as, an ordinarily prudent person would not risk projecting his arm out of the window of his bus, especially in Indian traffic conditions. However, whether or not such contributory negligence is equal to that of the driver of the vehicle who is found negligent in driving his vehicle too close to any other vehicle or pole etc. on the side of the road, is debatable, inasmuch as, though by ordinary prudence, the passenger would be guilty of some contributory negligence, in my opinion, it cannot be equal to that of the driver of the vehicle that was brought too close to any other vehicle driving on the road, or too close to

the berm, so as to endanger passengers sitting inside the vehicle.

12. The judgment relied upon by Mr. Sukhija, of a learned Single Judge of the Delhi High Court, in **Uttaranchal Transport Corporation** (supra), however, holds otherwise, though in slightly different circumstances. The claimant in that case was travelling by a night service bus and was holding his 4 ½ year old son on his lap, when he felt a huge impact and pain and found his right arm missing. The bus driver was stated to be driving at a very high speed.

The Court held that it was not the case of the Transport Corporation that the claimant had flung his arm outside the window, and further, since it was the middle of the night, a passenger who falls asleep, loses control over himself. Therefore, it is the duty of the driver to ensure that the bus is being driven in a manner which is wholly safe, by ensuring that he does not come too close to any vehicle coming from the opposite side, so as to avoid any danger to the safety of the passengers.

The Court also referred to the judgment in **Delhi Transport Undertaking** (supra), wherein a passenger was hit by a log protruding from a cart, which the driver of the bus in which the passenger was travelling, was trying to overtake. In that case also, it was held that it was the duty of the driver to have seen that there were logs protruding from the cart and he should have ensured that there was sufficient space between the bus and the cart, while overtaking it.

As already noticed earlier, one judgment each, of this Court and of the Allahabad High Court, were also referred to by the Delhi High Court in **Uttaranchal Transport Corporation** (supra), to conclude that it was the duty of the driver of the vehicle concerned to ensure that the vehicle was not

brought too close to any other vehicle, in a manner that would endanger the passengers.

13. This Court has also gone through the Central Motor Vehicles Rules, 1989, as also the Punjab Motor Vehicles Rules, 1989, but has found nothing contained in them, which stipulates by way of passenger safety, that a person is prohibited from placing his/her arm on the window sill of a vehicle; though, normally, in Indian conditions, one would expect passengers and drivers to know the potential danger of doing so.

Hence, even though there is no such prohibition in any law brought to the notice of this Court or as has been seen by this Court itself, however, a normally prudent person would be expected to also ensure his/her own safety, keeping in view traffic conditions on Indian roads. That is not to say that conditions should be what they are, but with knowledge that they are most definitely not anywhere near ideal conditions, some contributory negligence, in my opinion, would need to be attributed to a person keeping his arm outside or on the window-sill of a vehicle, especially while travelling on traffic-congested roads.

Thus, on the issue of negligence, this Court finds that the appellant was guilty of contributory negligence, but not to the extent of 50%, as held by the Tribunal, but only to the extent of 10%, by resting his arm on the window sill of the bus that he was travelling in, resulting in some part of his arm to be protruding outside, due to which the on-coming pick-up van caused his arm to be amputated, on impact.

14. The question of whether the driver of bus bearing registration No.PB-11-E-8725, i.e respondent No.3, is also equally guilty, along with respondent No.1, of contributory negligence, is a question which need not

be gone into by this Court, in view of the fact that the appellant had also not made any allegation against the driver of the bus, of any negligence on his part. Hence, the learned Tribunal having found only respondent No.1 guilty of bringing his pick-up van too close to the bus, thereby resulting in the amputation of the appellants' arm, 90% negligence in causing the accident, is foisted only upon respondent No.1 by this Court, instead of 50% as held by the learned Tribunal.

15. Coming next to the question of whether the compensation of Rs.2.50 lacs awarded by the Tribunal, eventually reduced to Rs.1.25 lac on account of 50% contributory negligence attributed to the appellant, is sufficient or not. In my opinion, it is highly inadequate compensation, inasmuch as, the appellant has lost one of his four important limbs, i.e. his right arm, in the accident, thereby drastically curtailing his normal activity. Also, no doubt, chances of his future promotion in the service of the police force have also obviously been nullified, as can be seen from the fact that even 18 years later, he is stated to be still serving as a Constable. Of course, it cannot be ruled out that even in the normal course of his career, he may not have been further promoted for other reasons; however, nothing has been shown to the effect that he has been subjected to any disciplinary proceedings etc., so as to debar him from further promotion in his career. However, that aspect would need to be considered alongwith the pecuniary loss suffered, if any.

16. In **Raj Kumar Vs. Ajay Kumar** (supra), the hon'ble Supreme Court laid down the parameters to be followed in cases of personal injuries. It was held that though permanent disability due to loss of limb would obviously affect a persons' day-to-day life, however, it does not always

amount to reduction in earning capacity. Hence, these factors are to be, naturally, taken into consideration while awarding compensation under the head of loss of income due to loss of limb.

In the present case, as stated in the Award of the Tribunal (the original record of this case, including the lower Courts' record having been destroyed in a fire in this Court), as per the disability certificate issued by one Dr. Sanjeev Goel of the Dayanand Medical College and Hospital, Ludhiana, the extent of disability to the appellant, owing to amputation of the right arm, was 85%. However, as per the first schedule to the Workman's Compensation Act, 1923, amputation below the shoulder with a stump less than 20.23 c.m. from the tip of the acromion (shoulder plate), would be disability to the extent of 80% and similarly, amputation between 20.23 c.m from the tip of the acromion to less than 11.43 c.m. below the tip of olecranon (elbow joint), would be to the extent of 70%.

Such disability is qua the earning capacity of a workman. The appellant, however, being a policeman, cannot be classified to be a workman.

Being a police Constable aged 27 years at the time of the accident, obviously his ability to handle fire arms, batons, 'lathis', etc. has been reduced to the extent of at least 50%, if not wholly in the case of large fire arms, where both hands are necessary to handle such arms, including rifles. Therefore, his career prospects, in terms of chances of promotions etc., may obviously have been nullified, as already said.

Even accepting that he would be assigned a clerical type of a job in the police, he would normally be required to use his right hand but would have, expectedly, acquired a skill to write with his left hand.

However, that does not detract from the fact that his normal ability has obviously been curtailed drastically, thereby leaving him at the post of a Constable for the rest of his career.

Also, with regard to daily and normal activities of life, again obviously, he has been hugely disadvantaged, with the loss of a limb as important as the right arm.

Thus, as regards leading a normal life etc., considering it is a loss of one of four primal limbs, the total disability qua the body, in the opinion of this Court, would be more than 25%, given that it was his right arm and there is no evidence suggesting that he was left handed. Hence, I would assess the disability to be about 35%. However, as to how much disability that would translate into, qua the appellants' earning capacity, needs to be seen separately.

17. As regards loss of earning capacity in the police force, as per the salary certificate for the month of August, 1996, as has been now placed on record by way of additional evidence, which has not been rebutted by the respondents (and would not normally be rebuttable, having been issued by the office of the Assistant Inspector General, Government Railway Police, Punjab and is signed by the said officer under his official stamp), the total pay of the appellant was Rs.4037/- at the time of the accident, from which deductions were made towards the General Provident Fund and General Insurance Scheme (which in any case are not to be deducted for the purpose of calculation of compensation, they being contributions towards the appellants' own welfare, as opposed to income tax, which, of course, is a compulsory deduction, not related to immediate individual benefit).

In the month of October, 2014, the appellant was drawing a

gross monthly salary of Rs.46025/-, as per the salary certificate for the said month.

Presuming that he may have reached the rank of an Assistant Sub-Inspector/Sub-Inspector in these 18 years since the accident, his salary would have been to the tune of approximately a sum between Rs.45,000/- to Rs.55,000/-, as is to common knowledge, with regard to salaries at these ranks, in the Punjab Police. Hence, with his present salary at Rs. 46025/-, obviously he has been granted the benefit of the Assured Career Progression (ACP) Scheme, whereby, in lieu of promotion, the salary of the next two grades is payable to a person who has not been promoted twice, in a span of 20 years. Therefore, subsequently, strictly as regards loss of income, he has not suffered much, if at all.

Consequently, there would be no reason to grant any additional compensation to the appellant, on that count.

18. Yet, he may have achieved a higher status in his career, which he may have been deprived of due to the loss of his limb, which is not really quantifiable in terms of money. Therefore, what is to be granted in terms of loss of career prospects, by way of possible loss of status, is to be considered.

Despite all that has been said heretofore about loss of career prospects to the appellant, it also cannot be lost sight of that such prospects are not a certainty. Hence, seen with the fact that there has been virtually no monetary loss to him, in my opinion, as a token measure, **Rs.50,000/-** can be awarded to him for the possible loss of status, and is so awarded.

19. Coming next, to compensation payable under other heads.

The total amount awarded by the learned Tribunal, considering all factors, including pain and suffering, permanent disability etc., as already noticed, was Rs.2,50,000/-.

If that amount is broken down and apportioned under two different heads, i.e. pain and suffering and loss of limb (there being no loss of income), it would obviously amount to Rs.1,25,000/- each, under these two heads, which, in the opinion of this Court is not adequate for permanent loss of a limb, thereby curtailing daily and long term body abilities by at least 35% of its capacity. Though the sum of Rs.1,25,000/- is also inadequate for the amount of pain and suffering endured, however, without enhancing the amount of **Rs.1,25,000/-** for pain and suffering, the amount awarded for permanent disability/loss of a limb, is enhanced to **Rs.2,50,000/-**.

20. Coming to the component of compensation to be awarded for a properly functional prosthetic limb, which can, to at least some extent, function as a substitute limb.

As already noticed above, respondent No.3, i.e. the National Insurance Company, with which the offending vehicle (pick-up van bearing registration No.PB-11-G-4570) was insured, has very fairly admitted that the quotation cited by the appellant for the purchase of such a prosthetic limb is correct, i.e. **Rs.2,60,000/-**. Hence, the same amount is awarded, without interest, to the appellant. Interest would not be payable as this is the current price of a prosthetic limb, as in September 2014.

21. As regards compensation for actual expenses incurred on medical expenditure, nothing specific was awarded by the Tribunal, though some bills in that regard had been presented before it, as per what is stated

in the Award. The reason for that would obviously be that the appellant, being a Government servant, would be entitled to reimbursement of all medical expenses incurred by him, especially as the Dayanand Medical College and Hospital, Ludhiana, even though a private charitable institution, is an approved hospital on the panel of hospitals of the Government of Punjab. Thus, I find no ground to award any amount by way of medical expenses to the appellant.

22. Thus, the total compensation now awarded to the appellant is Rs.6,85,000/-. (Rs. 50,000/- plus Rs. 1,25,000/- plus Rs. 2,50,000/- plus Rs. 2,60,000/-). From that amount, an amount to the extent of 10% is to be deducted, owing to the contributory negligence on the part of the appellant, as held by this Court. Hence, the total amount payable to the appellant is **Rs.6,16,500/-**.

23. For calculating interest payable to the appellant, a sum of Rs.2,34,000/- is to be deducted from the total compensation of Rs.6,16,500/- because Rs. 2,34,000/- is 90% of Rs.2,60,000/-, which is payable to him as the current price of a good prosthetic limb. Thus, an amount of Rs.2,34,000/- shall be paid to the appellant without any interest, if paid within three months from the date of receipt of a certified copy of this order, failing which it shall carry an interest @ 9% p.a. from the first day after 3 months are over, till the time that actual payment is made to him.

Of the remaining amount of Rs.3,82,500/-, Rs.1,25,000/-, as have already been paid to the appellant in terms of the award of the learned Tribunal, is to be deducted. On the last remaining amount of Rs.2,57,500/-, interest @ 8% p.a., shall be payable to him, from the date of filing of the claim petition till the date that actual payment is made.

The appeal is allowed in the above terms, with no orders as to costs.

July 1, 2015
dinesh

(Amol Rattan Singh)
Judge