

THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4249 of 2010

Date of decision : 20.02.2015

Satish Gupta

.....Appellant

Versus

Sukhjeet Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

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. Ashish Gupta, Advocate
for the appellant

None for respondents No. 1 and 2

Mr. R.N. Singal, Advocate
for respondent No. 3

ANITA CHAUDHRY, J.

This is the claimant's appeal seeking modification in the award dated 09.04.2010 passed by Motor Accident Claims Tribunal, Faridkot. The Tribunal held the appellant to have contributed in the accident and determined the compensation at ₹ 80,000/-, an award of ₹ 40,000/- was passed in his favour.

The claimant had pleaded that he was running a Chemist shop and was earning ₹ 25,000/- per month and was an income tax payee. The plea raised was that he had spent ₹ 1,25,000/- on his treatment and had suffered disability. The Tribunal noted that the accident occurred when a jeep going ahead slowed down and took a

sudden U turn and scooter driven by the claimant hit the jeep on the rear side.

The Tribunal noted that there was no documentary evidence to establish his avocation or that he was an income tax payee. The only material adduced by him was record of DMC Ludhiana. The following compensation was allowed:-

(A) PECUNIARY COMPENSATION

- (i) Compensation on account of medical treatment = ₹ 40,000/-
- (ii) Compensation on account of services of attendants and special diet and loss of income = ₹ 20,000/-

(B) NON-PECUNIARY COMPENSATION

- (i) Compensation assessed on account of physical pain and mental agony = ₹ 5,000/-
- (ii) Compensation assessed on account of disability and loss of physical attributes = ₹ 15,000/-

Total : ₹ 80,000/-

The submission made on behalf of the appellant is that the accident occurred on account of negligence of the jeep driver who decided to take a sudden U turn and scooter struck behind the jeep and the claimant suffered fracture and disability of 10%. It was urged that bills to the tune of ₹ 58,677/- were produced but the Tribunal had only awarded ₹ 40,000/- for the bills and had given no reason for rejecting the other bills. It was contended that no amount had been awarded for pain and suffering or for disability, future treatment and attendant charges.

The submission on the other hand was that the disability was not assessed by the Medical Board and the record would show that an application for assessing the disability was submitted to the Civil Surgeon who marked it to the Doctor who had given the report. It was submitted that the word “permanent” is not mentioned and it could be that the disability could have improved with physiotherapy and the Tribunal had allowed compensation on all the heads. It was urged that the drivers are expected to maintain a safe distance and in the event of an unforeseen circumstance if the driver has to slow down, the vehicles behind is expected to keep a distance so that the collusion does not take place and the Tribunal had examined all the aspects and had rightly held it to be a case of contributory negligence.

The Tribunal had minutely gone through the record and had found that there was a contradiction in the injury referred to in the record of DMC Ludhiana where the injury was stated to be on the right leg whereas the case of claimant was that the injury was on the left leg. Brushing aside the contradiction, the Tribunal proceeded to examine the case. So far as the question of contributory negligence is concerned there is no reason to take a different view. The claimant himself had mentioned that a jeep was going ahead to him which took a turn and his scooter hit the jeep from the rear side. It appears that the jeep driver did not give any indication before making a turn and at the same time the scooterist did not maintain safe distance and it was being driven at a high speed that he could not stop his scooter. The finding on issue No. 1 is affirmed.

The claimant was seeking compensation for the disability suffered by him. No evidence had been led with respect to the income. The stay in the hospital was for 11 days. No doubt the injury (fracture) would have confined the claimant to the bed atleast for three months and there would have been loss of income for that period. No amount had been awarded for loss of income.

The claimant had relied upon disability certificate Ex. P34 which is on a plain sheet issued by Dr. Neeraj Malhotra. The disability was not assessed by the Medical Board. The rules require that the disability should be assessed by the Medical Board. The certificate does not indicate that the disability was permanent in nature. The Tribunal had awarded ₹ 15,000/- on account of disability though without assessing the functional disability. I am of the view that certificate was not issued by the Medical Board, therefore, no addition for the disability can be made.

The Tribunal had awarded ₹ 40,000/- for the amount spent on the treatment and medicines. The bills on the record are for a sum of ₹ 58,677/-. The claimant was entitled to the remaining amount i.e. ₹ 18,677/-. The claimant had led no evidence to show that he was running a chemist shop, no bill books or receipts of purchase had been produced. That evidence was available with the claimant. He would have obtained a licence to run a Chemist shop. In the absence of any evidence on that account and considering that the accident had taken place in the year 2008, the income of the claimant can be taken at ₹ 4000/- per month. The minimum wages that year were much lower, therefore, calculating the loss of salary

for three months, an addition of $3 \times ₹ 4000/- = ₹ 12,000/-$ is made.

The appellant is, thus, entitled to an increase of ₹ 18,677 + ₹ 12,000/- = ₹ 30,677/- rounded to ₹ 30,700/-. This amount shall be paid to the appellant within two months failing which the appellant shall be entitled to interest @ 6% p.a. from the date of filing of the appeal till realization.

The appeal is partly allowed.

20.02.2015

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(ANITA CHAUDHRY)
JUDGE