

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3653 of 2002 (O&M)
Date of decision : July 05, 2016.

M.D.A. Chaudhary

.... Appellant

Vs.

Kartar Chand and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not? yes
2. Whether the judgment should be reported in the Digest?

Present : Mr.R.P.S.Ahluwalia, Advocate,
for the appellant.

Ms. Mansi Bansal, Advocate,
for respondent No.2.

Mr. Man Mohan, Advocate,
for respondent No.3-Insurance company.

AMOL RATTAN SINGH, J.

This is an appeal by the claimant before the learned Motor Accident Claims Tribunal, Ambala, seeking enhancement of the compensation of Rs. 90,000/- awarded to him by the Tribunal vide the impugned Award, for the injuries sustained by him in a motor vehicle accident on 1.1.1993.

The appellant-claimant had sought a compensation of Rs. 10 lacs.

2. The facts of the case, as taken from the impugned Award of the learned Tribunal, are that the appellant was going to the bank on his bicycle, towards Kalka, when a tanker vehicle, bearing registration no. HR-01-A-9247, driven by respondent no. 1, allegedly in a rash and negligent manner, struck against the cycle and dragged the appellant and the cycle to a considerable distance, resulting in multiple fractures to him.

The appellant was a Sepoy in the army and was taken to the military hospital, Chandimandir, and was treated there for multiple fractures on his left foot. 55 stitches are also stated to have been applied on his head, as also on his face. He was also stated to have suffered a fracture of both his jaws. A rod was inserted in his left foot and his jaws were repaired with the help of metal wires.

After discharge from the hospital, he was again admitted for another operation of his left foot and for further treatment of his head injuries, as a result of which he was confined to bed for six months. Thereafter also, he is stated to have started working only in November, 1993, with the help of a stick.

It was further contended that he became permanently disabled on account of the head injuries, and he has not been able to put any weight on his head.

Yet further, it was contended that other than the military hospital, he also took treatment from a private doctor and had eventually spent a sum of Rs. 1 lac on his treatment and special diet.

In the hospital, he was looked after by his relatives.

3. Originally, when the claim petition was filed on 19.01.1995, it is stated in the award that his monthly income was given to be Rs.1700/-,

whereas in the amended claim petition filed on 30.5.2001, it was given as Rs. 5518.

4. It is also stated in the award that other than compensation sought under Section 166 of the Motor Vehicles Act, 1988 (hereinafter to be referred to as the Act), a sum of Rs. 25,000/- was also claimed by way of no fault liability under Section 140 of the Act.

5. In response to the notice issued by the Tribunal, respondents no. 1 and 2, i.e. the owner and driver of the tanker, filed a joint written statement stating therein that the tanker was going on the left side of the road at a normal speed, when the appellant suddenly tried to go to the right side of the road, due to which the accident happened.

In the reply filed by the insurance company that had insured the vehicle (respondent no. 3), the accident itself was denied, further stating that the appellant - claimant may have sustained injuries due to the some other cause.

Both the salaries claimed to have been drawn by him, in the original and the amended petition, were also denied by the insurance company.

The Tribunal framed the usual issues with regard to whether the injuries had been caused to the claimant due to the rash and negligent driving of the vehicle in question, by respondent No.1, and if so the amount of compensation he was entitled to and further, whether the insurance company was liable to pay it or not.

6. After filing their written statement, it is seen from the award that the first two respondents did not appear and were proceeded against *ex-parte*.

7. Upon appraisal of the evidence, respondent no. 1 was found to have been negligent in driving the vehicle, thereby leading to the accident causing injuries to the appellant.

No appeal by the respondents, against any finding in the Award, has been brought to the notice of this Court by counsel for the parties, and as such, only the adequacy or inadequacy of compensation awarded is to be considered in this appeal.

8. The Tribunal first found that despite the accident, the appellant-claimant continued to be in service till the date of his testimony on 17.11.2001 and though his basic pay at the time of the filing of the claim petition was Rs. 1700/-, and gross pay was Rs. 2200/- per month, he was eventually drawing Rs. 3500/- as basic pay and Rs. 5500/- as gross salary, per month.

The contention of the learned counsel for the claimant (before the Tribunal) that the claimant lost chances of promotion due to the injuries suffered by him, was not accepted by the Tribunal, on the ground that, as admitted by the claimant, a Sepoy is promoted as a Naik after six to eight years of service. However, the appellant having joined service in the army on 12.2.1985, (i.e. slightly less than 8 years prior to the accident), had not been promoted as a Naik. Hence, it was held that he had been overlooked for promotion in the normal course, and as such, had continued to hold the rank of Sepoy.

The Tribunal further held that there was no evidence led to show that there was a delay in his promotion as a Naik, or that such delay was attributable to the injuries suffered by him.

Hence, it was held that he cannot claim any compensation for

loss of income.

9. The next contention before the Tribunal was that the appellant was being boarded out service as he had been found medically unfit to continue. That argument was also rejected on the ground that, firstly, the appellant, in his testimony on 17.11.2001, had admitted that he was being discharged from service w.e.f. 28.2.2002 and that a Sepoy can seek retirement from the army after 15 years, with full benefits of retirement.

Still further, it was noticed that a certificate had been placed on file, issued by the Platoon Commander in his unit, with regard to the transfer of the appellant to the pensioned establishment w.e.f. 28.2.2002, with no reason for such transfer given on the certificate. Though the said letter referred to another letter dated 16.11.2000, that letter was not brought on record by way of evidence and as such, an inference was taken against the appellant and it was held that he was not being discharged from the army w.e.f. 28.2.2002 due to any medical disability, but as per the regular terms of his employment.

Yet further, it was found by the Tribunal that vide medical board proceedings held on 3.2.1998 and on 30.1.1996, the appellant had been put in "CEE(PER)" category and that the next medical board for the appellant was to be held on 13.1.2000. However, the proceedings of that board had not been produced before the Tribunal, to show that he had been held to be medically unfit for service.

A certificate issued by a single doctor of the army (Lt. Col. H.C. Talan) on 5.3.1998, countersigned by Lieutenant Colonel S.D.Singh, officiating Assistant Registrar, on 6.3.1998, was produced before the Tribunal as Ex.P-14. It was considered by the Tribunal but it was held that

the said certificate could not be taken to be issued by a regular medical board (even though it showed a disability of 40%).

Taking the entire evidence aforesaid into consideration, the Tribunal held that especially in the absence of the certificate dated 13.1.2000, issued by the competent medical board, it must be inferred that the medical category of the appellant actually stood upgraded and eventually there was no loss of income to him after the accident.

10. As regards the compensation for treatment, it was held that since the treatment was taken from the military hospital and no evidence was led to show that he had taken treatment privately from anywhere else, including his village, and further, that he had been paid his salary even during the leave period, no compensation for any expenses incurred for his treatment was payable.

11. Eventually, however, the learned Tribunal held that since the appellant had suffered multiple injuries and fractures and had remained admitted in the hospital, during which he had undergone two to three operations and had remained in the lower medical category from January 1993 onwards, he was entitled to compensation under the following heads:-

(i)	Pain and sufferings	Rs. 50,000/-
(ii)	Special diet	Rs. 10,000/-
(iii)	Loss of enjoyment of amenities	Rs. 30,000/-

Total	Rs. 90,000/-
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That being the total compensation that was awarded, the appellant was also held entitled to get interest @ 12% per annum on the aforesaid amount, running from the date of filing of the claim petition till the date of payment.

12. Before this Court, Mr.R.P.S. Ahluwalia, learned counsel appearing for the appellant, submitted that the Tribunal had wholly erred in holding that the appellant was not boarded out of the army due to his lower medical category condition, resulting from his accident. He first referred to the testimony of PW-1, Lieutenant Colonel H.C.Talan. This witness had testified on 21.2.1998, that even till that date, i.e. more than 5 years after the accident, the x-ray of the appellant showed that there was a non-union of the tibia and that his ankle movements were still restricted and he had to walk with a support. This witness had further testified that he had been put in the permanent lower medical category and would not get any promotion and may be boarded out of service within two years.

He also testified that there was a permanent disability to the extent of 40%, which this witness was in full knowledge of, being his treating doctor for one and a half years, after which another army doctor treated him.

In cross examination, the witness had deposed that though the treatment was free in the army hospital, but the medicines not available had to be provided by the patient, but further, "routine medicines" were reimbursed by the army.

The witness thereafter admitted that "the patient is standing without support in the court".

Thus, Mr. Ahluwalia submitted that with the aforesaid testimony, corroborated by the appellants' own testimony that he had been placed in medical category- C from medical category-A, and consequently could not be further promoted, read with the certificates produced in Court, by way of evidence, the Tribunal was wholly in error in holding as it did.

Learned counsel thereafter referred to the document exhibited as P-1 before the Tribunal, i.e. the medical board proceedings held in January 1998, showing that the disabilities of the appellants were:-

- (i) Closed head injury
- (ii) Compound comminuted fracture tibia & fibula (LT) (OPTD)
- (iii) Fracture mandible (LT)

As a result of the aforesaid injuries/disabilities, the said certificate further shows, that the appellant is stated to have been placed in a medical category of "CEE (Permanent)" w.e.f. 13.1.1996, in which category he was continued w.e.f. 13.1.1998 and was to be re-assessed on 13.1.2000.

Ex.P4 was next pointed to by the counsel, which is a certificate issued on October 9, 1997, by a Company Commander in 268 Engineers Regiment, stating therein that the appellant had been placed in the aforesaid medical category due to the injuries sustained in a road side accident on 1.1.1993.

Learned counsel again also pointed to Ex.P14 showing a 40% permanent disability due to severe injury, appellant, as per the certificate issued by Lt. Colonel H.C.Talan, Orthopaedic Surgeon, Chandimandir, counter signed by Lt. Col. S.D.Singh, as already noticed.

13. Lastly, Mr. Ahluwalia pointed to a document shown to be marked as Mark-Y, which was issued on 23.07.2001, again by a Company Commander of 268 Regiment, on behalf of the Commanding Officer of the Regiment, stating therein that the appellant had met with an accident on 01.01.1993, resulting in severe injury to the head and leg, due to which no promotion to the ranks of Naik (Selection), Havildar, Naib Subedar, Subedar and Subedar Major, with further honorary rank of Lieutenant and Captain,

could be given to the appellant.

The certificate further states that the appellant was proceeding on retirement on completion of his terms of engagement, as he had lost the above promotions due to his accident, on account of which he had also been down graded to the lower medical category, i.e. medically unfit.

Yet further, it is stated in the certificate that had the appellant been promoted, he would have served for another 15 years. It also states that by Government policy, no one would retire as a Sepoy.

14. In view of the above evidence, learned counsel for the appellant submitted that the appellant deserved to have been granted compensation for loss of income and chances of promotion, including higher status etc.

15. Mr. Man Mohan, learned counsel for respondent No.3, i.e. the insurance company, on the other hand, pointed to the testimony of the appellant himself before the Tribunal, as PW2, wherein he had admitted in cross-examination (on 17.11.2001), that he had been promoted as a Naik about three months earlier but not by way of promotion, but because he was being discharged from service.

He also admitted that before being promoted as an officer in the army, a test is required to be passed and that he was to get full benefits of retirement, but only those available one rank above a Sepoy, as also a disability pension.

Learned counsel therefore submitted that the Tribunal had not erred in dis-entitling the appellant from any compensation for loss of income and as such, the appeal deserves to be dismissed.

16. In rebuttal, Mr. Ahluwalia also again pointed to the aforesaid testimony, where the appellant had deposed that he had been promoted only

because of the fact that he was being discharged not as per merit, and that he still had a rod in his leg.

Hence, Mr. Ahluwalia submitted that seen with the medical certificates and the certificate issued by the Company Commander, it shows that the appellant actually lost out on chances for promotion in the army and consequently was boarded out of the service upon having completed 17 years, at the age of 36.

17. Having considered the aforesaid arguments, as also the Award of the Tribunal, in the opinion of this Court, the Tribunal did completely err in holding that the appellant did not suffer any loss of income on account of any injury.

Without doubt, the appellant had not been promoted as a Naik until the date of his accident, i.e. slightly short of his having completed 8 years in service as a Sepoy. However, again without doubt, he was placed in the lower medical category (permanent) even after treatment for his injuries, after being examined by two medical boards, in January 1996 and January 1998.

Simply because he could not produce the last medical board certificate of the year 2002, the Tribunal should not have ignored both, the testimony of his treating doctor, PW1, Lieutenant Colonel H.C.Talan, nor the certificates issued by his Company Commander, duly under seal, to the effect that he had actually been discharged from the army w.e.f. 28.02.2002, due to his placement in the lower medical category.

Looking at the kind of injuries that he had, i.e. 'close head injury', a fractured mandible and compound fracture of the tibia and fibula, obviously shows that he could not be placed in a higher medical category,

especially as he was suffering from a 40% permanent disability on account of the aforesaid injuries, as stated in the disability certificate, Ex.P14, dated 05.03.1998, again issued under the seal of the Classified Specialist Surgeon and Orthopaedic Surgeon, Lt. Colonel H.C.Talan, duly countersigned by the officiating Assistant Registrar, on behalf of the Commandant of the Command Hospital, Chandimandir. This is to be seen with the Medical Board proceedings dated 08.02.1998 (Ex.P1), the hospital admission and discharge slips etc., all exhibited before the Tribunal, as also the testimony of Lt. Col. Talan (PW1).

Hence, in the light of the aforesaid evidence this court must conclude that the appellant actually suffered an early discharge from service, as also lack of chances of promotion, for which he in any case has to be awarded loss of future prospects of income, though only on the parameters laid down in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**; i.e. even though he cannot be granted full possible benefits, as whether or not he would have continued beyond the rank of Naik to higher ranks, even without the lower medical category, is an imponderable "if".

18. Therefore, coming to the loss of future prospects of income, in terms of the ratio of *Sarlas'* judgment, since the proved salary of the appellant was Rs. 5500/- per month in the year 2002, when he was below the age of 40 years, 50% of that sum is to be taken to calculate the loss of future prospects of income, which comes to Rs.2750/- per month, or Rs.33,000/- per annum.

The question then is as to whether, as per the appellants' given age, the normal multiplier of 16 should be applied, as has been held in *Sarla*

Vermas' case (supra), for the purpose of calculating the loss of future prospects of income to the family of a deceased victim, or a different multiplier should be applied in the present case, in view of the fact that the appellant himself would have continued in service in the army, but for a non determinable period, depending upon the rank that he would have reached, had he not been the injured.

He may have retired at a lower rank of Naik or Havildar, or may have gone onto become a Subedar Major, even in the normal course, and therefore retired at any time between 22 years of service (2007) and about 32 years of service (in 2017). Consequently, a lesser multiplier of 12 would, as such, be applicable, if it were to be presumed that he may have continued to serve till (on an average) the age of 42 years, thereby bringing the total loss of future prospects of income to be Rs. 3,96,000/-. (In view of the fact that had he retired after 22 years of service, in the normal course, at the rank of Naik, it would have meant just five years extra service, up to 2007, but on the other hand, had he retired at the rank of Subedar Major, he could have gone up to the age of 52 years at the most). Taking a mean between an added 5 years and 16 years of service, it would otherwise be appropriate to apply a multiplier of 12. However, depending upon the rank that he would have retired from in the normal course, obviously his pension also would have been higher. Hence, it is considered appropriate to apply a multiplier of 16 itself, to the annual loss of future prospects of increased income.

Accordingly, to the sum of Rs. 33,000/- i.e. the annual loss of future prospects of income, a multiplier of 16 is applied, to arrive at an amount of Rs.5,28,000/-; which is awarded to the appellant, by way of the total loss of future prospects of increased income.

19. As regards the compensation under the heads of pain and suffering, loss of enjoyment of amenities and special diet, the Tribunal had awarded Rs. 90,000/-. Another sum of Rs.25,000/- is added towards pain and suffering, on account of the extensive injuries he suffered on his mandible, as also the 40% disability suffered qua his whole body. An additional amount of Rs.20,000/- is also awarded for loss of enjoyment of amenities.

20. Thus the total compensation now awarded is as follows:-

(i)	Pain and suffering	Rs. 75,000/-
(ii)	Loss of enjoyment of amenities	Rs.50,000/-
(iii)	Special diet	Rs. 10,000/-
		(as awarded by the Tribunal)
(iv)	Loss of future prospects of income	Rs. 5,28,000/-
	Total	Rs.6,63,000/-

Thus the amount of enhanced compensation awarded by this judgment, is Rs.5,73,000/- over and above the Rs. 90,000/- awarded by the Tribunal.

The enhanced amount of compensation would carry interest @ 6% per annum, running from the date of the filing of the claim petition, till the date of realisation thereof.

The appeal is accordingly allowed as above, with no order as to costs.

July 05, 2016

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**(AMOL RATTAN SINGH)
JUDGE**