

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

FAO-1000-1993

Date of decision : 25.10.2016

Raghubir Singh

... Appellant

Versus

Ramesh Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Mr.G.D. Gupta, Advocate
for respondent no.3.

AMOL RATTAN SINGH, J.

1. This is an appeal by the claimant before the learned Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as “Tribunal”), after his claim petition was dismissed by the Tribunal vide the impugned Award dated 03.03.1993.

The facts, as taken from the impugned Award, are that the appellant-claimant (hereinafter referred to as “claimant”), stated in his petition that he, along with his wife, were coming from village Palsora to his quarters in Sector 41, Chandigarh, after fetching milk from the milk vendor, on his scooter bearing registration no.CHN-8409, on 12.09.1990 at about 7.15 PM. When they reached near an electric pole on the road dividing Sector 40-41, a car bearing registration no.PB-10-0779, driven by respondent no.1 herein allegedly in a rash and negligent manner, came from behind and hit his scooter. Due to the impact, the claimant and his wife fell

down and were dragged for a short distance, due to which he suffered a fracture of his right ankle. His wife also suffered some injuries, with the scooter also badly damaged.

The claimant and his wife were shifted to the General Hospital, Sector 16, Chandigarh, on an auto rickshaw but the claimant was referred to the PGIMER, Chandigarh. In the PGI, an operation was performed, involving “plating, screwing and surgery”.

It was claimed that the claimant had spent Rs.7000/- on medicine, Rs.3000/- on conveyance and Rs.2000/- on the repair of his scooter. It was further stated that he was an employee of Panjab University, drawing a salary of Rs.2100/- per month.

In the claim petition filed on 08.02.1991, he claimed compensation of an amount of Rs.3 lacs due to the injuries and suffering that he went through.

2. Upon notice issued to the respondents, i.e. the driver, owner and insurer of the car owned by respondent no.2, the insurance company-respondent no.3 filed a separate written statement whereas the first and second respondents are stated to have filed a separate joint written statement. The common stand in both the written statements was that no such accident had taken place with the vehicle owned by respondent no.2.

It needs to be noticed here that though the learned Tribunal has observed that two separate written statements were filed, with the aforesaid common stand, a perusal of the photocopy of the records of the Tribunal shows that only one written statement is on record, which is of the respondent-insurance company. This may be due to the reason that the entire

record has been reconstructed by learned counsel upon the original record having been burnt in the fire incident that took place in the record room of this Court in January 2011.

3. Upon the aforesaid pleadings, the following issues were framed by the Tribunal:-

- “1. Whether the claimant sustained injuries because of the rash and negligent driving of vehicle no.PB-10-0779 by Ramesh Lal respondent? OPP
2. To what amount of compensation, if any, the claimant is entitled and from whom? OPP
3. Relief.”

4. The claimant testified as PW1 and further examined one M. S. Bajwa, Dr. Suresh Sharma, as also one Constable Gurmail Singh and further examined his (claimant's) wife, Hardev Kaur.

He also produced various documents in support of his claim.

The respondents examined Yashpal, an Ahlmad of the Court of the learned JMJC where criminal proceedings were continuing against respondent no.1, and one Ramesh Lal, who produced a copy of the cover note of the insurance policy.

5. Upon appraising the aforesaid evidence, the learned Tribunal found that though the witnesses for the claimant had testified in support of his claim petition, and respondent no.1, in his cross-examination, had also admitted to the registration of a criminal case against him and further, that he had never informed higher authorities about any false implication, yet, on the issue of negligence, the Tribunal returned a finding against the claimant.

This was on account of the fact that in the OPD card issued by the PGI, Chandigarh, in the summary recorded by the doctor, it had been

stated that the claimant had suffered injuries on account of having been run over by a bus.

Further, when he appeared as PW1 on 02.12.1991 (i.e. about 2½ months after the accident), he did not disclose the number of the vehicle involved in the accident and even the copies of the DDRs, numbered 24 & 25, only related to the discharge of the claimant from the PGI on 18.09.1990.

The number of the vehicle involved in the accident was found to have been supplied to the wife of the claimant by PW2, M.S. Bajwa, though on the same day.

Hence it was held by the Tribunal that it was very easy for the wife of the claimant to have informed the doctor at the PGI, at the time of admission of the appellant, with regard to the type of vehicle involved in the accident, but actually the doctor had been informed that he had been run over by a bus. Thereafter, no FIR was lodged for several days, during which time the claimant had enough time to consult his counsel, due to which (as per the Tribunal), a “*parchi*”, Ex.A2, was fabricated and delivered by PW2.

It was further held that the claimant did not come up with any version in respect of the vehicle involved in the accident till 18.09.1990, i.e. till 6 days after the accident, and for the first time on 26.09.1990, he wrote an application (Ex.A4) and another one, one month later on 27.10.1990 (Ex.A5), in which he disclosed the registration number of the vehicle involved in the accident.

It was further found that there was no postal receipt in respect of the application dated 26.09.1990, which was addressed to the SHO of the

Police Station concerned and that the FIR was actually recorded on 22.12.1990, more than three months after the accident.

Hence, it was held that in such circumstances it could not be held that car no.PB-10-0779 was involved in the accident.

Consequently, the first issue, with regard to the negligence in causing the accident, was held in favour of the respondents, as already noticed.

6. Even having held as above, the learned Tribunal went on to calculate the compensation that would have been payable to the claimant, if the issue of negligence had been decided in his favour.

In this regard it was found that as per the testimony of Dr. Suresh Sharma, duly proving the medical record, the claimant was admitted to the PGI, Chandigarh, on 12.09.1990 and the following injuries were found on him:-

“(i) Fracture of right medial malleolus with lateral sub luxation of the talus and spiral fracture of lower shaft of fibula.”

The doctor also testified that the claimant was operated upon on the night of 12/13.09.1990 at 12.30 AM and thereafter again on 21.06.1991, to remove certain “hardware” that had been inserted at the time of the first operation. (Though the language used in the Award is confusing at this point, however it seems very obvious that a plate and screws were inserted in the operation on 13.09.1990).

The doctor further testified that the claimant suffer a functional disability of 40% in respect of the lower limb and that information had been

sent by the hospital to the police on 18.09.1990, regarding the discharge of the claimant from hospital.

7. As regards the amount spent by the claimant on his treatment, it was found that Rs.6000/- to Rs.7000/- had been reimbursed to him by the University where he was employed, on account of medical bills, and that he had not brought any account of the expenditure stated to have been incurred by him. It was also found that he was getting further treatment from the University hospital.

It needs to be specifically noticed here that at this stage the Tribunal has discussed that the claimant testified in his cross-examination that he and his wife had told the attending doctor that they were hit by a car.

8. Eventually holding that the expenses on medicine having been reimbursed and the conveyance expenses, based on receipts Exs.A9 to A20, were not admissible in view of the fact that rickshaw puller who had issued the receipts was not examined, it was also held that the claimant would have been entitled to compensation under the following heads, if the issue of negligence had been proved against the respondent:-

- | | |
|---|-------------|
| “1. Pain and sufferings | Rs.5,000/- |
| 2. Medicines, treatment and rich diet | Rs.5,000/- |
| 3. 40% functional disability suffered in the lower limb | Rs.50,000/- |
| 4. Absence from duty due to accident for two months.” | Rs.5,000/- |

9. However, in view of the fact that the negligence of respondent no.1 in causing any accident was not proved, and in fact the accident itself with the car owned by respondent no.2 was not proved, the claim petition

was dismissed.

10. Along with the appeal filed before this Court, an application under Order 41 Rule 27 CPC, read with Section 151 thereof, has also been filed by the claimant, seeking to lead by way of additional evidence, the order of the learned JMIC, Chandigarh, dated 27.01.1993, in which it is shown that respondent no.1, Ramesh Lal, pleaded guilty to having driven Maruti car no.PB-10-0779, rashly and negligently, and consequently causing the accident by which the claimant and his wife suffered grievous injuries, thereby making respondent no.1 guilty of the commission of offences punishable under Sections 279, 337 and 338 of the IPC.

Along with the aforesaid order, the judgment and order of sentence of the learned JMIC, also dated 27.01.1993, are also sought to be led by way of additional evidence, by which respondent no.1 was held guilty of the commission of the aforesaid offences but was ordered to be released on probation “in the sum of Rs.1000/- for a period of one year”, subject to his good behaviour etc.

No reply has been filed by the respondents to the aforesaid application. Thus, with these orders and judgment not having been denied, the admission by respondent no.1 to his guilt in causing the accident in question and having been convicted and sentenced thereafter, for it, has not been denied by the respondents.

11. It also needs to be noticed that since records of this case were destroyed in the fire incident as already stated, none had been appearing for respondents no.1 & 2 and consequently, upon the submission of learned counsel for the appellant, a co-ordinate Bench had allowed them to be

served by substituted mode of service by publication of the notices in a newspaper. Such publication having been made and none having still appeared for respondents no.1 & 2, they were ordered to be proceeded against ex-parte on the date when the judgment was reserved in this case.

Thereafter, even in the long time that it has remained reserved, no application has been received from respondents no.1 & 2, for recalling the order reserving judgment and for hearing them.

12. At the time when arguments were heard, learned counsel for the appellant had submitted that as regards the issue of negligence, nothing further remained to be proved, with the admission of respondent no.1 of his guilt and his subsequent conviction, for having caused the accident and injuries to the appellant.

He further submitted that simply because the doctor, while recording the summary on the OPD/discharge card, wrote that the injuries had been caused due to an accident with a bus, the appellant could not be “punished” for such erroneous recording by the doctor, at a time when both the appellant and his wife were under the trauma of having suffered an accident and grievous injuries.

Similarly, he submitted that because the FIR was lodged at a later stage by the police, with the appellant admitted to hospital with a fractured ankle, and having been operated upon a plate and screws inserted, again he could not be held responsible for the late registration of a case by the police.

He therefore submitted that in the aforesaid circumstances, and with the admission of the guilt of respondent no.1 in criminal proceedings,

the finding of the Tribunal on the issue of negligence in driving, thereby causing the accident, needs to be reversed and respondent no.1 held guilty of such negligence.

13. As regards the quantum of compensation, learned counsel submitted that with the appellant having been proved to have suffered injuries due to which he had to be operated upon twice over a period of 9 months, he obviously went through tremendous pain and agony, other than day to day inconvenience and harassment on account of the injuries and operations. Hence, he submitted that the amounts of Rs.5000/- each, assessed on account of pain and suffering and on treatment and medicines and diet etc., were highly inadequate.

14. Mr. Gupta, learned counsel for the insurance company, on the other hand submitted that admission of guilt in causing the accident with the car in question was wholly “concocted up”, as the first version given by the appellant and his wife was obviously that they were hit by a bus. Subsequently, in connivance with the appellant, the first respondent herein admitted to his negligence by pleading guilty before the court seized of the criminal proceedings against him, upon which he was simply released on probation. Thus, he submitted that even such admission would not change the basic fact that the appellant had actually suffered his injuries on account of an accident with a bus.

Hence, Mr. Gupta further submitted, knowing that eventually the liability to pay compensation would fall upon the company that had insured the car, respondent no.1 obviously pleaded guilty only in connivance with the appellant.

He, therefore, prayed for dismissal of the appeal.

15. Learned counsel for the appellant, in rebuttal, first pointed to paragraph 7 of the impugned Award, to submit that the claimant had testified that after he was shifted to the PGI, Chandigarh, he was told that the police would arrive to record his statement, but nobody turned up. He was thereafter discharged on 18.09.1990 and got DDRs no.24 & 25 recorded at the police post at the PGI Chandigarh on the same date, and thereafter sent his wife and child to the Police Station Sector 39 Chandigarh, on 26.09.1990, for registration of the case, but his wife was told that the SHO was not available. Consequently, he addressed an application dated 26.09.1990 to the SHO and also sent a copy of the same to the IGP and SSP on 27.10.1990, through registered post.

Learned counsel further pointed to the fact that the Tribunal, while referring to the appellant's testimony and the postal receipts Exs. P6 and P7, had noticed that the FIR (Ex.A8) was registered on 22.12.1990, on the basis of the application Ex.A5.

The appellant's wife, Hardev Kaur, had also testified to the same effect as was duly noticed by the learned Tribunal thereafter.

He further submitted that simply because the car number was subsequently supplied by Sh.M.S.Bajwa, PW2, to the wife of the appellant, that did not falsify the case of the appellant, seen with the fact even respondent no.1 had admitted that he never informed higher authorities with regard to his false implication in a criminal case.

16. Having heard both learned counsel, I agree with learned counsel for the appellant, that with the appellant and his wife both injured,

and the appellant at least disabled with a fracture of his ankle which was operated upon, he could have not do better than he did as regards the registration of the FIR. Of course, the fact that the doctor wrote that the accident took place with a bus and the number of the car was supplied lateron by PW2 (M.S.Bajwa) to PW5 (the appellant's wife), does put a question mark on whether it was the car owned by respondent no.2 and insured by respondent no.3 that was involved in the accident, or it was actually a bus that was involved, with the car having been simply involved later.

I also agree with learned counsel for the appellant that in the injured condition that the appellant was, with his wife also having suffered injuries, they obviously had no control over what was recorded by the doctor in the admission/ discharge / OPD card, with regard to the accident having taken place with a bus. Though that could have been rectified subsequently also, however, in view of the fact that eventually the FIR was also registered upon an application having been made to the SHO on 26.09.1990, with copies thereof having been sent subsequently to the IGP/SSP on 27.10.1990, and further, the fact that respondent no.1 never once complained of a false FIR having been registered against him, this Court would not be able to accept the contention of learned counsel for the respondent, that admission of guilt by respondent no.1 before the learned JMIC in criminal proceedings, was the result of any connivance.

Factually, the orders and judgment of the learned JMIC, which are not denied by learned counsel for the respondent, are dated 27.01.1993, whereas the impugned Award is dated 03.03.1993, i.e. about 1 ½ months

later, and as such the possibility of connivance cannot be entirely ruled out, in view of the fact that with no evidence led before the Tribunal by which the insurance company would be absolved of its liability to indemnify respondent no.2, it had become obvious to respondents no.1 and 2 that any compensation awarded would be paid by the insurance company only. Thus, with the driving licence of respondent no.1 and a copy of the insurance policy having been proved before the Tribunal, in case the compensation assessed had been awarded to the appellant, naturally it would be the insurance company, i.e. respondent no.3, which would eventually bear the brunt of payment of such compensation.

17. Yet, what this Court cannot ignore, is the fact that by admitting his guilt, there was no certainty that respondent no.1 would have simply been released on probation by the learned JMIC, upon his conviction thereafter. Of course, again it cannot be wholly ruled out that he possibly being a first time offender, may have hoped for such a sentence. However, I find it difficult to hold that there would have been no chance of his conviction, upon his guilt, even though, possibly, there could have been some indication to that effect. However, that is in the realm of conjecture, on account of which this Court would not accept the contention of learned counsel for the respondent-insurance company, with regard to the alleged connivance between the appellant and respondents no.1 & 2.

18. Coming then to the issue of why the application under Order 41 Rule 27 CPC, filed along with this appeal, should be accepted when the orders and judgment of the learned JMIC, could have been also led by way of evidence before the Tribunal, the Award of the Tribunal being 1½

months later. Unfortunately, with the record of the Tribunal burnt and no 'zimni' orders passed by the Tribunal having been produced before this Court, even by the respondent-insurance company, it cannot be determined as to when evidence was closed by the Tribunal, after which arguments were heard by it before the Award was pronounced on 03.03.1993.

Hence, keeping all the above facts in view, as regards the issue of negligence, I firstly allow the application under Order 41 Rule 27 CPC and take on record photocopies of the orders of the learned JMIC, Chandigarh, dated 27.01.1993, as Exhibits CA1 to CA3, by which respondent no.1 pleaded guilty to the charges framed against him, as also the judgment accordingly convicting him for the commission of offences punishable under Sections 279, 337 and 338 IPC, as also the order by which he was simply released on probation for a period of one year, upon furnishing a bond of Rs.1000/- subject to his good behaviour during the aforesaid period.

To repeat, these orders have not been denied by the respondents and as such, even from the arguments of learned counsel for respondent no.3, the orders *per se* are admitted.

Thus, with the orders being admitted, I see no reason to disallow the application for leading even photocopies of the orders as such additional evidence.

19. Consequently, upon perusal of the additional evidence led by the appellant, the conclusion drawn by this Court is that the negligence in causing the accident having been admitted in criminal proceedings by respondent no.1, the finding of the Tribunal on that issue, to the effect that

respondent no.1 was not guilty of negligent driving, cannot be sustained. Hence, the finding of the Tribunal on the issue of negligence is reversed and respondent no.1 is held guilty of negligence in driving the car bearing registration no.PB-10-0779, thereby causing the accident in question, in which the appellant was injured.

20. Coming then to the question of quantum of compensation.

As regards the amount of Rs.5000/- awarded by the Tribunal by way of expenditure on medicines, treatment and “rich diet”, I see no reason to award any amount towards medicine and treatment, with the Tribunal having found that the expenditure on medicines had been reimbursed to the appellant by the University that employed him. His treatment from a Government Hospital would have been free of charge or with very minimum charges and thereafter, what he actually would have spent on, as was not reimbursed, would only be the special diet that he may have had to take, for which Rs.3000/-, in the year 1993, is considered adequate compensation.

As regards the functional disability of 40% of the lower limb as assessed by the doctor and accepted by the Tribunal, I find Rs.35,000/- to be sufficient compensation for such disability to the ankle, as against the Rs.50,000/- awarded by the Tribunal, the disability not being qua the whole body.

As regards absence from duty for a period of two months, Rs.5000/- was awarded by the Tribunal, with the records burnt, presumably on the assumption that the appellant may have had to avail of extra ordinary leave (without pay) and his pay having been proved to be Rs.2100/-. That sum of compensation also requires no interference with.

Coming last then to the issue of whether Rs.5000/- was sufficient compensation for the pain and suffering that the appellant went through.

In this regard, I agree with learned counsel for the appellant, that with the trauma of the accident, him being taken to two hospitals (even with no treatment at the first), having to undergo two operations including insertion of a plate and screws in his foot and removal of some supportive 'hardware' and the pain that such operations and procedures (as also the accident itself) would have caused him, along with the suffering he went through for a period of 9 months between 12.09.1990 uptill his second operation and recovery in June 1991, compensation to the tune of at least Rs.35,000/- should have been awarded to him.

Consequently, the compensation assessed by the Tribunal under the head of pain and suffering, is enhanced from Rs.5000/- to Rs.35,000/-, with the total compensation now payable to the appellant coming to Rs.78,000/- under different heads, as follows:-

i)	Pain and suffering	Rs.35,000/-
ii)	40% functional disability of the lower limb	Rs.35,000/-
iii)	For special diet	Rs.3000/-
iv)	In lieu of salary for two months	Rs.5000/-
Total		Rs.78,000/-

Thus, though the amount awarded by the Tribunal towards the functional disability of the lower limb, has been reduced by this Court from Rs.50,000/- to Rs.35,000/-, the compensation for pain and suffering has been increased from Rs.5000/- to Rs.35,000/-. Consequently, this Court has increased the compensation assessed by the Tribunal (though held to be not

payable by that Court), of Rs.65,000/-, to Rs.78,000/-.

Somehow, even while noticing that reimbursement for expenses on medicines had been made by the University where the appellant is employed, and that he got follow-up treatment in the hospital in the University, and as such, no compensation is admissible, eventually Rs.5000/- had been awarded under the head of “Medicines, treatment and rich diet”, which has now been reduced to Rs.3000/- by this Court, which has been awarded only for the special diet that the appellant obviously would have been required to take, during his treatment and possibly thereafter.

21. Since compensation was not paid to the appellant on account of the dismissal of the claim petition by the Tribunal, on the issue of negligence, obviously he is to be awarded interest also on the aforesaid sum but in view of the fact that this appeal has remained pending for the past 23 years, it would be unfair to foist the respondent-insurance company with a higher rate of interest and as such, even though in old cases pending in this Court, usually this court is awarding interest @ 6% per annum on the enhanced amount of compensation, since in this case compensation was never paid and is being held to be now payable, including the enhanced amount of Rs.13,000/-, interest is ordered to run on the entire compensation @ 4% per annum, from the date of the filing of the claim petition, till the date of realisation thereof.

18. The appeal is accordingly allowed to the above extent, but with no order as to costs.

October 25, 2016.

Davinder Kumar

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No