

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No. 1075 of 1991
Date of Decision : May 05,2016

Hav. Jagan Nath APPELLANT

VERSUS

Bhushan Goyal and others RESPONDENTS

CORAM : HON'BLE MRS. JUSTICE LISA GILL

1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO
2. To be referred to the Reporter or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

...

Present: Ms. Rajni Paul, Advocate
Advocate, for the appellant.

Mr. Banni Thomas, Advocate
for respondent No.3.

...

LISA GILL, J. (Oral)

This appeal has been preferred by the claimant-Hav. Jagan Nath praying for enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Bathinda, vide order dated 2.5.1991.

It is submitted that the appellant sustained injuries in a

motor vehicle accident which occurred on 18.11.1987 at 6:15 a.m. due to rash and negligent driving of Maruti car No. PAW-1074 by respondent No.2. The appellant was hospitalized from 18.11.1987 till 25.2.1988 which is substantiated by the evidence of AW4 Major C.S.Joshi who has endorsed the factum of admission of the appellant for the said period and it was further stated that the claimant was attended by Lt. Col. K.C.Panda and subsequently by Major C.S.Joshi. Multiple injuries were suffered by the appellant. He claimed compensation to the tune of ₹5,50,000/- for the injuries suffered by him stating that he had been permanently disabled on account of the fractures sustained, thus preventing him from resuming his duties. Appellant's claim was resisted by the respondents. The learned Tribunal framed the following issues on the basis of the pleadings of the parties:-

1. Whether the petitioner sustained multiple injuries in the motor vehicular accident resulting permanent disability due to rash and negligent driving of the Maruti car PAN 1074 driven by Harkrishan Lal Sharma respondent No.2 on 18.11.87 in the area of Bathinda Cantt, OPA.
2. To what amount of compensation the petitioner is entitled and to and from whom? OPA.
3. Whether the petitioner has no locus-standi and cause of action to file the present petition against the respondents? OPR.
4. Whether the application is bad for mis joinder of un-necessary parties? OPR

5. Whether the application is not maintainable in the present form? OPR.
6. Whether the petitioner is estopped from filing the petition due to his act and conduct? OPR.
7. Whether the application is filed in collusion with respondents No. 1 and 2? OPR-3.
8. Whether the car driver was having valid driving licence ? OPR-1.
9. Whether the car involved in the accident was being used as taxi without any payment. If so its effect ? OPR.
10. Relief.

Evidence was led by the parties and the learned Tribunal on considering the entire facts and circumstances of the case awarded a sum of ₹50,000/- to the appellant on account of the injuries sustained by the him. Aggrieved therefrom the appellant has prepared the instant appeal praying for enhanced compensation.

It is argued that the appellant suffered fractures of two bones of his left leg and due to this reason, he was placed under category 'C' by the military authorities as a result of which he would not be entitled to be retained in the military, therefore, the appellant is entitled to a much higher compensation. Furthermore, no compensation has been awarded for the loss of future prospects, loss of income, pain and suffering etc., thus learned counsel for the appellant prays for enhancement of compensation awarded to the appellant.

Learned counsel for respondent No.3 disputes the said averments and submits that there is no evidence on record to substantiate the above-said assertions. Compensation has been rightly awarded by the learned Tribunal and calls for no further enhancement.

Heard learned counsel for the parties and perused the record.

It is an undisputed fact that the appellant himself while appearing as AW2 has admitted that he could walk in a normal manner without any aid. Furthermore, no deduction has been made in his salary after his accident and he continues to be in military service. The appellant has further admitted that he is getting all the facilities and benefits which he used to get prior to the accident. There is no evidence on record to show that the appellant has suffered any permanent disability due to this accident. It is candidly conceded that there is neither any assessment of the permanent disability, if any, suffered by the appellant, nor is there any certificate issued by any authority in this respect. The medical expenses incurred by the appellant were admittedly taken care of by the military authorities. Reliance by learned counsel for the appellant, on the statement of AW4 C.S.Joshi to submit that the appellant was placed in Category 'C' is of no avail in the absence of any record to indicate the placing of appellant in Category 'C' from Category 'A'. Still further the averment that the appellant could not carry on in military service

due to this reason is negated by his own statement. There is not an iota of evidence on record to indicate that future prospects/promotion of the appellant have been adversely affected in any manner due to the injuries in question, which admittedly have not caused any permanent disability. Faced with this situation, learned counsel for the appellant submits that the appellant would still be entitled to a higher sum of compensation on account of pain and suffering as the appellant was admittedly hospitalized for a period of about three months.

In the facts and circumstances of the case as noted above, especially the undisputed fact that the appellant suffered multiple fractures of the bones of his left leg. He underwent procedures and was indeed admitted in the hospital from 18.11.1987 to 25.2.1998, thus the appellant is held entitled to a sum of ₹75,000/- instead of ₹50,000/- as compensation on account of pain and suffering. Keeping in view the factual matrix of the case, the appellant shall also be entitled to interest @ 6% p.a. on the enhanced amount of compensation from the date of filing of the appeal till its realization. The appellant is not entitled to compensation on any other account as claimed by him for the reason that there is no evidence on record to show that he has suffered any permanent disability or has been incapacitated from continuing in military service.

With the above said modification in the quantum of compensation awarded by the learned Motor Accident Claims

FAO No. 1075 of 1991

[6]

Tribunal, Bathinda vide award dated 2.5.1991, this appeal is disposed of.

05.05.2016
rupi

(LISA GILL)
JUDGE