

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO-574-2000 with
XOBJC-59-CII-2008**

Date of decision: 19.05.2016

Harpreet Singh

...Appellant

Versus

Mangat Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. P. L. Verma, Advocate
for the appellant.

Mr. Sandeep Verma, Advocate and
Mr. Adish Gupta, Advocate
for respondent No.1/Cross-objector.

Mr. V. K. Garg, Advocate
for respondent No.3.

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JITENDRA CHAUHAN, J.

CM No.3167-CII of 2000

Prayer in this application, filed under Order 41 rule 27 read with Section 151 CPC, is for leading the additional evidence.

The learned counsel for the applicant-appellant refers to Annexure A-1 (invoice-cum-delivery challan) and states that at the

time of alleged accident, the offending vehicle owned by the appellant was being loaded with goods of M. S. Ingot at the factory of M./s J. R. Alloys casting (P) ltd. Ind. Area. Bhiwani for delivery to M/s Capital Ferro Alloys (P) Ltd. and as such truck of the appellant was falsely implicated in the instant case. The learned counsel submits that the appellant had handed over the documents to the counsel appearing for him before the learned Tribunal, but he forgot to produce the same.

Heard.

The only reason put forth in the application for leading the additional evidence is that the applicant had handed over the aforesaid document to his counsel appearing for him before the learned Tribunal, but he forgot to produce the same. However, this plea is not available with the applicant at this belated stage. No affidavit of the learned counsel, who forgot to produce documents, has been placed on record. A bare perusal of the award shows that the applicant had also raised this plea before the Tribunal that the offending vehicle was not involved in the accident. However, no corroborative evidence or document was brought on record by the applicant in support of his plea. Further, from the application it reveals that there is no mention about the time when the offending vehicle was being loaded as alleged by the applicant.

In view of above discussion, this Court feels that this

application seems to be an afterthought, just to get exonerated from the liability to pay the compensation, therefore, no case is made out for leading the additional evidence.

CM stands dismissed.

Main Case

The present appeal filed by the owner is directed against the award passed by learned Motor Accidents Claims Tribunal, Faridabad, ('the Tribunal', for brevity) vide award dated 16.08.1999 whereby the claim petition was partly allowed.

The Cross-objection has been filed by respondent No.1 for seeking enhancement of compensation in the aforesaid award.

The learned counsel for the appellant states that the truck/dumper bearing registration No.DL-1G-1698 was not involved in the alleged accident.

The learned counsel for respondent No.1/Cross-objector states that the learned Tribunal erred in not appreciating the entire facts and circumstances of the case and the fact that due to accident in question respondent No.1 sustained multiple injuries which resulted into amputation of his right leg and suffered 80% disability. Therefore, the compensation awarded by the learned Tribunal is liable to be enhanced.

The learned counsel for respondent No.3 states that the

driver of the offending vehicle i.e.dumper was not holding a valid driving licence, therefore, there is a breach of the terms and conditions of the insurance policy and as such, the insurance company has been rightly absolved by the learned Tribunal.

I have heard the learned counsel for the parties and perused the record.

From the facts on record the involvement of the vehicle is fully established. There is no dispute with regard to the disability to the extent of 80%, therefore, considering the disability, ₹1,60,000/- towards the disability is awarded to respondent No.1, in view of the judgment passed in ***K. Gowthami (minor) through maternal grandmother and another VS. New India Assurance Co. Ltd and another***, Civil Appeal Nos.5846-5851 of 2013, decided on 15.07.2013.

Further, considering the nature of injury and period of hospitalisation, this Court feels that another amount of ₹50,000/- towards pain and suffering payable to respondent No.1 would meet the ends of justice. Ordered accordingly.

As per the testimony of treating doctor PW2-Dr. P. S. Gill, respondent No.1 had remained under his treatment for crushed injury on his right leg for which he had to be amputated upto knee level. Thus, this Court feels that amount of ₹1,00,000/- towards loss of enjoyment of life would meet the ends of justice.

In view of the above, the respondent No.1/cross-objector is held entitled to the enhanced compensation of ₹3,60,000/- [(₹1,60,000/- towards disability) + ₹50,000/- (enhancement towards pain and suffering) + ₹1,00,000/- (towards loss of enjoyment of life) + ₹50,000/- (towards the artificial limb)], as indicated above, over and above the amount already awarded by the learned Tribunal, which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, he shall also be entitled to interest as indicated in the award i.e. 7.5% per annum, from the date of filing the present appeal, till its realization.

However, keeping in view the price of the artificial limb, which is stated to be ₹25,000/-; age of respondent No.1-injured as 52 years; and the life of the limb being 5 to 7 years, out of aforesaid ₹50,000/- paid towards artificial limb, ₹25,000/- may be incurred for the first time for fixing artificial limb. The cross-objector is directed not to spent this amount under any circumstances other than the purpose indicated above. Remaining ₹25,000/- shall be put in fixed deposit and the dividend thereupon shall take care of the price inclination when the second replacement of the artificial limb will be required by the cross-objector.

Further, as per the statement of RW2-Padam Singh, Record Keeper from Transport Department, Mall Road, Delhi, it emerges that

the driving licence brought on record by the driver of the offending vehicle was a fake document. Therefore, the learned Tribunal rightly held that there is breach of terms and conditions of the insurance policy and absolved the insurance company to pay the compensation.

With the aforesaid modification in the impugned award, the cross-objection is partly allowed as indicated above and the appeal is dismissed.

The statutory amount deposited by the appellant be placed at the disposal of the Tribunal for disbursement.

19.05.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**