

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

FAO-4703-2004

Date of decision : 4.11.2016

Sher Singh Panjeta

... Appellant

Versus

Rakesh Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. R.S.Mamli, Advocate
for the appellant.

Mr.Neeraj Khanna, Advocate
for respondent no.2.

AMOL RATTAN SINGH, J.

This is an appeal by the appellant-claimant (hereinafter referred to as the 'claimant') before the learned Motor Accident Claims Tribunal, Yamuna Nagar (hereinafter referred to as 'Tribunal'), seeking enhancement of the compensation of Rs.62,500/- awarded to him vide the impugned Award of the Tribunal, dated 20.07.2004.

The facts leading up to the filing claim petition, as taken from the impugned Award, are that the claimant stated that on 27.11.2002 he was going to Shimla and boarded bus no.HP-12/4103 from Ambala Cantt to Chandigarh. Allegedly the bus was being driven in a rash and negligent manner by respondent no.1 herein and though he was asked to drive the bus carefully and slower, however, he did not heed the advice and when the bus reached near Nalagarh at 3.30 am, respondent no.1 could not control the bus,

as a result of which its tyre came on to the divider in the road, due to which the bus turned turtle and the persons sitting in it received injuries, including the claimant. He was taken to the Government Hospital, Sector 32, Chandigarh, by somebody and was discovered to have suffered injuries on his foot and other parts of the body.

He consequently filed the claim petition under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”), on 17.05.2003, claiming a compensation of Rs.4 lacs.

In response to the notice issued, both the respondents, i.e. the driver and owner of the bus in question, filed a written statement admitting to the accident but asserted that the bus was being driven on the correct side of the road but due to a bolt and “*kamany*” (suspension bar) breaking, and due to imbalance, the bus struck against something and turned turtle.

On the aforesaid pleadings, the following issues were framed by the learned Tribunal:-

- “1. Whether the petitioner received injuries by the use of Bus no. HP 12/4103? OPP
2. If issue no.1 is proved, to what extent and to what amount of compensation the claimant is entitled?OPP
3. Relief.”

3. By way of evidence, the claimant examined himself and produced tickets purchased by him for travelling in the bus, as Exs.P36 to P43. He also examined Dr. R.K. Mahajan, a Chemist, Vijay Chopta and Dr. Deepan Jain as witnesses, who are all stated to have supported his case, as stated in the Award. Dr. Deepan Jain, PW5, proved a disability certificate,

Ex.P44.

Though the impugned Award states that both parties led their respective evidence, however, no evidence led on behalf of the respondents is referred to in the Award.

In this regard, it needs to be stated here that this is one of those cases the records of which were burnt in the fire that took place in the record room of this Court on 30.01.2011 and as such, with the records of the Tribunal also having been destroyed, the exact evidence led on behalf of the respondents is not determinable. However, in view of the fact that it was a claim petition filed under Section 163-A of the Motor Vehicles Act, and not under Section 166 thereof, the only thing that was actually needed to be proved was that the injuries sustained by the claimant, were so sustained due to a motor vehicle accident that took place involving the bus in which he was travelling.

The accident itself not having been denied and no stand seen to have been taken by the respondents, that the injuries were not sustained in the accident, obviously no further evidence in that regard was required to be led.

That issue was held proved in favour of the claimant, by the Tribunal also.

4. On the question of compensation, the claimant contended that he had spent Rs.5000/- on his treatment in Sector 32, Chandigarh and had further spent Rs.50,000/- on his treatment in Mahajan Hospital (no place given).

However, as regards the hospital of Sector 32, Chandigarh, he could not produce any bills and stated that he was alone at the time when he was admitted there. Thereafter, he produced bills of Rs.17,500/-. (Though the

Award does not specify as to which hospital these bills pertain to, they are presumably from the Mahajan Hospital, because a doctor from that hospital is also seen to have been examined as per the Award).

5. Having appraised the evidence, the Tribunal came to the conclusion that it being a claim petition under Section 163-A (and not under Section 166) of the Act, compensation could only be awarded as per the Schedule and the income of the claimant could not be taken to be more than Rs.40,000/- per annum.

Accepting his age to be 50 years, the Tribunal applied the following formula to compute the loss of the income:- $\text{Rs.}400 \times 10 / 100 = \text{Rs.}40,000/-$. Though the calculation is obviously incorrect, however, the basis seems to be loss of income for a certain period.

Other than the loss of the income, he was awarded Rs.5000/- for pain and suffering and Rs.17,500/- by way of medical expenses.

6. Consequently, awarding a total amount of Rs.62,500/- as compensation, the claim petition was allowed to that extent, with the claimant also held entitled to interest @ 9% per annum, on the amount of compensation awarded, running from the date of the filing of the claim till the realisation of the awarded amount.

7. Mr. R. S.Mamli, learned counsel for the appellant, submitted that this Court would not be fettered in enhancing compensation only in terms of the second Schedule of the Act of 1988, even though it was a claim petition filed under Section 163-A of the Act.

Without referring to any specific judgment, he however submitted that it has been held so by the Supreme Court, in view of the fact that the Schedule was introduced into the Act in 1994, whereas the accident

took place in 2002, i.e. 8 years later.

He further submitted that as is obvious from the Award of the Tribunal, it had been proved from the disability certificate, Ex.P44, that the claimant had suffered a permanent disability of 12%, due to amputation of the 4th and 5th toe of his right foot, other than a compressed fracture of the spine (vertebrae D12/L1).

8. On the other hand, Mr. Neeraj Khanna, learned counsel for respondent no.2, i.e. the Himachal Road Transport Corporation, submitted that the claim petition having been filed under Section 163-A, with no negligence proved, the claimant could not ask for more than what is provided in the Schedule, which is applicable only in cases of a “no fault liability”.

9. Having considered the aforesaid arguments of learned counsel as also the Award of the Tribunal, I agree with learned counsel for the claimant, to the extent that strictly following the compensation amounts given in the second schedule to the Act of 1988 is not possible, except in accidents which took place within 3 to 4 years of the Schedule having been enforced, i.e. w.e.f. 14.11.1994. Thereafter, if nothing else, the Tribunal/Court would be bound to at least factor in a certain amount of inflation as regards the compensation amounts stipulated in Clauses 3, 4, 5 & 6 of the Schedule.

Of course, a basic departure from the formula provided in the Schedule is not possible, in view of the fact that the Schedule is based upon Section 163-A, which was also incorporated with effect from the same date in the Act, on the principle of providing compensation to the victims of motor vehicle accidents / their legal heirs, on the principle of a “no fault liability”.

Thus, when the fault of the driver of the vehicle involved in the

accident is not to be established, obviously compensation against the owner (and the driver) cannot be awarded on the same principle as it is awarded under Section 166 of the Act, wherein the fault and negligence of the driver of the vehicle concerned is necessarily to be established, in order to foist the driver, the owner and the insurer of the vehicle with 'unlimited' liability, as per the circumstances of the case.

10. Hence, departing from the structured formula provided in the second Schedule is not possible, though with the accident in question having taken place in the year 2002, the figures given in Clause 3 to 6 would need to be enhanced suitably, factoring in inflation to some extent at least.

This view has also been taken by this Court in *FAO no.929 of 2001 Mela Ram and others Vs. Satpal and others, decided on 04.10.2016*; based upon the observations of the hon'ble Supreme Court in *Master Mallikarjun vs. Divisional Manager, the National Insurance Company Limited and another 2013 ACJ 2445*. However, in *Mela Rams'* case, the accident having taken place in the year 1997, no benefit of any inflation was awarded by this Court.

11. Coming to the facts of the present case, it is seen that indeed a 12.5% disability is shown to have been proved before the Tribunal, by way of a disability certificate, Ex.P44, in respect of which PW5, Dr. Deepan Jain, testified. However, the contents of the certificate cannot be seen by this Court as the records of this appeal were burnt, including the record before the Tribunal, as already noticed. Thus, though the paper book to the extent of the impugned Award has been reconstructed from the brief of the learned counsel, no evidence that was led before the Tribunal is available.

Yet, that again would not make much difference in view of the fact that it was not disputed that the said certificate, showing amputation of the 4th and 5th toe of the right foot of the claimant and compressed fracture of spine, involving one disk and a vertebrae, were proved. However, whether such disability can be taken to be 12.5% qua the entire body, or only qua the right limb (leg), remains to be seen.

12. As per the first Schedule to the Employees' Compensation Act 1923, in the case of a workman, amputation of two toes of one foot, excluding the great toe, through the metatarso and phalangeal joint, is shown to be a disability of 3% of the earning capacity of a workman.

In this respect it needs to be noticed that no source of income of the claimant has been discussed in the Award, though it is stated that he is an Advocate. As such, obviously he is not a workman who would lose his working capacity on the loss of two toes, except the ability to move about in a normal manner, which would not, in the opinion of this Court, be any loss of ability as far as his earning capacity as a lawyer goes.

However, obviously it cannot be lost sight of that he has lost two toes, as also developed a compressed spine, thereby restricting his ability to move about in a normal manner and perhaps in his sitting capacity, and it equally obviously having caused him pain and suffering.

Hence, taking into account the fact that Clause 4 of the second Schedule to the Act stipulates a maximum compensation of Rs.5000/- in respect of grievous injuries, taking into account the eight year period between the enactment of the second Schedule w.e.f. 14.11.1994 and the date of the accident, i.e. 27.11.2002, a sum of Rs.10,000/- is awarded to the claimant on

account of such pain and suffering.

13. As regards medical expenditure, a maximum of Rs.15,000/- has been stipulated in Clause 4(ii) of the Schedule, but since the Tribunal has already awarded Rs.17,500/- in terms of the bills produced by the claimant, nothing further needs to be awarded under that head.

Further, the Tribunal already having awarded Rs.40,000/- for loss of income, obviously for the period that the claimant remained hospitalised and was recovering from his treatment, nothing further can be awarded by this Court, he being an Advocate and not a workman, as already noticed.

14. In *Master Mallikarjun* supra, it was held that the Schedule (due to the fact that it had not been amended for more than 10 years), had become redundant, as regards the quantum of compensation, provided therein.

However, that was observed only with regard to the quantum of compensation provided therein and not with regard to the basic structured formula stipulated. In fact, Section 163-A (3) of the Act also provides for amendment of the Schedule from time to time keeping in view the cost of living, though the Central Government has not so far made any such amendment, despite almost 22 years have elapsed since the Schedule was introduced.

15. Be that as it may, keeping in view the fact that the only compensation, in terms of inflation, that can be increased by this Court, is with regard to the general damages suffered on account of the pain and suffering gone through by the claimant, this appeal is allowed to the limited extent that such compensation has been enhanced from Rs.5000/- to Rs.10,000/- as already held hereinabove, thereby increasing the total

compensation payable to the claimant, including what was awarded by the Tribunal, to Rs.67,500/-.

On the enhanced amount of Rs.5000/-, the claimant would be entitled to interest @ 6% per annum, running from the date of filing of the claim petition till realisation thereof.

He is also awarded costs of Rs.5000/-.

The appeal is thus, partly allowed to this limited extent.

(AMOL RATTAN SINGH)
JUDGE

November 04, 2016.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No