

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.406 of 2006

Date of decision : 05.02.2016.

Narpat Singh

.... Appellant

Vs.

Ram Chander and other

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

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

Present : Mr.Bhupesh Dogra, Advocate for
Mr.Amit Sharma, Advocate,
for the appellant.

Mr. Arjun Atri, Advocate,
for respondents No.1 and 2.

Mr. Vinod Chaudhary, Advocate,
for respondent No.3.

AMOL RATTAN SINGH, J.

Though a request for adjournment has been made, the same is declined in view of the fact that the appeal is pending since 2006 and a perusal of the order sheets reveals that after February 12, 2014, the matter has been adjourned time and again for no good reason .

2. The background leading up to the filing of the claim petition is that the appellant-claimant was riding (driving) his motorcycle bearing registration No.HR-04-A-1617 on 19.09.2003, coming from village Bagwali to his village Shahzadpur, stated to be at a moderate speed on the correct side of the road. At about 8:00 AM, when he reached in the area of village

Kakkarmajra, on the highway, a truck bearing registration No.HP-10-0908, driven by respondent No.1, allegedly in a rash and negligent manner, came from the opposite direction and by going on its wrong side, hit the motorcycle head on, due to which the appellant fell down in the ditches on the left side of the road, alongwith the motorcycle. The truck also came towards the side of the ditches and stopped.

3. The appellant was shifted to the General Hospital, Sector-6, Panchkula, by some passersby and his brother Kanwar Pal, where he was operated upon and a plate and rod were inserted in his right thigh.

At the time of hearing of evidence by the Tribunal, he was stated to be under treatment and had allegedly already spent a sum of Rs.1,00,000/- on his treatment, special diet, transportation, attendants etc.

The motorcycle is also stated to have been badly damaged, on which the claimant spent Rs.20,000/-.

He is stated to have been a man of 45 years of age then, otherwise enjoying very good health and physique. He is also stated to be cultivating his 20 acres of agricultural land and earning Rs.20,000/- per month, but on account of the injuries suffered, he became permanently disabled and confined to bed.

It was also claimed that he would have to suffer pain and suffering throughout his life and that his future had been ruined.

4. In the reply filed by respondents No.1 and 2, i.e. the driver and owner of the truck, they admitted the accident but stated that it took place due to the negligence of the appellant-claimant himself.

The Insurance Company, respondent No.3, in its written statement alleged collusion between the appellant and the first 2

respondents and further stated that respondent No.1 did not have a valid and effective driving licence.

5. On the necessary issues of negligence and entitlement for compensation having been framed, the learned Tribunal, on the basis of evidence led before it, held that the accident had indeed taken place due to the negligence of respondent No.1.

That issue, not being subject matter of any appeal brought to the notice of this Court, only the claim of enhancement of compensation, by the appellant in the present appeal, is to be considered by this Court.

6. The appellant had led evidence in the form of a certificate issued by the Medical Board of the Civil Hospital (Government Hospital), to the effect that he had suffered a 15% disability in his leg.

Even though no doctor of either the hospital, or the Board, was examined, but from the radiological report in the criminal case filed against respondent No.1 and from the disability certificate, the Tribunal accepted and held that the appellant had suffered a fracture on his hip bone and had consequently, suffered a disability to the extent of 15%.

7. The appellant admitted that his entire treatment at the Civil Hospital was free of cost and also could not show that he owned 20 acres of agricultural land from which he was earning Rs.20,000/- per month, or that he had suffered any loss of income.

Consequently, the learned Tribunal simply awarded a sum of Rs.25,000/- as lump-sum compensation, giving no break up for the same, thereby implying that the disability and the pain and suffering and any loss of income suffered by the appellant, were adequately compensated by the aforesaid sum of Rs.25,000/-.

All the respondents were jointly and severely held responsible to discharge the liability.

8. Before this Court, learned counsel for the appellant submitted that the lump-sum compensation awarded was highly inadequate, in view of the fact that the appellant obviously underwent a large amount of pain and suffering, firstly because of the trauma of the accident, then the fracture suffered by him, the operation to insert a plate and rod at his right femur and hip bone level, due to which his movements have been restricted throughout his life. Further, he was still under treatment at the time when evidence was led before the learned Tribunal in the claim petition, which had been filed on 28.10.2003 and was decided on 08.11.2005. As such, the pain and suffering and loss of income suffered by him during that period also need to be factored in.

In fact, as noticed by the learned Tribunal, he remained an out door patient for 7 to 8 months.

9. Learned counsel for the respondent does not dispute that a 15% disability was assessed and that the appellant may have remained an outdoor patient for a long time in view of the operation undergone and rod inserted.

He, however, submitted that with no evidence whatsoever, led on the income of the appellant, but as per his own admission, he being a landlord with 20 acres of agricultural land, no loss of income would have accrued to him, with his family looking after the land.

As regards the pain and suffering and disability, he submitted that the sum of Rs.25,000/- awarded was sufficient compensation assessed by the Tribunal, more than ten years ago, and as such did not require any further enhancement.

10. Having considered the Award of the Tribunal and the arguments made before this Court, in my opinion, the sum of Rs.25,000/- is not at all adequate compensation, in view of the pain and suffering that the appellant obviously went through and the permanent disability suffered by him.

Though the disability assessed, may not be a disability of 15% qua the whole body, yet, even if it is assessed at half the percentage qua the whole body, or up to the 10%, the total compensation, even in the year 2005, in my considered opinion, requires enhancement.

11. Though no amount has been awarded for loss of income in view of the fact that no evidence was led in that regard, the learned Tribunal should either have assessed the income of the appellant to be that of a daily wager, which is normally done, or, if he did not seem to be a daily wager, being a motorcycle owner etc., some loss of income should have been assessed in view of the fact that even for an agriculturalist, his contribution to the land would naturally have been nil for the period that he was under treatment, and thereafter, with a restricted hip movement, obviously the ability to even operate a tractor, or to perform other agricultural operations, would have gone down.

Therefore, in view of the fact that possibly the appellant is not a labourer, being a motorcycle owner and claiming himself to be an agriculturist, the loss of income for the period that he would have remained under treatment, still needs to be compensated.

Hence, whether being a labourer himself, or by way of employment of an additional hand to work in his fields, he would have had a loss of income for about at least 3 to 4 months, which as per the

approximate daily wage rates in 2005, would be about Rs.2300/- per month, as per the Minimum Wages notified by the Haryana Government.

Thus, taking that he would not have been functional properly for at least about 3-4 months, a sum of Rs.10,000/- is awarded on that count.

A sum of Rs.35,000/- is awarded by way of compensation for pain and suffering gone through on account of the accident, fracture and operation and its immediate aftermath. The sum of Rs.25,000/- awarded by the Tribunal, is assigned to be compensation for the disability suffered by him.

Thus, the amount of compensation awarded by the Tribunal is enhanced by a sum of Rs.45,000/- with the total compensation now awarded to the appellant being Rs.70,000/-.

The enhanced amount would carry an interest @ 6.5% per annum, running from the date of filing of the claim petition, to the time of the realization of the amount.

The appeal is party allowed to the above extent, with no order as to costs.

05.02.2016
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(AMOL RATTAN SINGH)
JUDGE