

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

FAO No.188 of 2012

Date of decision : April 22, 2016.

Devi Lal

.... Appellant

Vs.

Paramjit Singh and others

.... 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. Malkiat Singh, Advocate,
for the appellant.

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

Mr. Sandeep Suri, Advocate,
for respondent No.5.

AMOL RATTAN SINGH, J.

1. The appellant is in appeal against the Award of the learned Motor Accident Claims Tribunal, Fatehabad, by which he was awarded a total compensation of Rs.4,00,000/- for the injuries suffered by him in a motor vehicle accident that occurred on 28.12.2007.

As per the claim petition (which was decided alongwith four others, all of which arose out of the same accident), the appellant-claimant, Devi Lal, alongwith seven other persons, was proceeding to Chandigarh in a vehicle (Scorpio) bearing registration No.HR-62-2111, driven by respondent No.4, Balraj. At about 8:30 a.m., a light commercial vehicle bearing

registration No.PB-13N-5913, driven by respondent No.1 (Paramjit Singh) came from the opposite side and struck against the Scorpio vehicle, near Nirman Dhaba, after crossing village Chak Amritsaria.

The appellant and other passengers of the Scorpio were injured and were taken to the Civil Hospital at Samana, and as the other vehicle (the LCV Tata 407) was being driven negligently, as alleged, a criminal case was also registered against respondent No.1.

2. The appellant claimed Rs.15,00,000/- by way of compensation on account of the injuries sustained by him. The other injured persons filed separate claim petitions, seeking different amounts of compensation. No appeal filed before this Court, in respect of the other claim petitions, has been brought to my notice.

3. Respondents No.1 and 2, i.e. the owner and driver of the “offending vehicle”, stated that the accident actually took place on account of the rash and negligent driving of respondent No.4, as he was talking on a mobile phone while driving the Scorpio and that a false case has been registered against respondent No.1.

The insurance company with which the LCV was registered, i.e. present respondent No.3, filed a separate written statement, also taking a similar stand, further alleging that there was collusion between the claimants and the drivers and owners of both the vehicles. Additionally, it also pleaded that respondent No.1 was not holding a valid driving licence.

The driver and owner of the Scorpio vehicle also filed a separate written statement and essentially took the same plea as was taken by the appellant-claimant, to the extent of the negligence of respondent No.1.

4. The usual issues, with regard to negligence and the amount of compensation payable, if any, having been framed by the Tribunal, as also with regard to the injuries suffered by the claimant, the issue of negligence in causing the accident was decided in favour of the appellant, holding that it was respondent No.1 who was guilty of negligence in driving the aforesaid LCV Tata 407 vehicle, bearing registration No.PB-13N-5913.

No appeal has been filed against that finding of the Tribunal, by respondents No.1 to 3, i.e. the driver, owner and insurer of the vehicle.

5. Coming therefore to the issue of adequacy/inadequacy of compensation awarded to the appellant herein, the relevant witnesses, with regard to the nature of injuries suffered by him, would be the doctor who testified thereto, as also the appellant himself, with regard to the expenses he incurred on his treatment.

As per the appellant, after the accident he was taken to Civil Hospital, Samana, where he was medico-legally examined and thereafter, he was taken to Abrol Hospital, Fatehabad, where he remained admitted for one day and was thereafter referred to the Post Graduate Institute of Medical Sciences, Rohtak, where he was operated upon and remained admitted, from 29.12.2007 to 24.01.2008.

Thereafter, he was advised weekly/fortnightly follow-up treatment. At the time of his deposition, the appellant stated that he was still under treatment as he had become permanent disabled. He claimed that he had spent Rs.4,00,000/- on his treatment and that he had still to undergo another operation. He submitted receipts/bills of medicines purchased, as also the discharge slip and OPD slips issued by the hospital.

He further stated that he was practising as an Advocate, earning

Rs.20,000/- per month and that he was looking after his land comprising 7 acres.

6. Dr. Kulbushan Garg, Medical Officer, who was also a member of the Medical Board that had examined the appellant, testified that on 07.04.2010, i.e. about 2 years and 3 months after the accident, he had examined the appellant and found him to be having the following disability:-

“An operated case of fracture acetabulum with AVN head femur right with plate in situ flexion right hip limited. No internal and external rotation right hip with shortening of right leg 1½ inch with moderate pain and wasting of muscle.”

The disability was assessed to be to the extent of 36%, in respect of which a disability certificate was also proved by him.

7. One Dr.M.M.Pahwa, an Ortho Surgeon of a private hospital, was also examined by the appellant, who stated that on 13.03.2009 he had issued an “estimate” for further surgery of the appellant and found that he was suffering from an old fracture of the acetabulum and that his hip joint was not working well and he had also developed secondary osteoarthritis of the hip joint. Consequently, his situation had deteriorated, and he was advised complete hip replacement for better living. An estimate of Rs.3,00,000/- was given by the doctor for the hip replacement and its surgery etc.

This witness further stated that as per record, the appellant had also already got an opinion for total hip replacement, from the Medical College at Rohtak, which was proved by him to be Ex.P81.

8. Having considered the aforesaid evidence, the Tribunal held that the testimony of Dr.Pahwa was of not much help to the claimant, as it was not clear as to whether, if the same treatment was taken from a

Government Hospital, the same expense would have been incurred by him or not. Therefore, observing as above, the Tribunal held that the appellant being an Advocate, having undergone the aforesaid surgery and not being able to lead a completely normal life, and not being able to 'earn properly', a sum of Rs.1,50,000/- would be adequate for future surgery, hospital stay, operation fee, transportation, physiotherapy.

The Tribunal noticed that the appellant had produced bills to the tune of Rs.85,000/- but had not examined any person to prove the said bills. Consequently, a sum of Rs.50,000/- was awarded on “guess work”, by the Tribunal, on account of the actual expenses incurred on medicines etc., other than the hip surgery to be undergone by him.

Rs.40,000/- was awarded for loss of income during the period that the appellant remained admitted in hospital, on the basis of income tax returns filed by him, showing an approximate income of Rs.14,097/- per month (annual income Rs.1,69,170/-).

The break-up of the total compensation awarded by the Tribunal was given as follows:-

“a)	Permanent disability	Rs.1,00,000/-
b)	Amount spent on medicines	Rs.50,000/-
c)	Amount to be spent on future treatment	Rs.1,50,000/-
d)	Pain and suffering, attendant & transportation etc.	Rs.60,000/-
e)	Loss of income	Rs.40,000/-
Total		Rs.4,00,000/-”

Interest @ 7% per annum was also awarded on the aforesaid amount, running from the date of institution of the claim petition till its

realization.

Respondents No.1 to 3 were held jointly liable to pay the compensation, after holding that no breach of policy could be proved in any manner, by respondent No.3.

9. Before this Court, it was submitted by the learned counsel for the appellant that the appellant still had to undergo further treatment, after the closing of the evidence before the learned Tribunal. He also sought to place on record the subsequent bills paid by the appellant, to prove the same.

By an order dated 20.05.2014, this Court referred the matter back to the Tribunal, granting one effective opportunity to the appellant to lead any evidence with regard to the aforesaid contention.

Pursuant to the said order, the appellant led further evidence before the Tribunal, on the basis of which a report dated 31.10.2014 was submitted by the Tribunal to this Court.

A perusal of the said report shows that the appellant examined one Dr.Nishikant Kumar of the All India Institute of Medical Sciences, New Delhi, as PW17, Rajbir Singh, an employee of Healing Touch Surgicals, as PW18, Amit Choudhary, employee at South Delhi Medicos as PW19, Rajender Sethi, of Sethi Departmental Store, as PW20; one Balraj son of Mam Chand as PW21 and Dr.Devender Singh, of Holy Hospital, as PW22. He also submitted documents exhibited as Exs.P181 to 223, as also other documents simply marked as A1 to A8.

The respondents led no evidence at this stage.

10. From the aforesaid evidence, the Tribunal calculated that a sum of Rs.2,05,405/- had been spent by the appellant, with no rebuttal to the aforesaid claim.

It was opined by the Tribunal, that keeping in view the nature of injuries suffered by the appellant, it was possible that the aforesaid sum may have been spent by him on further treatment.

11. Thereafter, when the matter came up for arguments again before this Court, Mr. Malkiat Singh, learned counsel for the appellant, drew attention to the testimony of PW17, Dr.Nishikant Kumar from the All India Institute of Medical Sciences, New Delhi.

As per the doctor, the appellant underwent total hip replacement of the right hip on 06.01.2011 and was admitted in the new private ward of AIIMS, from where he was discharged on 15.01.2011 in a satisfactory condition. He proved the discharge card as Ex.P181.

The witness further proved a receipt of Rs.400/- (Ex.P182) and bills, Exs.183 to 185, issued by the said hospital. He also proved bills exhibited as Exs.P182 to 211 and stated that the medicines described in these bills, were prescribed by the hospital. He deposed that these bills included room charges, operation fee, laboratory tests and blood bank charges.

The doctor further testified that normally, the life span of an artificial hip is about 25 years, after which it has to be replaced.

On cross-examination, the witness stated that he had himself treated the appellant, though he admitted that the bills, Exs.P182 to P211, did not bear his signatures and were not issued by him. He, however, denied that exaggerated bills had been issued to help the petitioner, “who happens to be an Advocate”.

12. A perusal of the testimonies of the other witnesses that were examined by the Tribunal, in the second round of evidence led before it,

(upon directions of this Court), shows (as already noticed) that PW18 was one Rajbir Singh, employee of Healing Touch Surgical of Pitam Pura, Delhi, who testified that the hip implant was purchased from their shop by the appellant, for a sum of Rs.1,10,000/-. He proved bill Ex.212 in this regard and stated that it was issued by his firm.

On cross-examination, this witness stated that he had been working with the said firm since 2008 and though Ex.P212 did not bear his signatures, it was issued by his senior, D.D.Gulati.

The witness admitted that he had not brought any authority letter from the owner of the firm. He also deposed that he did not know the appellant personally.

He denied that the aforesaid bill had not been issued by their firm.

13. Similarly, PW19 was one Amit Choudhary, an employee in South Delhi Medicos, Gautam Nagar Complex, New Delhi, who also deposed with regard to the veracity of some other bills issued by his firm/shop.

On cross-examination, this witness also stated that the bills did not bear his signatures but bear the signatures of the Pharmacist. He also denied that the bills were simply issued to help the appellant.

To the same effect was the testimony of PW20, who was a witness from a different departmental store, who testified with regard to bill Ex.211.

PW21 was one Balraj who swore an affidavit that he was running his vehicle as a Taxi and had been hired by the appellant on nine dates, to visit hospitals at Delhi, Agroha, Chandigarh and Rohtak (from

Fatehabad) and that he had charged Rs.3600/- from the appellant for each visit to Delhi, Rs.3700/- for each visit to Chandigarh, Rs.800/- for Agroha and Rs.2400/- for Rohtak.

The affidavit also states that he had issued receipts Exs.P213 to P221, in this regard.

In cross-examination, he admitted that he did not have any route permit for running his vehicle as a Taxi and the petitioner is his neighbourer. He, of course, denied having issued false bills.

PW22 was Dr. Devender Singh, Holy Hospital, Fatehabad, who testified that he had conducted physiotherapy upon the appellant from 24.01.2011 to 25.03.2011 and that he had charged Rs.250/- per visit. He testified that the treatment charts, Exs.P222 and P223, were issued by him, under his signatures.

On cross-examination, the witness stated that he did not know the appellant earlier and that he had seen the medical report and medical advice for the treatment of the patient.

14. Learned counsel for the appellant, in the light of the aforesaid evidence, submitted that apart from the money actually already spent by the appellant, duly proved before the Tribunal, it was obvious that even the artificial hip that had been implanted, would need replacement after 25 years. He submitted that at the time of the accident, the appellant was about 43 years of age and that he had been suffering since then, leading up to his hip replacement, in 2011, almost four years after the accident.

Mr. Malkiat Singh, therefore submitted, that the amount of Rs.60,000/- awarded for pain and suffering, including therein the charges for transportation and for an attendant, were highly inadequate, as was the sum

awarded for future treatment. As regards the actual amount spent, learned counsel submitted that though the appellant had actually spent much more, obviously he could not prove it beyond the amount contained in the bills which were produced before the Tribunal, in the first round of evidence and in the second.

15. Mr. G.D.Gupta, learned counsel for respondent No.3, i.e. the insurance company that had insured the “offending vehicle”, submitted that other than the fact that the Tribunal had already awarded Rs.1,50,000/- for treatment in the future, the compensation awarded under other heads is also sufficient, especially as the appellant being an Advocate, would not be hindered at least in his profession.

He, therefore, prayed for dismissal of the appeal.

16. Having heard learned counsel for the parties and having perused the impugned Award, as also the evidence led in 2014, pursuant to the order of this Court dated 20.05.2014, in my opinion, the appeal deserves to be partly allowed, to the extent of what should be awarded by way of pain and suffering, as also with regard to the differential on the amount awarded by the Tribunal for future treatment (Rs.1,50,000/-) and what has been recommended by the Tribunal in its report dated 31.10.2014, on the amount actually spent by the appellant on such treatment after the evidence was initially closed by the Tribunal before pronouncing its Award in 2011.

17. As already noticed, the Tribunal has presently recommended, on the basis of bills produced that a sum of Rs.2,05,405/- has been spent by the appellant. This is supported from the oral testimonies of those who stood to prove the bills.

Consequently, an additional sum of Rs.55,405/- is awarded to

the appellant, as cost of treatment undergone, after he had led evidence before the Tribunal (prior to the impugned Award); (i.e. Rs.2,05,405/- minus 1,50,000/- = Rs.55,405/-).

The aforesaid amount would carry an interest @ 7% per annum, running from 01.02.2011, till the date of realization thereof. The aforesaid date has been taken on the basis of the testimony of PW17, Dr.Nishikant Kumar of the AIIMS, New Delhi, who stated that the appellant was operated upon in the month of January 2011 and had incurred the expenses as per the bills produced.

18. As regards the pain and suffering undergone by the appellant, in my opinion, since the appellant continued to suffer for a period of more than 3 years after the accident and had to also undergo a hip replacement surgery, a total amount of Rs.2,00,000/- needs to be awarded to him for such pain and suffering and is accordingly awarded, which is Rs.1,40,000/- over and above the amount of Rs.60,000/- awarded by the Tribunal.

The aforesaid sum would also carry interest @ 7% per annum, running from the date of filing of the claim petition till the date of realization.

19. As regards the contention of Mr. Malkiat Singh that the hip joint would have again to be replaced after 25 years, it having been implanted when the appellant was 50 years old, I see no reason to award any compensation for future treatment at this stage, unless such treatment is actually undergone by the appellant.

Consequently, that contention is rejected at this stage, with liberty to the appellant to move an appropriate application in the present appeal at the stage of any future hip replacement/serious complication, if at

all it occurs. Obviously, any such claim would be examined on its own merit, at that stage.

Accordingly, the compensation awarded by the Tribunal, of Rs.4,00,000/-, is now enhanced to a total sum of Rs.5,95,405/-, rounded off Rs.5,95,400/-. Thus, the original compensation awarded by the Tribunal is enhanced by Rs.1,95,400/-, with interest running on different components of the aforesaid enhanced compensation, in the manner already given hereinabove.

This appeal is, thus, partly allowed with no order as to costs.

April 22, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE