211.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3220 of 2013 (O&M)
Date of decision:09.05.2016

Jaswinder Singh ... Appellant

versus

Jagdish Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rajbir Singh, Advocate, for the appellant.

Mr. R.C. Kapoor, Advocate, for respondent No.3.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. *(Oral)*

1. The appeal is against the dismissal of a claim for compensation for grievous injuries suffered in a road side accident that took place on 26.05.2008. The claimant was travelling in a motorcycle when admittedly the insured's car dashed against him, threw him off the vehicle inflicting head injuries that felled him unconscious. He was taken to the hospital on 26.05.2008 and remained in an unconscious state till 09.06.2008. He was said to have regained conscious and lapsed to a serious state again on

16.06.2008. He was operated upon and discharged in semi conscious state on 24.07.2008. The wife had given a statement that they owned 5 acres of land which was attended to by her husband and he would contribute about ₹3,000/- per month as income by his labour that was completely lost to the family and he has become 100% disabled. He could not walk on his own and he has lost power of speech. He was being fed on liquid diet that cost her about ₹150 to ₹200/- per day for about 1/½ years and she was now spending ₹70 to ₹80/- on liquid diet and milk.

2. The involvement of the insured vehicle was not denied and actually entered in the DDR. The case did not escalate to a criminal prosecution by the result of an investigation that found that a child had suddenly crossed the road and the insured car swerved the vehicle towards motorcyclist in an attempt to avoid the child. Therefore criminal negligence could not be established. This prevailed on the Tribunal Judge to hold that the negligence was not established and proceeded to dismiss the petition.

3. I hold the reasoning of the Judge to be perverse. If a sudden crossing on the road by a child put the driver of a vehicle to quandary and swerved to one side, he should have still seen that he did not cause harm to any person. A child can never be taken as negligent, for, any person that drives a vehicle ought to factor an unforeseen situation of a stray cattle or a pedestrian crossing. The

skills of driving are such that they must be brought to its fore to ensure that even in such an eventuality, the driver steers the vehicle with such dexterity that he does not bump on to yet another person and cause harm. Of what could be exculpatory for criminal negligence cannot be a justification for evading the consequences of claim for civil negligence. There is a sure distinction between the same and a Tribunal Judge ought to know the same. It was wholly insupportable for a Judge to dismiss a case of a seriously injured person who on account of accident had become a walking vegetable and his claim to be thrown out on an untenable reasoning that it was nobody's fault that the accident took place. I reverse the finding of the Tribunal Judge and hold the insured's vehicle as responsible for the accident and make him liable for the consequences of the injuries suffered.

4. The Tribunal has not assessed the compensation and I thought for a while whether it would be necessary to send it back to the Tribunal for reconsideration on the issue of quantum. It was a case where the best of evidence has been brought by production of all the expenses relating to medicines and treatment filed through the original receipts. All the bills show the treatment involving surgery and medicines and all the bills, vouchers correlate to the period when he was taking treatment. The medical bills brought through C1 to C15 aggregate to ₹1,45,714/- and the medical bills through

purchase of medicines at pharmacies add up to ₹52,237/-. They aggregate to ₹1,97,951/- which I round off to ₹2 lakhs.

5. Having regard to the evidence given by the wife that he was unable to speak and only she had given evidence at the time of trial when there was not even a suggestion that the husband was deliberately avoiding the witness-stand, I have no difficulty in assessing compensation on the basis of evidence which is available. Even at the time of trial, an application has been filed through counsel for the claimant stating that although the doctor was examined as PW3, the nature of injury for the claimant was such that he was still unconscious and under treatment and sought for a long adjournment to get the disability certificate after he was reasonably well cured and who could stand the cross examination. This application had been moved on 31.10.2009 but unfortunately the Tribunal did not accommodate the plea for production of disability certificate and made it irrelevant by holding that the negligence of the respondent was not proved.

6. I was of the view that the Tribunal Judge had committed gross injustice in not affording appropriate opportunity to produce the best evidence and I had, therefore, directed through my order dated 03.03.2016 that the claimant should be medically examined by the board constituted by the Director, PGIMER. Accordingly, the Board was constituted and the 3 members Board has certified as

follows:-

"(a) He/She is a diagnosed case of **<u>Head Injury.</u>**

(b) He/She is a case of Multiple Disability. Extent of his/his permanent physical impairment/disability has been evaluated as per guidelines for the disabilities ticked below, and shown against the relevant disability in the table below:

Sr. No.	***Disability***	***Affected part of Body***	***Diagnosis***	***Physical/mental disability (%)***
1.	Locomotor @ disability		Rt. Side Mild Hemiparesis	25%
2.	Low vision/Blindness		Homonymous Hemianopsia	30%
3.	Hearing impairment			Nil
4.	Mental retardation/illness		IQ=87	Nil
5.	Others		Severe Speech Problem	50%
6.	Total			70%

(c) In the light of the above, his/her overall permanent physical/mental impairment as per guidelines ** as follows:-

In figures 70% Percent In words Seventy Percent

2. This condition is non-progressive, not likely to improve.

3. Reassessment of disability is:

i) Not necessary. "

7. A Division Bench of Madras High Court in ***The Oriental Insurance Company Limited Versus Rajesh (CMA No.428/2016, dated 11.03.2016)*** and in a judgment on 12.04.2016 in ***M/s. Tata AIG General Insurance Company Limited Versus Prabhu (CMA No.2380 of 2015)*** has held that the issue of fake certificates in proceedings before MACT is a major problem to grapple with and the assessment of disability contributed in a larger measure to requirement of summoning of doctors and even if summoned, there was no skill employed for cross examination to call the bluff even if the certificate is an exaggeration. The Bench therefore suggested that in all cases there shall be a permanent Medical Board available in all districts and the assessments shall be made through Boards' reports which could be acted upon by a Tribunal. Even without resort to the observations, Section 169 of the Motor Vehicles Act allows for a flexibility of approach for a Tribunal to employ its own procedure and could choose one or more persons possessing special knowledge to assist it in holding the inquiry.

8. A Bench of Delhi High Court in ***Mayur Arora Versus Amit-2011(1) TAC 878*** has examined several statutes using the expression "inquiry" as opposite to the expression "trial" and has reasoned that a Motor Accident Claims Tribunal which is bound to hold an inquiry shall adopt a pro-active approach to secure what is

appropriate and just even if there is a slackness or deficit in securing the best evidence before the Tribunal. In this case, I would commend such a practice as relevant, for, this court has secured the assistance of a Medical Board constituted by the Director, PGIMER and it would require no further authentication than a mere production and I will take the recitals of what obtains in the document as immediately relevant for our case.

9. Apart from a loss of power speech, he has also lost vision in one eye which the Medical Board has assessed at 30%. The severe speech impairment has been assessed at 50% and a locomotor disability through right side mild hemiparesis has been assessed at 25%. Although the overall compensation is taken at 70%, I would take the loss of income for the claimant to be not less than ₹3,000/- in the manner that his wife spoke about. Even if 5 acres of land remained with them and can provide the source of livelihood, I will take the equivalent of the managerial services of the claimant to be not less than ₹3,000/- and take that to be the loss of earning capacity. Consequently for a person aged 41 years, I will apply a multiplier of 14 and take the loss of earning capacity as ₹5,04,000/- (3,000x12x14) . For medical expenses, I have already assessed the amount at ₹2 lakhs and I will provide for attendant charges for the rest of his life at a modest amount of ₹1,000/- per month and apply same multiplier to yield a corpus which can return about ₹1,000/-

per month. Considering the evidence regarding special diet that is necessary, I will award ₹1 lakh and provide for ₹10,000/- towards transportation. I will make a provision for pain and suffering a further sum of ₹1 lakh and for the disability component of what has been assessed at 70%, I will make a provision for ₹1,50,000/- towards loss of amenities in life. The several heads of claims are tabulated as under:-

Date of accident: 26.05.2008			
Age: 41			
Period of hospitalization:			
Occupation & income :			
	Heads of Claim	Tribunal	High Court
Sr. No.		Amount ₹	Amount ₹
1.	Loss of income from to		
2.	Medical expenses:		
i)	Medicines		
ii)	Hospital charges		2,00,000
iii)	Attendant charges		1,68,000
iv	Special diet		1,00,000
v	Transportation		10,000
3.	Pain & suffering		1,00,000
4.	Disability (%) & compensation		1,50,000
5.	Income as assessed by the Tribunal (a)		
6.	% loss of earning capacity (b)		
7.	Multiplier (c)		
8.	Loss of earning capacity (axbxc)		5,04,000
9.	Reduction in life expectancy		
10.	Loss of prospect of marriage		
	Total		12,32,000

The compensation shall aggregate to ₹12,32,000/- and the said sum shall also attract interest at 9% from the date of petition till date of payment. The liability shall be on the Insurance Company. There was a delay of 1045 days in filing the appeal which has been condoned by order dated 03.03.2016. I find no scope for denying interest also for the delay was for reasons obvious, for, the petitioner was far too disabled to prosecute his case effectively and if there was delay it was a delay which was duly explained.

10. The award of dismissal is set aside and the appeal is allowed with costs assessed at ₹10,000/-.

(K.KANNAN)
JUDGE

09.05.2016
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