

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.1648 of 2002

Date of Decision.19.07.2017

Jasmohan Kaur and others

.....Appellants

Vs

United India Assurance Co. and others

.....Respondents

Present: Mr. Ashwani Arora, Advocate
for the appellants.

Mr. Gopal Mital, Advocate
for the insurance Company.

Mr. Inderjit Sharma, Advocate
for respondent No.4.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The present appeal had been accompanied by an application filed under Order 41 Rule 27 CPC, owing to the occurrence of subsequent events. According to the averments made in the application with regard to occurrence of subsequent events, Mohinder Singh (since deceased) who had met with an accident on 19.01.1997 unfortunately died on 27.09.2001. The case set up in the application was that cause of death was as a result of injuries he had sustained and in this background of the matter, this Court vide order dated 22.04.2014, allowed the application and sought the report from the Motor Accident Claims Tribunal, Chandigarh. In this regard, claimant have examined following witnesses and recorded their statements:-

(a) APW1- Dr. Ashwani Kumar, Sr. Resident, Deptt. of Medicines, Government Medical and Civil Hospital, Sector 32, Chandigarh.

(b) APW2- Dr. Navtej Pal Singh, Medical Officer, Civil

Hospital, Mohali.

(c) APW3- Dr. M. K. Tewari, Professor, Deptt. Of Neuro Surgery, PGI, Chandigarh.

The Motor Accident Claims Tribunal vide letter dated 19.07.2014 sent the record to this Court for the purpose of adjudication of the case.

Mr. Ashwani Arora, learned counsel appearing on behalf of the appellant, now being represented through legal representatives, submits that the deceased-Mohinder Singh, who, along with others was travelling in the ill-fated vehicle i.e. Tata Sumo Jeep bearing registration No.HR-01-E-1655 met with an accident and received serious injuries. The vehicle was insured with the insurance company-respondent No.1 and owned by Luxmi Devi and Suraj Bhan i.e. respondent Nos.3 and 4. At that time compensation had been sought on account of permanent disability, as he had suffered paraplegia. The Tribunal on the basis of oral and documentary evidence brought on record i.e. claimant's statement as PW1, statement of PW2- Kashmir Singh, PW-3 Ajit Singh and PW-4 Dr. M.K. Tiwari, Associate Professor, Department of Neuro Surgery, PGI, Chandigarh, awarded a compensation of ₹1,23,125/- which included ₹75,000/- for pain and suffering and loss of amenities, ₹15,000/- for transportation, ₹5,000/- for special diet, ₹15,000/- for attendant charges and ₹13,125/- for loss of salary.

However, during the intervening period as indicated in the application for additional evidence, after a gap of four years i.e. on 27.09.2001, Mohinder Singh died and the cause of death was related to the accident, therefore, compensation is required to be assessed as done in the

death cases. He left behind wife, two daughters and son, though originally the mother was also there but unfortunately she died during the pendency of the petition.

In this regard, he has drawn attention of this Court to the statement of Dr. Ashwani Kumar, Sr. Resident Department of Medicine, GMCH, Sector 32, Chandigarh to contend that Mohinder Singh had died owing to the cirrhosis of the liver and the factum of paraplegia resulting from the trauma to the spine on account of accident was also indicated by the doctor. The aforementioned statement of the doctor read with the statement of Dr. M.K. Tiwari, Professor, Department of Neuro Surgery, PGI, Chandigarh leaves no manner of doubt that cirrhosis of liver was owing to the loss of immunity having been occurred owing to the accident and therefore, the death is related to the accident and compensation in this regard is liable to be increased manifold i.e. on account of loss of dependency and other conventional heads being awarded in death case.

In this regard, he also relies upon the ratio decidendi culled out by Hon'ble Supreme Court in **Ramathal Vs. M.D. Cheran Transport Corpn. Coimbatore 2003(10) SCC 53** to contend that it was a case where the deceased had remained an indoor patient from 14.01.1991 to 21.01.1991 and ultimately died on 26.02.1992 and the Hon'ble Supreme Court after taking into consideration all the aspects, found that the cause of death was related to the accident, thus, granted the compensation. In **National Insurance Company Limited Vs. Pooja Verma 2011(2) PLR 129** where the deceased had met with accident on 23.05.2000 and died on 04.07.2000, the counsel for the appellants referred to para 10 of the judgment to contend that once there was no intervening factor and situation regressed gradually

to result in death, compensation is liable to be increased by taking the criteria of loss of dependency etc. Another unreported judgment of this Court in FAO No.4684 of 2008 decided on 02.04.2013 titled as “**Kiran Bala and others Vs. Rajeev Sharma and others**” referred by the counsel is with regard to a person who met with an accident on 3.12.2005 and at the time of accident, he was already diabetic with kidney disease and Tuberculosis and suffered fractures but owing to the diabetes was not advised surgery and death took place on 13.03.2006 i.e. three months thereafter. By taking into consideration all the aforementioned aspects, the Court granted compensation.

On the contrary, Mr. Gopal Mittal and Mr. Inderjit Sharma, learned counsel appearing for the insurance company and respondent No.4 respectively submit that the cause of death is not related to the accident as the deceased had already suffered jaundice 25 years ago and cirrhosis of liver has not been proved on record to be connected or related to the accident. Even the original record has not seen light of the day, owing to the candid admission of the doctor, in essence, the claimants have failed to prove on record cause of action of death and its connectivity relating back to the accident, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book. In order to appreciate the controversy, it would be apt to reproduce the examination-in-chief and cross-examination of Dr. Ashwani Kumar, which reads as under:-

“I have been deputed by Dr. Atul Sachdev, Director, GMCH Sector 32, Chd to depose in this case. As per the record shown to me which has been issued under the RTI to the claimants,

the patient Sh. Mohinder Singh was admitted in our hospital on again said he had come for follow-up treatment in Orthopedics Surgery deptt on 17.7.1997 which shows that he had met with road side accident six months back with complaint of retention of urine because of paraplegia and history of surgery of urethra. He was on urethral catheter for the past 5 months. He was advised to attend orthopedics apart for conducting some tests. He was also advised X-ray Lumbar spine. He was also advised to spinal brace to continue. As per the record with regard to period 1997 he did not have any serious ailment associated with any chronic liver disease with hepatic encephalopathy with upper gastro intestine bleed. The original card shown to me by the claimant in the court is Ex.APW1/1. Thereafter, the patient came to the hospital on 21.9.2001 in the Emergency OPD vide CR No.010905682 admission No.200114317. This time the patient was found to have suffered chronic liver disease possible cirrhosis with complications and he was also had paraplegia resulting from trauma to spine. The patient was completely bed-ridden because of the spine injury and because of the poor immunity-immune system. The patient was bound to invite various ailments which normally a normal human body does not invite. This time he had jaundice and swelling of abdomen. As per page 37 of the bed-head ticket i.e. Ex.APW1/2 (containing 71 pages) the patient was non-alcoholic as per the record. As per page 39 the patient also had bed-sores. The patient had

suffered jaundice 25 years back as per the history given at page 37 of Ex.APW1/2 from which he had recovered. I have also been shown the original test report-Ex.APW1/3. This record shows the report of patient was almost normal. Stress ulcers can be caused due to paraplegia which can lead to massive UGI bleed that can be a cause of death. I have also seen Ex-APW1/4 and Ex.APW1/5 which are issued by our hospital. Even in the death report it has been mentioned that the patient had no bices likes chewing tobacco or habitually drink alcohol. The post mortem of the patient was not conducted. The original record of the hospital was destroyed and the same is mentioned even in the order by medical supdt dt. 27.8.2012 which is Ex.APW1/6. The record pertains to this case might have been destroyed after the said order.

Xxxxmn by Sh. R.K. Bashamboo, Advocate counsel for respondent No.1 and Sh. R.C. Gupta, Advocate counsel for respondent No.2.

I have never treated the patient personally since I have joined the hospital in April 2012. I have deposed on the basis of record shown to me which is obtained under the RTI as well as the other original documents which is in the custody of claimants. It is wrong to say that the patient did not have any history of paraplegia. It is further wrong to say that the patient never treated in our hospital. It is wrong to say that the patient had died only due to other complications not related with the spinal injuries. It is wrong to say that I have deposed falsely.

*RO&AC**sd-
Commissioner
(Sunita Devi)
22.5.2014 “*

On going through the statement, it has come on record that no post-mortem report was conducted, much less, the original record has not seen the light of the day. The patient was brought to the hospital on 21.09.2001 and was diagnosed with cirrhosis of liver, in essence, he was suffering from jaundice and swelling of abdomen. The statement was made by the doctor on the basis of photocopy of the record but not the original, as to a specific question the answer was that the original record of the hospital has been destroyed and the same is mentioned in the order of the Medical Superintendent dated 27.08.2012, Ex.APW1/6. The aforementioned doctor has also referred to one MRI conducted in the year 2001 and that MRI has also not seen light of the day, which would have been a clinching point to show whether there was cirrhosis of liver owing to the accident or not. In the absence of the direct and cogent evidence, mere statement of the doctor on the basis of the information obtained under RTI would not establish that the cause of death related to the accident.

The judgments referred to above dealt with the facts and circumstances of each case. On reading of the statement of the doctor, much less, facts of the case, it has not been proved on record that the cirrhosis of liver is related back to the cause of the accident as the deceased at that time had suffered paraplegia i.e. injury of spine, he required support and had also been visiting hospital for further treatment i.e. till some time but thereafter, got the MRI done. He was diagnosed of some stone in the gall bladder, in essence, the state of health of the deceased has not been

proved to have regressed after the accident, thus, this Court is of the view

that the death caused owing to the cirrhosis of liver. Any person even if he had not suffered with accident or any such injury to the spine can contract cirrhosis of any part of the body what to talk of the liver. It is unfortunate that the deceased had earlier suffered accident and thereafter, developed cirrhosis of liver. It was his bad luck that he could not survive.

In view of what has been observed above, I do not find that the legal representatives of the deceased-Mohinder Singh are entitled to any compensation on account of death as noticed above. The compensation awarded on account of injuries is sufficient as the deceased remained in job till he was alive and got all the benefits.

The appeal is dismissed.

(AMIT RAWAL)
JUDGE

July 19, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No