

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

FAO No.2430 of 2003

Date of Decision.29.08.2017

Sukhdev s/o Bhagwan @ Bhan Singh

.....Appellant

Vs

Darshan Singh and others

.....Respondents

Present: Mr. Pinki Banwala, Advocate and
Mr. Harsh Aggarwal, Advocate
for the appellant.

Mr. Paul S. Saini, Advocate
for respondent No.3.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

-.-

AMIT RAWAL J.(ORAL)

It is an injury case where the claimant suffered injuries in an motor accident occurred on 29.03.2002 at 9.15 AM. The appellant-claimant was stated to be working as an Agriculturist. He along with Gafoor Khan and Jana Khan was travelling in a tractor trolley bearing registration No.PBS-5981 when a truck bearing registration No.PB-11B-5339, driven by respondent No.1 in a rash and negligent manner came from Bhawanigarh side and dashed against the tractor trolley in an attempt to overtake it. As a result of the impact, the claimant sustained multiple grievous injuries and Gafoor Khan died on the spot. An FIR bearing No.99 dated 29.03.2002 under Sections 304A, 279, 337, 338 and 427 IPC was also lodged at Police Station, Sangrur. The claimant was admitted in the hospital for injuries suffered i.e. fracture of pelvis and had to undergo follow up treatment for the complications which he suffered.

Ms. Pinki Banwala and Mr. Harsh Aggarwal, learned counsel

appearing on behalf of the appellant submits that the Tribunal has committed illegality and perversity. There is misdirection and misreading of oral and documentary evidence on record. Many of the documents have been proved through the testimony of various witnesses. Dr. Karamjit Singh, CW7 had proved bed head ticket of the claimant, who was admitted on 29.11.2002 suffering from chronic osteomyelitis of left tibia bones (discharge of pus from the upper and left tibia). He was operated on 29.11.2002 and discharged on 09.12.2002. The discharge slip has been proved as C61. Similarly, CW8, Om Parkash, Cashier of DMC Hospital, Ludhiana had brought on record the original bills from C.62 to C82. CW-11, Narinder Singh proved Ex.C89, the bill pertaining to an amount of ₹40,350/- incurred by the claimant in the private hospital i.e. Bassi Hospital Pvt. Ltd., Ludhiana.

She further submits that main thrust of the Tribunal had been on the statement of witnesses, who brought the medical bills, that it did not bear signatures of the doctor, which according to her, was not the actual state of affairs as the medicines against the bills were issued only on the prescriptions of the doctor which have been brought on record i.e. discharge slips containing the follow up treatments to be undertaken by the patient. The witnesses have extensively been cross-examined but nothing contrary surfaced. Even Ex.C82 the medical certificate issued by the Dayanand Medical College and Hospital, Ludhiana revealed that the claimant was admitted on 29.03.2002 and discharged on 16.04.2002, admitted on 06.05.2002 and discharged on 11.05.2002, admitted on 23.08.2002 and discharged on 29.08.2002 and again admitted on 24.09.2002 and was still admitted in the hospital on the date when the medical certificate was issued

i.e. on 01.10.2002. He was operated upon for Exploratory Laparotomy with Transverse Colostomy with SPC with stay sutures over rectum and therefore, a consolidated sum of ₹80,000/- awarded as compensation by the Tribunal is too meager. The Tribunal while assessing the compensation has totally ignored the medical bills of ₹1,85,000/- which have been proved on record, thus, urges this Court for enhancement of compensation by modifying the award passed by the Tribunal.

Mr. Paul S. Saini, learned counsel appearing on behalf of the insurance company submits that in the absence of proof of income of the claimant or the ownership of land as was an Agriculturist, the Tribunal did not have any material to form an opinion to grant compensation as sought for. The findings are based upon the appreciation of oral and documentary evidence and cannot be tinkered with as there is no illegality and perversity. Certain documents have been marked, therefore, they cannot be looked into, in essence, not proved in accordance with law, thus, urges this Court for dismissal of the appeal by upholding the award under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that the findings arrived at by the Tribunal needs to be modified as the compensation awarded on account of injuries suffered is too meager. I would be failing in my duty in case, I do not reproduce the statements of CW4, CW5, CW7 and CW8, who have unequivocally and candidly proved the medical bills.

“CW4. Sanjeev Kumar, Pharmacist Gurmail Bros, Chemists and Druggists Opp. New DMC, Ludhiana.

I have brought the original bill books of Gurmail Brothers Chemists and Druggists, Ludhiana. Today I have seen the original bills of our shop which were issued by our shop in favour of Sukhdev Singh patient. All the bills are correct as per our carbon

copy. The original bills are Ex.C2 to Ex.C54. I identify the signatures of the same of different sale man of our shop. I am working as a salesman since 8 years back.

xxxxxxx cross examination by counsel for respondent Nos.1, 2 and 3.

I am not a diploma holder in a medical science. I have not a degree of D. Pharmacy. I do not know Sukhdev Singh patient personally. He never came at any time on our shop. The name of the attendant has also not mentioned on the bills Ex.C2 to Ex.C54. It is also correct that the father's name of Sukhdev Singh and residence are also not mentioned on the abovesaid bills. It is also correct that the above said bills finds no mention regarding the prescription made by the doctor for the medicine issues through the bills. It is also correct that name of the doctor who prescribed the medicine is not mentioned thereon. None of the abovesaid bills and the issued and signed by me. It is wrong to suggest that I deposed falsely at the instance of the party. I do not know whether abovesaid bills have been issued for the treatment of the claimant. Voluntarily the bills have been issued in the name of Sukhdev Singh. 10 Salesman are working in our shop. It is correct that all the above said bills bears the initials not signatures of the salesman. It is correct that C.R No. is not mentioned in any of the above said bills. It is wrong to suggest that all the above said bills are false, fictitious and wrongly prepared in collusion with the claimant. It is wrong to suggestion that medicines mentioned in the bill has not been apply to the patient.”

RO&AC

-sd-
MACT, Sangrur

CW5.

Sanjay Kumar Prop. M/s City Medicose, Opposite C.H. Sangrur on S.A.

I brought the original summoned record of medical receipt regarding the medicine of Sukhdev Singh. Today I have kept my counter file record regarding medicine record of Sukhdev Singh which is prepared by me and under my hand. The carbon copy is same with the original. The original were handed over to the relative of claimant at the time of purchasing the medicine. I identify my signatures on the carbon copy and original, which is

Ex.C55 to Ex.C60. I see the original bill and I identify my signature on the same.

xxxxx cross examination by counsel for respondent Nos.1 and 2.

It is correct that the prescribed doctor name is not mentioned on the Ex.C55 to Ex.C60. It is correct that Sukhdev Singh never visited on our shop nor he paid any amount to me against these medicines. It is also correct that the name of the relatives of Sukhdev Singh, who purchased these medicines from our chemist shop.

xxxxxxx cross examination by counsel for respondent No.3.

I do not know Sukhdev Singh personally, I have written the name of the patient as told by the person who purchased the medicine. It is wrong to suggest that I prepared false bills to give the benefit to the claimant. It is also wrong to suggest that I have deposed falsely.

RO&AC

-sd- MACT Sangrur
15.1.2003

CW7. Dr. Karamjit Singh, M.O. Civil Hospital, Sangrur. on SA

I have brought bed head ticket of Sukhdev Singh son of Bhan Singh r/o Ghabdan, District Sangrur. Sukhdev Singh was admitted on 29.11.2002 and was suffering from chronic ostiomylioties of left tibia bones (Pus was discharging from the upper and left tibia). On 29.11.2002 he was operated upon and was discharged on 9.12.2002. During this period he remained under my treatment. Photostat copy of discharge slip is Ex.C61.

xxxxxxx cross examination by counsel for the respondents.

The claimant had told that his monthly income is 1500/- PM. Patient was in a satisfactory condition when he was discharged. It is wrong to suggest that Sukhdev Singh never remained admitted in the hospital. It is wrong to suggest that I have prepared false record.

RO&AC

-sd- MACT Sangrur
15.1.2003

CW8. Om Parkash Supervisor/Cashier DMC Ludhiana.

I have brought the summoned original record relating to Sukhdev Singh patient. These bills are Ex.C62 to Ex.C82.

xxxxxxx cross examination by counsel for respondents.

These bills are not signed by me. These bills are not prepared in my presence nor payment was made in my presence. I do not know Sukhdev Singh patient personally. It is wrong to suggest that I am not working at DMC Ludhiana. This record is not kept in my custody. Today I have no authority letter from the DMC to produce this record in court. It is wrong to suggest that I have deposed falsely.

RO & AC

*MACT Sangrur
15.01.2003”*

The reasoning assigned by the Tribunal that the medical bills do not refer the name of the doctor in my view is neither here nor there. It is perverse and erroneous finding. All the medical bills which have been issued by the private pharmacist and the pharmacist situated at Dayanand Medical College, Ludhiana where the claimant remained admitted for quite a number of days, against the prescription noticed in the discharge card. It is a common practice in the hospital where the patient is admitted that a slip is issued by the doctor to get the medicines from the pharmacist/chemist shop and a consolidated invoice/bill or separate invoice/bill is made later on at the time of discharge. This fact had been proved through the testimony of person, examined, from the Bassi Hospital vide bill amounting ₹40,350/-. Despite extensive and detailed evidence, the Tribunal ought not to have been awarded a meager amount of compensation as indicated above. Admittedly, the claimant suffered fracture of pelvis and further complications as a result thereof. There was pus in the pelvis area and discharge in the urine which required constant dilation.

A cumulative reading of all the facts and testimonies leads to irresistible conclusion that the compensation awarded is not just and equitable. The Tribunal grossly erred in not awarding an amount of

Resultantly, I am of the view that the claimant is entitled to an amount of ₹1,85,000/- more for the expenditure incurred on medical bills and keeping in view the fact that the claimant suffered a lot of pain and suffering due to grievous injuries, I will award ₹1,20,000/- under the heads of medicines, pain and suffering, special diet, attendant charges, transportation, loss of income and loss of amenities of life over and above ₹80,000/- already awarded by the Tribunal, in essence, the claimant shall be entitled to an enhancement amount of ₹3,05,000/-. This amount shall also attract interest @6% per annum from the date of filing of the appeal till its realization. The liability shall remain the same as has already been determined by the Tribunal. The amount of ₹3,05,000/- along with interest aforementioned shall be paid within a period of two months from the date of receipt of certified copy of this order, failing which the claimant shall be entitled to interest @9% per annum.

The award stands modified and the appeal is allowed to the above extent.

(AMIT RAWAL)
JUDGE

August 29, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes