

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.161 of 1993

Date of Decision: 14.02.2017

Amar Nath

...Appellant

Vs.

Balbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- None for the appellant.

Mr. Pardeep Goyal, Advocate,
for respondent no.3.

Amol Rattan Singh, J.

By this appeal, the appellant seeks enhancement of the compensation awarded to him by the learned Motor Accident Claims Tribunal, Kurukshetra, vide the impugned Award, dated 02.11.1992.

2. The case set-up by the appellant-claimant was that at about 9:30/10:00 pm on 16.06.1991, he was driving a three-wheeler vehicle bearing registration No.HYL-4975, going home to Kurukshetra from Pipli. As he reached the area near the Electricity Colony, a Maruti van bearing registration No.HR01/2124 came from the opposite side, driven by respondent no.1 herein, allegedly in a rash and negligent manner at a very high speed. As per the appellant, the van came onto the wrong side of the road and dashed into the three-wheeler resulting in it turning turtle, thereby causing multiple injuries to the appellant.

3. As stated in the Award of the Tribunal, the three respondents, i.e. the driver, owner and the insurer of the Maruti van respectively, filed their

replies simply denying that the accident took place due to the negligence of respondent no.1.

The following issues were consequently framed by the Tribunal:-

- “1. Whether the claimant Amar Nath sustained injuries in an accident caused due to rash and negligent driving by Balbir Singh respondent-driver of Maruti Van No.HR01-2124?
 2. In case issue no.1 is proved to what amount is the claimant entitled to and from whom? OPP
 3. Relief.”
4. The present appellant appeared as PW2 reiterating what he had stated in his claim petition and, as stated in the Award, further testifying that a bus was coming from the opposite side so he slowed down the three-wheeler but respondent no.1, in a bid to overtake the bus, came to the wrong side of the road and hit the three-wheeler resulting in the accident.
- It was noticed by the Tribunal that in his cross-examination, the appellant “did not mention the presence of the bus ahead of the maruti van”. In his testimony, he also stated that the van driver (respondent no.1) stopped for a while and ran away thereafter. He also stated that the FIR was registered “after 15/30 days”.
5. It was further found by the Tribunal that upon the petitioner having produced his driving licence, it was found to be a licence to drive a scooter/motorcycle only and not to drive a three-wheeler. In the report submitted under Section 173 Cr.P.C. to the competent Court, pursuant to the FIR registered, it was also stated that the FIR was registered on 18.06.1991, i.e. two days after the accident.

In the site plan exhibited as Ex.P3, the place of the accident was

not shown and only the place where the three-wheeler was standing on the turning point of the Pipli-Kurukshetra road leading to the Housing Board Colony, was shown, without depicting the manner in which the accident took place.

6. In the arguments addressed before the Tribunal, it was stated by the present appellants' counsel that the Maruti van came onto the wrong side of the road trying to overtake the bus, whereas the counsel for respondent no.1 argued that it was actually the appellant herein who was trying to overtake the bus.

However, upon considering the evidence led before it, and the arguments addressed, the Tribunal found that the site plan did not throw any light on the manner of the accident and consequently, because of the specific stand taken by each of the counsel for the parties, it could only be concluded that both the drivers were equally responsible for the accident. To arrive at that conclusion the Tribunal also noticed that had the van being moving at a high speed as depicted by the appellant, there would have been damage to the three-wheeler. However, (presumably) with no evidence led in that regard, the Tribunal came to the conclusion as aforesaid.

7. It needs to be observed here that this Court can only go by the Award of the Tribunal and what is stated in the grounds of appeal or argued by counsel for respondent no.3, to determine the correctness of the Award, as the original record of the case, including the evidence led before the Tribunal, has been burnt in a fire incident that took place in the record room of this Court in January 2011. Thereafter, the reconstructed paper book is as per what has been placed on record by learned counsel for the appellant and hence, the benefit of the original documents led in evidence, is not available

to this Court.

8. Having come to the aforesaid conclusion as regards the negligence in causing the accident, the learned Tribunal next went on to the issue of compensation payable to the appellant herein and towards that end the claimants' contentions were referred to, averring that he was 30/31 years old, earning Rs.80/100/- per day and that he had got himself treated from the Satya Nursing Home for about one month and had spent about Rs.25,000/- on his treatment and on the repair of his three-wheeler. He also claimed that he was unable to drive the three-wheeler any longer. He produced bills of the medicines purchased, as Exs.P4 to P27 (as stated in the Award). These bills were found to be amounting to Rs.13053.10 paise but as per the Tribunal, there were "certain curious things" about the bills. This was found to be so because in Ex.P23, it was shown that the appellant was charged Rs.85/- for an x-ray and consultation on 20.02.1992. A certificate had been given by one Dr. Anil Aggarwal, Ex.P27, that the appellant had suffered a disability of 5% and that he may take two to three months to recover under physiotherapy treatment. The said certificate was also dated 20.02.1992.

As regards the appellants' statement in his testimony that he was unable to drive the three-wheeler any longer, the learned Tribunal noticed that, to the contrary, his counsel had admitted that the "petitioner was alright now". Hence, it was held that the claim was exaggerated on the part of the appellant-claimant.

9. Nevertheless, it was found that the medical bills were otherwise not dis-believable and consequently Rs.14,000/- was awarded by way of medical expenses etc.

For pain and suffering and loss of earning, Rs.10,000/- was

awarded, thereby making a total compensation of Rs.24,000/-.

However, since the appellant herein was held to be 50% negligent in causing the accident, what was awarded eventually was Rs.12,000/- only.

On the aforesaid amount, interest @ 12% per annum was also awarded, running from the date of the filing of the petition till realisation of the amount, alongwith the costs of Rs.300/-.

The insurance company that had insured the van, respondent no.3 herein, was held liable to pay the compensation.

Thus, the appellant is before this Court, seeking enhancement of the compensation awarded to him.

10. It is to be noticed that though learned counsel for the appellant is otherwise seen to have been appearing in this appeal fairly regularly, however, on the date that it was finally listed for arguments, none appeared for the appellant. Hence, this Court is taking the arguments of the appellant from the grounds of appeal filed.

11. It has been stated therein that the finding of contributory negligence has been wrongly arrived at by the Tribunal, inasmuch as, there was admittedly an FIR registered against respondent no.1, pursuant to which he was also facing trial in the competent Court.

It is further stated that the Tribunal has ignored the injuries suffered by the appellant, who was treated at the Satya Nursing Home, Kurukshetra, for about a month as an indoor patient and had spent Rs.25,000/- on his treatment, as also for the repair of his three-wheeler.

Further, it has been reiterated that as per the certificate given by Dr.Anil Aggarwal, he had also suffered a disability of 5% in respect of which

no compensation has been awarded by the Tribunal.

Similarly, nothing has been awarded for damage to the three-wheeler and the Rs.10,000/- awarded towards pain and suffering and loss of earnings, was also extremely low compensation.

Yet further, it has been stated that the Tribunal erred in not awarding any compensation for transportation to the appellant who had to hire a private vehicle to visit the clinic and hospital, as also to attend to his personal and social needs, he being unable to board a public service vehicle.

Further, nothing having been awarded to him for the physiotherapy treatment that he had to undergo on the advice of the aforesaid Dr. Anil Aggarwal, has also been challenged in this appeal.

Lastly, it is stated in the grounds of appeal that the Tribunal also awarded nothing to the appellant on account of the services of an attendant, even though the attendant was a family member who had looked after the claimant-appellant during his treatment.

12. As opposed to the aforesaid grounds taken in the appeal, Mr.Pardeep Goyal, learned counsel for the respondent insurance company (respondent no.3), submitted that even the disability of 5% claimed by the appellant-claimant was not proved and the learned Tribunal also eventually recorded a finding to the effect that he had been cured. Yet Rs.14,000/- was awarded on account of medical expenses, even though bills of only Rs.13,053.10 paise were proved, which also were initially doubted by the Tribunal, but thereafter more than the amount shown in the bills produced was awarded under that head. Further, Rs.10,000/- was awarded by way of pain and suffering but with the contributory negligence of the petitioner having been found to the extent of 50%, he was only held entitled to

compensation of Rs.12,000/- which, as per learned counsel, is sufficient.

13. Having considered the grounds of appeal filed, as well as the arguments of learned counsel for the insurance company, and having perused the impugned Award, as regards the issue of negligence, I find myself unable to interfere with the finding of the learned Tribunal, in view of the fact that no eye witness other than the appellant himself is seen to have stepped into the witness box and with the police unfortunately having apparently prepared a very shoddy site plan, obviously for the reason that the van driven by respondent no.1 was no longer available at the site two days after the accident took place, it cannot be determined as to whether it was respondent no.1 who was wholly negligent in causing the accident or there was actually contributory negligence by the appellant also, as has been held by the Tribunal.

It needs to be observed here that with the appellant obviously having been taken to hospital after the accident, it was actually the duty of the police to have reached the spot on its own, and to have prepared the site plan, after, if necessary, making enquiries from people in the vicinity. However, road side patrolling by the police unfortunately being very lackadaisical in our country, one can go only by what is contained in the site plan as described by the learned Tribunal and as per what is testified to by the witnesses who appeared before it.

Hence, as regards the finding on negligence, I find no ground to interfere with the findings of the Tribunal.

14. As regards the quantum of compensation awarded, I partly agree with what is stated in the grounds of appeal, to the extent that if the Tribunal had accepted the fact that the appellant had incurred expenses to the extent of

Rs.13,053.10 paise towards purchase of medicines, obviously in the year 1991 he would have remained under treatment for sometime. Also, as regards the pain and suffering gone through by the appellant, I am of the opinion that Rs.10,000/- awarded under that head, clubbing it with loss of earnings, was a highly meagre amount even in 1991.

Consequently, for the pain and suffering that the appellant went through, with a fracture of the leg proved before the Tribunal, and his loss of earnings, even if it is taken that he was out of work for about two to three months, as also for the special diet he would have needed, Rs.50,000/- is awarded to him. Though, admittedly, as per the appellant in his claim petition, his income was Rs.80/100/- per day, with no evidence led in that regard, the minimum wages of Rs.930/- per month notified by the Government of Haryana in the year 1991 can be taken to be his monthly loss of income, thereby coming to a loss of about Rs.3000/- to Rs.4000/- over the period that he had to remain out of work.

Hence, Rs.50,000/- for pain and suffering, loss of earnings in the year 1991, is considered at least somewhat adequate, which would also include in it the money spent by the appellant on any extra special diet that he would have taken towards his healing process.

14. I am also of the opinion that for about one month or so after the accident, looking at the medicines that he spent on, the appellant would have needed an attendant to look after him and as such, Rs.2000/- is awarded under that head and towards transportation expenses.

15. Coming then to the disability of 5%, as urged in the grounds of appeal, I find myself unable to agree with that contention, in view of the fact that not even the doctor who wrote out the certificate to that effect was

examined, and if the photocopy of the certificate itself is to be looked at, it was also opined therein that the appellant, with physiotherapy, could get back to normal after two to three months of treatment.

It may be stated here that one Dr. Pawan Kumar Goel, a Private Practitioner from Kurukshetra, is seen to have been examined as PW1 with him testifying that on 16.06.1991 he was posted as Medical Officer at the L.N.J.P. Hospital, Kurukshetra, and had examined the present appellant. He was found to be fully conscious and well oriented, with “no neurological deficit”. His right thigh was found to be fractured with a dislocation in the middle of the thigh. Other than that, he had an abrasion on his left knee.

16. Coming next to the claim made in the grounds of appeal for repair of the appellants' three-wheeler, no evidence having been led in that regard, I find myself unable to award any compensation for the same, though it can be accepted that some minor damage at least must have occurred to the three-wheeler.

17. Thus, other than the Rs.14,000/- awarded by the Tribunal towards medical expenses, which this Court is not interfering with, the compensation awarded towards pain and suffering, loss of earnings and special diet, is increased to Rs.50,000/- from Rs.10,000/-. Rs.2000/- has also been awarded towards transportation charges and the services of an attendant, by this Court. Hence, the total compensation awarded to the appellant by this judgment is Rs.66,000/- which is Rs.42,000/- more than the Rs.24,000/- awarded by the Tribunal.

Yet, in view of the fact that the finding of the Tribunal as regards the contributory negligence has been upheld by this Court, the net amount actually awarded to the appellant is Rs.33,000/-, which is Rs.21,000/- more

than what was finally awarded by the Tribunal (Rs.12,000/-).

The appellant would also be entitled to the interest @ 6% per annum on the enhanced amount, running from the date of filing of the claim petition to the date of realisation of the enhanced amount.

Costs of Rs.2000/- are also awarded. The appeal is, therefore, allowed to the aforesaid extent.

February 14, 2017
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(AMOL RATTAN SINGH)
JUDGE

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |