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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2620-1999

Date of decision : 09.08.2017

Jagtar Singh

... Appellant(s)

Versus

Santosh Aggarwal and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kulvir Narwal, Advocate
for the appellants.

Mr. D.P. Gupta, Advocate
for the respondent(s)/Insurance Company.

AMIT RAWAL, J. (ORAL)

The appellant/claimant-Jagtar Singh is aggrieved of the award dated 07.05.1999 passed by the Motor Accident Claims Tribunal, Faridkot (in short 'the Tribunal'), declining the amount of compensation except awarding him a sum of ₹ 13,000/- on account of no fault liability on the premise that he was negligent in not taking care while working under the Truck, which was put on a 'jack'.

Mr. Kulvir Narwal, learned counsel appearing on behalf of the appellant/claimant submits that the learned Tribunal has committed illegality and perversity, much less, there has been a narrow and opaque appreciation of the oral evidence on record. There is no documentary evidence on record to establish that the appellant/claimant at any point of time gave a different version in the hospital. In order to buttress the aforementioned arguments, he read out the statement of AW-3 Jagtar Singh and AW-4 Parvinder Singh.

A suggestion was put in the cross-examination with regard to the negligent driving and therefore, there was no occasion for the Tribunal to put the blame of negligence. Both the witnesses had been coherent and consistent with regard to the negligence of the driver of the truck, who had started the truck, which was put on a 'Jack', as Jagtar Singh-appellant/claimant was working under the Truck being a proprietor of M/s Guru Nanak Motor Engineering, Bhatinda Road, Kotkapura, therefore, the Tribunal ought to have determined the compensation by taking the disability. As a result of the aforementioned accident, left leg below knee of the appellant/claimant has been amputated. The Disability Certificate issued by the Civil Surgeon, Faridkot reveals that the appellant/claimant suffered a disability to the extent of 65%, thus, the findings of the Tribunal are liable to be set aside and urges this Court for awarding the compensation by taking into consideration the age of the appellant/claimant as 23 mentioned in the claim petition.

Mr. D.P. Gupta, learned counsel appearing on behalf of the respondent(s)/Insurance Company submits that the findings rendered in paragraph 11 of the Tribunal does not warrant any interference, for, the claimant/appellant himself admitted before the Hospital Authorities of having not taken care while working under the truck. It is on the basis of the aforementioned statement, he has been held to be negligent. There is no evidence that the driver had put the engine of the truck 'ON', resulting into, movement of the truck and disabling from the spot/jack and causing injuries to the leg of the appellant/claimant, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the law on the part of cross-examination is no

longer *res integra*. Hon'ble Division Bench of this Court in **"Harnam Kaur V/s SGPC" AIR 1992 (P&H) 252**, has held that if there is no cross-examination on the statement suffered in the examination-in-chief, the same is deemed to be admitted.

In order to lend support to the aforementioned findings, I would be failing in my duty if I do not reproduce the entire statement of AW-3 Jagtar Singh, which reads as under:-

"I was working as mechanic of heavy vehicle of M/s Guru Nanak Motor Engineering Bhatinda Road Kotkapura, which is my own workshop. I used to earn about ₹ 4,000 - ₹ 5000 per month. On 17.05.1993 at about 3.00 pm, Salamat driver and owner of the truck bearing registration No.PJF 2333 came to me at my workshop. They told me that the gulla of their truck was broken, which was to be repaired and the truck was stationed near Bajakhana. I and my brother Parwinder Singh, who was helping me in my business, went the owner and driver of the truck aforesaid on their car to Bajakhana, where the truck was stationed. After reaching at the spot, I put two jacks and two iron supports (Ghore) at the rear part of the truck in order to remove and repair the tube/gulla. I had put bricks behind the tyres so that the truck might not move. While, I was under the truck and repairing the same, the driver Salamat of the Truck went in side the truck and started the truck all of a sudden, which resulted into the falling of the truck from the jacks and both legs came under the truck and were crushed. I raised hue and cry, at which labourers from nearby bricklin came and the removed me after lifting the truck. The truck fell from the jacks on my legs due to the negligence of driver Salamat. Then I was brought to GGS Medical College, Faridkot, where my left leg was amputated below the knee. I had also received injuries on my other leg. After the amputation my left leg, I am unable to do any work. I spent about ₹ 3-4 Lacs on my treatment. I am

unable to do any work in future. Before this incident, I was engaged, but after the accident, my engagement was broken, as I am unable to support myself. There are prospectus for my marriage. Due to amputation of my leg, my father has also expired about 4 months ago. Due to this accident, I have become a burden on my family members. When I was unconscious, the police obtained my thumb impressions on blank papers. I am educated and I always put my signatures. The police had connived with the respondents in not registering the criminal case against the respondents.

XXXX by the counsel for the respondents.

I was taken to the hospital by my brother and father. I do not know who brought me Kotkapura, as I was conscious. It is incorrect that the truck fell down from the jacks as the jacks were not put properly. It is wrong to suggest that I was just helping my father on his shop occasionally and my father had not any extra income due to my work. It is incorrect that I am not a trained mechanic. It is wrong to suggest that after the accident, I used to look after the work by sitting at the workshop. My brother separated from our shop about two months before my accident."

On perusal of the aforementioned statement, there is not even a whisper, much less, suggestion to the witness of having not taken care of or had been negligent in not taking care while working under the truck. On the similar lines, Parwinder Singh-AW-4 also deposed. His statement also needs to be extracted, which reads as under:-

AW-4 : On 17.05.1993 at about 3 PM, Salamat Singh driver of truck No.PJF 2333 and its owner came at our workshop. They took us to Bajkhana for their repair of tube/gulla of truck, which was stationed at Bajakhana. After putting jacks and Ghorri, we started removing the tube and Jagtar Singh was under the truck for its repair. When Jagtar Singh as under the Truck, Salamat Singh all of a sudden started the truck, which was in

gear, which resulted in moving of the truck and thus falling from the jacks and, as a result of which, the truck fell down on the legs of Jagtar Singh. We raised hue and cry and thereafter, Jagtar Singh was removed to GGS Medical College for his treatment, where his left leg was amputated. This accident has taken place due to the driver of the truck Salamat. Before this accident, Jagtar Singh was earning about ₹ 4000 - ₹ 5000 per month and after the accident, he is totally unable to do any work and has become a burden on the family. There is also no hope of his marriage due to this amputation of his leg.

XXX by the counsel for the respondents.

We did not get any case registered. It is wrong to suggest that Salamat had not started the truck. I do not know if my brother Jagtar Singh has got recorded this fact in the claim petition or not. We had put bricks before and after the tyres to stop them from moving. Jacks were put by me and Jagtar Singh on both sides of rear side of the truck. It is incorrect that the jacks were not put properly and that is why the truck fell down from the jacks. It is also incorrect that the truck fell down from the jacks due to our negligent and not due to the negligent of Salamat driver. It is incorrect that I am deposing false."

On conjoint reading of the aforementioned statements, I am of the view that the Tribunal has committed illegality in not referring to the aforementioned cross-examination by applying the aforementioned case law, thus, the findings rendered on issue of negligence fastening the negligence upon the claimant/appellant is not sustainable and the same are hereby set aside.

However, I proceed to decide as to how much amount of compensation the claimant/appellant would be entitled to. As per the pleadings, the age of the appellant/claimant has been referred to as 23, but

however, in the medical record and as well as in the examination-in-chief, he is stated to be 32-33 years, so, I take the age of the claimant as 32 years. In the absence of the report of the Medical Board of Directors, the disability certificate issued by the Civil Surgeon cannot be a piece of evidence for the purpose of determining the compensation, but the fact remains that the appellant/claimant had suffered a injury i.e. an amputation below knee. Since, he was a skilled labourer, he would not be able to perform his duties as he had been before the accident, much less, it has also come in evidence that his engagement had also been cancelled. Now, coming down for the purpose of assessing the loss of income, the appellant/claimant except the statement that he was earning ₹ 4000-5000 per month, has not led any evidence, much less, medical record of having spent a sum of ₹ 3-4 Lacs on the treatment. In the year 1999, minimum wages of any skilled labourer were not less than ₹ 4,000/-. The factum of repairing the truck is also not denied by either of the parties. As per Schedule I Part II of the Employees' Compensation Act, 1923, any amputation below knee is 60%.

Accordingly, I will take the income of the appellant/claimant as ₹ 4,000/- being unmarried particularly, his leg below knee has been amputated and take the amputation of left leg below knee, resulting into, 60% loss of future income. I adopt a multiplier of 16 and provide ₹ 1 lac for pain & suffering. The various heads of claim are tabulated as under:-

INJURY CASES			
Age	32		
Period of Hospitalization			
Occupation Skilled Labour			
	Heads of claim	Tribunal	High Court
Sl. No.		Amount(₹)	Amount (₹)

INJURY CASES			
1	Loss of income (after 60% loss of future income)		4000-1600 = 2400
2	Medical expenses		
(i)	Medicines	₹ 13,000	
(ii)	Hospital Charges		
(iii)	Attendant Charges		
(iv)	Special Diet		
(v)	Transport		
(vi)	Future medical expenses		
3	Pain & Suffering-per fracture/per surgery		100000
4	Disability (65%)		
5	Loss of earning capacity		
	Income		460800 (2400x12x16)
	Multiplier		16
	Future loss of income		
6.	Loss of amenities		
7	Reduction in life expectancy		
8	Loss of prospect of marriage		
9	Loss due to disfigurement		
	Total	₹ 13,000	₹ 5,60,800

The total compensation payable shall be ₹ 5,60,800/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @ 6% from the date of filing of the claim petition till the date of realization. The liability shall remain the same as fixed by the Tribunal.

Resultantly, the appeal is allowed and the award is modified to the aforementioned extent.

09.08.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No