

F.A.O. No. 1454 of 2005 (O&M)

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 1454 of 2005 (O&M)

DATE OF DECISION: 15.3.2017

Nardev Singh

.....Appellant

Versus

Uggar Singh and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Akshay Jain, Advocate
for the appellant.

Mr. S.C. Chhabra, Advocate
for respondent No.2-Cross-objector.

Mr. Rajbir Wasu, Advocate
for respondent No.3.

DAYA CHAUDHARY, J.

The present appeal has been filed by appellant-Nardev Singh for modification of award dated 11.11.2004 passed by Motor Accidents Claim Tribunal, Mansa (hereinafter referred to as 'The Tribunal').

Briefly the facts of the case as per claim petition are that on 29.5.2003 at about 2.30 pm, appellant-Nardev Singh along with his friend Charanjit Singh was returning from his poultry farm to Mansa City on his scooter, which was being driven by him and said Charanjit Singh was its pillion rider. On reaching near petrol pump, bus bearing No. PB-31B/4717 being driven in a rash and negligent manner by the driver hit the scooter

which resulted into accident. The appellant suffered multiple grievous injuries and filed claim petition against driver of the offending vehicle, owner of the bus and insurance company and claimed compensation to the tune of ₹8 lacs. Notice in the claim petition was issued to the respondents. Respondents No.1 and 2 appeared, filed joint written statement and contested the petition. Respondent No.3-Insurance Company filed separate written statement alleging therein that the driver of the bus was not having a valid driving licence at the time of accident. The respondent-Insurance company also denied its liability to make payment of compensation as the driver and owner violated the terms and conditions of the insurance policy. The claim petition was allowed and compensation to the tune of ₹1,70,000/- was awarded in favour of the appellant vide award dated 11.11.2004, which was to be paid by the respondents jointly and severally within a period of two months from the date of passing of the award, failing which, the claimant was held entitled to claim interest at the rate of 5% per annum from the date of filing of the petition till its realization. The appellant being unsatisfied with the award approached this Court for enhancement of compensation by way of filing the present appeal.

Learned counsel for the appellant submits that only an amount of ₹40,000/- has been awarded on account of temporary disability and report of medical board has not been taken into consideration. An amount of ₹86,800/- was awarded on account of medical bills, whereas, some of the amount was spent as medical expenses by the relatives and other visitors. Learned counsel further submits that a meager amount of ₹10,000/- has been awarded towards hospitalization and ₹10,000/- on account of loss of salary, whereas, the appellant received multiple injuries coupled with

disability and, therefore, the amount of compensation is inadequate. Even the amount awarded on account of special diet and attendant charges is also on the lesser side. At the end, learned counsel for the appellant submits that the amount of compensation awarded to the appellant is liable to be enhanced keeping in view the nature of injuries and that he was only 39 years of age at the time of accident.

Learned counsel for the respondent Nos.2 and 3 have opposed the submissions made by learned counsel for the appellant and contends that the amount of compensation cannot be termed as meager being temporary disability. Learned counsel for the respondents further submit that accident occurred due to rash and negligent driving of the appellant. The claimant himself was under the influence of liquor and this fact was noticed while recording his statement before the Tribunal. It has also come in the MLR Ex. A2 that there was smell of alcohol from the appellant-claimant and, therefore, he was not entitled for any compensation.

Heard the arguments advanced by learned counsel for the parties and have also gone through the award passed by the Tribunal.

Facts relating to filing of claim petition and award of compensation against different heads are not disputed. The present appeal has been filed on the ground that compensation awarded is inadequate as appellant is not in a position to work properly because of disability being permanent. Appellant-Nardev Singh appeared as AW-1 and has stated that the accident occurred due to rash and negligent driving of the bus. The driver of the offending vehicle did not appear before the Tribunal. As per MLR Ex. A2, smell of alcohol was coming from the appellant but the doctor who medico legally examined the appellant was not cross-examined. The

Tribunal while considering the fact that Doctor was not cross-examined and driver of the vehicle has chosen not to appear in the Court, an adverse inference was drawn. It was also mentioned in the award that had the doctor who medico legally examined the injured been produced in the Court, the injured would have been in a position to cross examine the doctor effectively. The findings recorded by the Tribunal are as under:-

“To strengthen his case, the injured has also examined AW-2 Dr. Pankaj Sharma, who made statement inter alia to the effect that on 9.1.2004, Nardev Singh injured visited CMO Office, Mansa for examination of his disability by the Board consisting of himself as Ortho Surgeon, Dr. Inderpal, Medical Specialists and Dr. Suresh Singh as ENT specialists. The Board of Doctors after examining Nardev Singh injured and perusing the case history of the patient, made the opinion that he is an old case of left leg injury operated for fracture tibia and conservatively treated for fracture acetabulum mild stiffness of hip left and moderate stiffness of knee left. He was operated six months back. His temporary disability is 28%. The disability in coming period (in future) can change on either side. He had brought with him the official record and he proved disability certificate Ex. A-5. Besides this, the petitioner has also placed on record medical bills/receipts Ex. A-56 to Ex. A-70 amounting to Rs. 86,759/-.”

Respondent No.2 has also filed Cross-Objections stating therein that the findings recorded by the Tribunal are contrary to the ratio of judgment of Hon'ble the Apex Court rendered in the case of **Lal Chand**

Vs. Oriental Insurance Company Ltd. 2006 (4) RCR (Civil) 204, wherein, it was held that absence, fake or invalid driving licence or disqualification of the driver are not the defence available to the insurer against the insured or third party.

After hearing the arguments advanced by learned counsel for the parties and on perusal of findings recorded by the Tribunal and by considering the nature of injuries, I am of the view that there is no ground to enhance the compensation.

However, by considering the objections raised by respondent No.2, it cannot be said that there was any negligence on his part.

The negligence was on the part of the renewal authorities as the original driving licence was renewed on three occasions. The driving licence on verification was found to be fake by the local commissioner, who was appointed to verify the genuineness of the driving licence. It was not found to be issued by the licencing authorities concerned. The renewal of the licence was done by believing the same to be valid. It was the duty of the renewal authority to verify as to whether the licence was issued by the competent/genuine authorities. The inter se dispute between the insurance company or the owner and driver of the vehicle cannot be decided in the present appeal. However, they are at liberty to avail the appropriate remedy available under law. The cross-objections filed by respondent No.2 are, therefore, dismissed.

In view of the above, the appeal filed by the appellant-claimant is dismissed as it cannot be said that the amount of compensation awarded by the Tribunal is not adequate keeping in view the nature of injuries and amount of compensation awarded to him. The Tribunal has considered all

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the aspects including medical report and the bills available on record. There is no merit in the contentions raised by learned counsel for the appellant and the appeal being devoid of any merit is hereby dismissed.

15.3.2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No