

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

FAO-277-2005

Date of decision : 16 .06.2017

Avjit Saha

... Appellant

Versus

Ramesh Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Vivek Suri, Advocate
for the appellant.

Mr.Vijay Lath, Advocate
for respondents no.1 & 2.

Mr.Karminder Singh, Advocate
for respondent no.3.

AMOL RATTAN SINGH, J.

1. By this appeal, the appellant seeks enhancement of the compensation of Rs.4 lacs awarded to him by the learned Motor Accident Claims Tribunal, Panchkula, vide the impugned award dated 04.10.2004.

The facts leading up to the filing of the claim petition under Section 166 of the Motor Vehicles Act, 1988, are that the appellant is stated to have been going to Pinjore on his scooter bearing registration no.CH01X-4584, on 26.08.2000, and when he reached round about of Command Hospital, Chandimandir at about 3.10 p.m., a truck bearing registration no.HP-12-3939 came and hit him from behind, as stated in the claim petition.

The truck was stated to have been driven by respondent no.1,

insured with respondent no.3, i.e. the National Insurance Co. Ltd.

2. As a result of the aforesaid accident, the appellant who is stated to have been 28 years old at that time, suffered a head injury and became unconscious. He was moved to the PGIMER, Chandigarh, where he remained admitted for 2 days, i.e. upto 28.08.2000, after which he is stated to have remained under treatment as an outdoor patient, and was under such treatment even at the time of filing of claim petition, as contended.

3. The injuries are stated to have left him disabled to the extent of 77%, as per the assessment of the disability Board of the said institute itself, i.e. the PGI, Chandigarh, and consequently, seeking compensation, the claim petition came to be filed on 16.09.2000.

4. Upon notice issued to the respondents, respondents no.1 & 2, i.e. the driver and owner of the vehicle, filed a joint written statement stating therein that the claimant himself was at fault “and struck himself without taking cares of the traffic rules” (as her paragraph 10 of the said written statement).

The other averments in the petition were also either refuted or denied, including the income of the claimant, he having claimed that it was Rs.5000/- per month.

5. The insurance company, in its written statement, also denied the averments made in the petition, and in fact even stated that no accident had occurred with the vehicle in question. It was further contended that if, however, eventually the Tribunal came to the conclusion that the accident had taken place, then it was not on account of any rash and negligent driving by respondent no.1.

Yet further it, was stated that the claimant was not carrying a valid and effective driving licence.

As usual, contravention of the terms and conditions of the insurance company by the owner of the vehicle was taken as a plea in the written statement of the insurance company, as was another plea to the effect that the driver of the insured vehicle was not also holding a valid and effective driving licence, and for those reasons, the insurance company could not be held liable to pay any compensation, if awarded.

6. On the aforesaid pleadings, the following issues were framed by the learned Tribunal:-

“1. Whether the accident in question took place due to rash and negligent driving of his vehicle by respondent no.1 as alleged?OPP

2. If issue no.1 is proved, whether claimant received injuries in the accident in question, if so to what effect?OPP

3. If the above issues are proved, whether the claimant is entitled to compensation, if so to what amount?OPP

4. Whether respondent no.1 was not holding a valid and effective driving licence on the date of accident?OPR

5. Relief.”

It needs to be noticed here that the claim petition is seen to have been filed by the appellant himself (despite his disability of 77 %), and he also testified as PW3 and is seen to have been subjected to cross-examination by counsel for respondents no.1 & 2, as also counsel for respondent no.3. In such cross-examination, amongst other things such as describing the manner of the accident, he also stated that he could not work

any longer, though he was working in a company prior to that.

7. Other than the appellant, his wife, Seema Saha, testified with regard to his salary, deposing that other than the salary of Rs.5000/- per month that he was earning with M/s. P.J. Electronics, Industrial Area, Chandigarh, he was also getting Rs.1000/- per month by working over time.

As per her, the appellant remained confined to bed for 6 months, after which he was removed from his job as he was unable to work due to his disability. She also deposed that a sum of Rs.50,000/- had been spent on his treatment since then.

8. One M.K.Verma, a partner of the firm, M/s P.J. Electronics, also testified in favour of the appellant-claimant, stating that he had worked as a Supervisor in the firm from January 2000 to August 2000, at a salary of Rs.4800/- per month and had left service because of a serious road accident, which had caused him a loss of memory.

This witness also produced a copy of the attendance register of the firm from March, 2000 to September, 2000 (Ex.P3 to P15), showing the appellant to be one person amongst other employees present during the said period.

9. No employee of the PGIMER, Chandigarh, is seen to have testified in respect of the disability certificate Ex.P19, but the learned Tribunal accepted that certificate to be correct, wherein it was also opined that the condition of the claimant was 'non-progressive' and that he was unlikely to improve.

A discharge card of the said institute was also exhibited as Ex.P22, showing therein that he had been admitted to the hospital on 26.08.2000 and remained there till 28.08.2000 due to a head injury etc.,

after which he was seen to have been treated regularly as per the out patient tickets Exs.P20, P21 and P23 to P25.

The bills in respect of the expenditure incurred on his treatment were also exhibited as Ex.P26 to P45, showing a sum of Rs.2800/- having been spent.

10. The respondents are seen to have examined 4 witnesses including the owner of the truck with which the appellant had an accident, i.e. respondent no.2, Nand Lal, and the driver thereof, i.e. respondent no.1 Ramesh Kumar. They also examined the Ahlmad of the Court of the learned JMIC, Panchkula, as RW3 and one Khem Chand, a Junior Assistant in the office of the Registering Authority, Shimla (Rural), who testified in respect of the driving licence of respondent no.1, to the effect that it was endorsed for driving heavy goods vehicles on 17.01.1997 and was valid upto 05.04.2001, after which it was renewed on 20.05.2003, valid upto 19.05.2006.

11. Upon appreciation of the aforesaid evidence, as regards the issue on negligence, it was held by the learned Tribunal that such negligence of respondent no.1 in causing the accident was duly proved.

Since no appeal against that finding is shown to have been filed by any of the respondents, this Court is not required to go into the correctness of that finding, but it needs to be noticed that a statement of respondent no.1 in his testimony, to the effect that the appellant came there and struck his scooter against the truck from behind, was rejected by the Tribunal on the ground that no detail thereof had been given in the written statement and as such the testimony was beyond pleadings, and further, the said respondent had never made a complaint or approached any authority

against the registration of the FIR against him, or for registration of an FIR against the scooter driver (the appellant herein).

12. On the issue of the amount of compensation payable, it was found that as per the income tax returns of M/s P.J. Electronics, i.e. the firm that had employed the appellant (such returns having been tendered in evidence by, in fact, the respondent), the appellant-claimant was shown to have been paid wages of about Rs.6000/- during the period April 2000 to August 2000.

Thereafter, going on to discuss that as per the disability assessed by the PGI, Chandigarh, the appellant had suffered 77% permanent disability in relation to his body, with him being 28 years of age at the time of accident, consequent to which he had lost his job and the life of his wife and children “has also become hell”, a lump sum compensation of Rs.4 lacs was awarded to the appellant, along with interest @ 9% per annum, running on that sum from the date of filing of the claim petition till the date of payment of the amount.

13. As regards the liability to pay the compensation, on the basis of the testimony of RW4, i.e. the Junior Assistant from the office of the Registering Authority, Shimla, the licence of respondent no.1 was found to be valid on the date of the accident and consequently, with the insurance policy also proved to have been valid at that point of time, it was held that the respondents were all jointly and severally liable to pay such compensation, with the insurance company liable to indemnify the insured.

14. In this appeal filed by the claimant, at the time when notice was issued in the year 2014, after the paper-book had been reconstructed, it having been burnt in a fire incident in January 2011, on the next date, i.e.

12.08.2014, service upon respondents no.1 & 2 was dispensed with and the records of the paper book were re-summoned from the learned MACT, Panchkula.

The judgment initially having been reserved after hearing arguments on 18.02.2016, the appeal was put up for rehearing as it was considered necessary by this Court to get the disability reassessed, to determine as to whether there was any improvement in the condition of the appellant in the 16 years that had gone by the since date of the accident, in view of the fact that the disability certificate, Ex.P19, showed a disability of 77%, and the compensation to be assessed, in terms of the judgments of the Supreme Court in *Raj Kumar vs. Ajay Kumar and another (2011) 1 SCC 343* and *Kavita vs. Deepak and others, 2012(4) RCR (Civil) 273*, may amount to a large sum.

15. Consequently, upon the matter having been put up for rehearing, the Director, PGIMER, Chandigarh, was asked, vide an order of this Court dated 05.07.2016, to constitute an appropriate Board to determine the present level of disability, of the appellant, if any, with the Board to state therein his ability to earn a living in the future and to perform the activities that a man of his age would normally perform.

16. The disability certificate was eventually received in the Registry of this Court, having been sent by post by the Assistant Administrative Officer, Nursing Cell, M.S. Office, PGIMER, Chandigarh. The certificate itself is seen to be issued under the seals and signatures of three doctors, with the Chairperson of the Board being Dr.Rajesh Chhabra, Professor, Department of Neurosurgery, PGIMER, Chandigarh. Dr. Sandeep Bansal, Associate Professor, Department of Otolaryngology, and a Senior

Resident in the Department of Hospital Administration of the same institute, are seen to be members of the Board.

As per the said certificate, dated 15.09.2016, there is no locomotor disability in the appellant, but due to a post traumatic optic nerve injury, he suffers from low vision / blindness to the extent of 75%. Mental retardation / illness due to impairment in his memory and “perceptomotor dysfunction”, is also shown, to be to the extent of 71%.

There is no hearing impairment (now).

However, on account of the aforesaid two physical disabilities, in respect of low vision / blindness and impairment in the memory and perceptomotor dysfunction, the total disability is assessed to be 87% by the Board.

As per the certificate, his condition is not likely to improve and no reassessment is considered necessary.

[It may be noticed here that the name of the Senior Resident, i.e. the 3rd Member of the Board, is not specifically given in the disability certificate, though the signature of the Member is visible and as per an office order of the Medical Superintendent of the PGIMER dated 25.07.2016, one Dr.Pruna Babbar, Sr. Resident, is seen to have been appointed as the Convener of the Board.]

17. Though no Member of the Board has been examined by this Court in respect of the aforesaid disability certificate, however, the certificate itself have been called for by an order of this Court and it having been received upon a reminder thereafter also issued by the office of the Registrar (Judicial) of this Court on 05.09.2016, with its authenticity not doubted by learned counsel for the insurance company, the certificate itself

having been received in the Judicial Branch of the Registry, it is accepted as a true certificate and would be considered by this Court as Ex.CA1 (though no formal order was earlier passed in that regard).

18. To compare the aforesaid certificate with the disability certificate exhibited before the learned Tribunal, i.e. Ex.P19, it is seen that the earlier certificate simply assessed the disability as a handicap to the extent of 77% of the whole body, because of a head injury, with impairment of memory and loss of hearing. Since the original records, including the evidence led before the Tribunal, were destroyed in a fire accident in the record room of this Court in January, 2011, what is on record is only a photostat copy of the evidence led (and the pleadings) before the Tribunal. Thus, the complete date on the said certificate is not discernible, with the year completely obliterated, but the date 'August 1' is clearly visible. Similarly, the photocopy shows that that Board also consisted of 3 Members, with the Chairman seemingly being a Professor from the Department of Plastic Surgery, the other Member being an Additional Professor in the Department of Surgery, and the Member Secretary being the Deputy Medical Superintendent of the institute.

19. What is obviously complete incongruous between two certificates is that whereas the earlier certificate, Ex.P19 before the Tribunal, shows a loss of hearing, the present certificate (original), now treated as Ex.CA1, issued on 15.09.2016, shows no hearing impairment at all and in fact shows 75% low vision / blindness due to a post traumatic optic nerve injury, as already noticed. However, as regards loss of memory, that is to be shown to be present in both, the old and the new disability certificates, with the new one stating it to be 71%.

Thus, the earlier certificate showed a loss of hearing in stead of a vision loss.

A perusal of the out patient prescriptions (Exs.P-20 to P-25), shows that the appellant was in fact tested for hearing loss even between the years 2002 to 2004, with mild disability discernible from those certificates/prescriptions. Obviously therefore, the hearing ability became normal thereafter, though the visual disability increased, due to an injury to the optic nerve.

It is also discernible from the noting dated 09.02.2002, on Ex.P20 (page 104 of the evidence led before the Tribunal), that the appellant had very low memory, with average recognition assessed at that time also, with the over all neuropsychological assessment being to the extent of 76% disability, though with an I.Q. of 111.

20. The question therefore is, as to whether the two certificates read together, the first being about 13 years old, showing a total disability of 77% and the present one being current, showing a total disability of 87%, including a loss of vision and loss of memory, with loss of memory common to both certificates, can the appellant be assessed to be completely disabled as regards his ability to earn a living?

21. The certificates being from the leading medical institute in India, north of Delhi, and a very prestigious institution, they can naturally not be discarded in any manner by this Court. However, what is seen to be surprising, is that at least at the time of the appellants' deposition before the learned Tribunal, as PW3, on 09.03.2004, he remembered the details of his accident that took place about 3 ½ years earlier.

Therefore, the loss of memory to an extent of 71%, as its stands

on 20.09.2016, as per the current disability certificate, does definitely raise a question in the mind of this Court. However, to repeat, as the certificate has been issued by a Disability Board of a premier medical institution of the country, with no specific percentage of memory loss shown in the first certificate, Ex.P19, this Court can only infer that the impairment in the memory and 'perceptomotor dysfunction' are obviously the current condition of the appellant.

22. It is also seen that during the testimony of the appellant and his wife, i.e. PWs 3 & 1 respectively, the appellant was not able to work after the accident. Hence, with the PGI Chandigarh now having certified that his total disability is 87% (though with no locomotor disability), this Court would have to accept that the appellant is unable to work, there also being 75% loss of vision as per the current disability certificate.

In the aforesaid background, the parameters laid down by the Supreme Court in *Raj Kumars' case (supra)* need to be reverted to, to determine the compensation payable to the appellant.

23. That was also a case where the appellant before the Supreme Court was injured in a motor vehicle accident, sustaining fractures in the leg and arm. While laying down the general principles relating to compensation in injury cases, it was observed by their Lordship as follows:-

“General principles relating to compensation in injury cases

5. The provision of the Motor Vehicles Act, 1988 (“the Act” for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a

result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C. K. Subramonia Iyer vs. T. Kunhikuttan Nair, R. D. Hattangadi vs. Pest Control (India) Ltd. and Baker vs. Willoughby).”

Thereafter the heads under which compensation is to be awarded, were described as follows:-

“Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of

marriage).

(vi) Loss of expectation of life (shortening of normal longevity). ”

It was also held that in routine personal injury cases, compensation would be awarded only under heads (i), (ii)(a) and (iv). It was also observed that assessment of non pecuniary damages involved determination of a lump sum amount, with rational circumstances such as age, the nature of the injuries/disability/depreciation suffered and the effect thereof on the future life of the claimant, to be gone into.

24. As regards loss of future earnings due to a permanent disability, it was held that such permanent disability must be assessed rationally qua the whole body, because though permanent disability qua specific limbs may be 80% and 60% (qua two such limbs), however, obviously the total disability qua the whole body cannot be held to be 140%.

In other words, it would be necessary for the Tribunal or the Court to assess the disability qua the whole body and the effect thereof, including the loss of earning capacity in terms of the percentage of the income and the ability to perform day to day activities and functions.

Essentially the same principle has been reiterated in ***Kavitas' case (supra)***, wherein medical expenses during the treatment, and future medical expenses, charges of an attendant etc., have also been enumerated.

25. Consequently, coming in the present case to the actual medical expenditure incurred by the appellant, as is seen from the bills tendered as Ex.P26 to P45, the total amount is Rs.2781/- and therefore the Tribunal correctly described it to be about 2800/-. Obviously therefore, with no other bills having been produced, that has to be accepted as the total expenditure

incurred, though expenditure on transport and miscellaneous expenses such as a special diet, services of an attendant etc., would also need to be added to some extent.

26. Seeing that as per the OPD certificates Exs.P20 to P25, he was visiting the hospital even right upto the year 2004, consequently Rs.2000/- is awarded as transportation charges.

Coming to the other pecuniary damages, as regards expenses related to treatment, Rs.2800/-, as was assessed by the Tribunal upon bills for that amount having been led by way of evidence, is awarded to the appellant, with no amount awarded towards future expenses on medicines, there not seen to be any expected expenses assessed in the disability certificate, Ex.CA-10.

In addition, Rs.2000/- already having been assessed by this Court towards transportation charges, another Rs.5000/- is also awarded towards the expenses that would have been occurred on nourishing food and miscellaneous expenses.

27. Since the appellants' locomotor ability is not affected at all, his day to day life would otherwise not have been affected, but for his poor vision. Therefore, as regards his ability to earn, with 75% low vision and a total disability of 87% as of today, and 77% as assessed in the disability certificate tendered in evidence before the Tribunal, his loss of earning capacity has to be estimated to be 100%, in terms of the certificates, and as per the testimonies of himself and his wife.

Hence, with his earning shown to have been Rs.4800/- per month as per his former employer, PW2, with that amount not seen to be excessive in any manner, and a salary certificate, Ex.P2, also stating to the

same effect, the loss of earnings at the time of the accident were obviously Rs.57,600/- per annum. To that a multiplier of 17 would be applicable , the appellants' age being 28 years at that time. The multiplier of 17 is applied in terms of the ratio of the judgment in *Smt.Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121*, which though applies to loss of income to the dependants of a person who died in a motor vehicle accident, the rationale would still remain the same as regards complete loss of earning in the case of an injured person who is no longer able to work.

As such, the loss of earnings in the present case would amount to Rs.9,79,200/- upon the application of the aforesaid multiplier (Rs.57600 x 17), and is so awarded, with no deduction to be made therefrom towards the personal expenses of the appellant, he obviously being alive.

28. Coming next to the compensation to be awarded towards pain and suffering, loss of amenities and loss of expectation of life, in terms of sub headings (iv), (v) and (vi) under the clause of non-pecuniary damages, as per the ratio of *Raj Kumars' case (supra)*, it is considered appropriate to club such damages along with the expenses of an attendant who would be needed to look after the appellant throughout his life, because of 75% loss of vision. Consequently, Rs.3 lacs are assessed under that head, as a lump sum.

29. The total compensation now awarded, therefore amounts to the following:-

1. Towards loss of earning, to the extent of 100% of such earnings	Rs.9,79,000/-
2. Towards transportation, special diet and miscellaneous expenditure	Rs.7,000/-
3. Towards treatment as per bills produced	Rs.2800/-

4. Towards pain and suffering, loss of amenities of life and permanent disability of 87%.	Rs.3,00,000/-
Total	Rs.12,88,800/- (rounded off to Rs.12,89,000/-)

Thus, the aforesaid amount is Rs.8,89,000/- more than what was awarded by the Tribunal.

The enhanced compensation would carry an interest @ 6% per annum on Rs.6 lacs, from the date of the filing of the claim petition till the date of the Award of the Tribunal, and 4% per annum from the date of that Award till realization of the enhanced amount, interest rates having dropped considerably.

The remaining amount of Rs.2,92,000/- would not carry any interest on it, in view of the fact that the total compensation claimed by the appellant was Rs.10 lacs, in his claim petition.

30. It may be stated here that though the amount claimed by the appellant in his claim petition was Rs.10 lacs, however, as per the ratio of the judgment in *Sanobanu Nazirbhai Mirza and others vs. Ahmedabad Municipal Transport Service, (2013) 16 SCC, 719*, wherein it was held that if as a result of the amount to be awarded under different heads, the total compensation exceeds the amount claimed, such compensation would be admissible. Therefore, an amount of Rs.2,92,000/- over and above the amount claimed, is being awarded by this Court, in terms of the break up of the compensation given under the different heads hereinabove. However, as already stated, no interest on the excess amount is being awarded.

31. No costs in this appeal are being awarded, for the same reason, i.e. that the compensation awarded is Rs.2.92 lacs more than what was claimed by the appellant in the claim petition.

The appeal is consequently allowed as above.

(AMOL RATTAN SINGH)
JUDGE

June 16, 2017.
Davinder Kumar

Whether speaking / reasoned	Yes
Whether reportable	Yes