

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.4203 of 2007 (O&M)

Date of Decision:21.04.2017

Mahender Singh

...Appellant

Vs.

Yudhbir Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Pawan Hooda, Advocate,
for the appellant.

Mr. Rajneesh Malhotra, Advocate,
for respondent No.4.

Amol Rattan Singh, J.

This is an appeal by the claimant before the learned Motor Accident Claims Tribunal, Hisar, seeking enhancement of the compensation of Rs.4,70,000/- awarded to him, vide the impugned Award dated 21.12.2006.

2. The circumstances leading up to the filing of the claim petition, are that the appellant, who is stated to be an agriculturist, aged 23 years at the time of filing of the claim petition in the year 2003, was going to village Mirkan in Haryana Roadways bus bearing registration no.HR-39/7096 on 01.02.2003.

When the bus reached Mirkan bus stand, the driver of the bus, i.e. respondent no.1 herein, is stated to have stopped it with some passengers alighting from the bus and some boarding it. The appellant-claimant was in the process of getting down, as stated in the claim petition, when respondent no.1 started the bus without waiting for the whistle of the conductor and due to the sudden jerk, the appellant fell down from the bus and his thighs and abdomen were run over by the rear tyres of the bus.

The accident is stated to have been witnessed by Jaswant Singh of village Mirkan who was waiting for the claimant at the bus stand. He raised an alarm due to which the bus was stopped, with respondent no.1 and the conductor of the bus having allegedly run away from the spot.

The aforesaid Jaswant Singh is stated to have arranged a vehicle to take the claimant to the N.C. Jindal Hospital, Hisar, where he remained admitted upto 07.02.2003, but upon his condition worsening he was shifted to the Sapra Hospital, where he remained admitted till 25.08.2003.

3. As per the claim petition, the appellant had to undergo two major operations for reconstruction of the urethra and a normal urinary passage, as also for reconstruction of the burns column of the anus.

It was contended that the appellant spent Rs.10,00,000/- on his treatment, special diet, an attendant and a much higher amount would still be required for operations.

It was further pleaded that the appellant had become permanently impotent and therefore his marriage prospects 'were affected' and even his engagement was cancelled.

Thus, it was pleaded that he had become permanently disabled.

Lastly, it was contended that he owned 25 acres of land and also used to run a milk dairy.

4. In response to the notice issued in the claim petition, filed under Section 166 of the Motor Vehicles Act, 1988, respondent no.1 (the driver of the bus) appeared and filed a separate written statement; respondents no.2 and 3, i.e. the General Manager of the Haryana Roadways and the State of Haryana respectively, filed a common written statement and the insurance company that had insured the bus, filed its own reply.

5. Respondent no.1 admitted the factum of the accident but stated that it was on account of the petitioners' (appellants' herein) own fault, who was trying to board a moving bus. He further stated that the police had lodged a 'false FIR' against him.

Respondents no.2 and 3 also submitted that the appellant was negligent while getting down from the bus without waiting for the bus to stop and when the driver noticed that some one had fallen down, he immediately stopped the bus and made arrangements for his treatment.

Respondent no.4, i.e. the insurance company, in its written statement pleaded that the driver was not holding a valid driving licence and further, with the claimant himself being at fault, the company was not liable to pay any compensation. Further, it was contended that the claim was highly exaggerated and that no operation had taken place, and neither had the claimant become permanently disabled or impotent.

6. Upon the aforesaid pleadings of the parties, the following issues were framed by the learned Tribunal:-

- “1. Whether the accident took place due to rash and negligent driving of bus bearing no.HR-39-7096 by respondent Yudhvir Singh? OPP
2. Whether the petitioner is entitled to any compensation on account of injuries sustained by him, if so, how much and from whom? OPP
3. Whether the insurance company is not liable to make the payment of compensation, if awarded, or not? OPR
4. Whether the claim petition is not maintainable in the present form? OPR
5. Relief.”

7. In support of his petition, the appellant-claimant examined as

many as 13 witnesses with he himself being PW13. His own testimony was in terms of his petition, supported by PW12, Jaswant Singh, who is stated to have witnessed the accident and taken the appellant to hospital.

Of the other witnesses, two doctors appeared from the two hospitals that the appellant had taken treatment, who testified in terms of the injuries sustained and the treatment administered. 8 witnesses are seen to be those who testified in respect of the various bills and receipts for the medicines administered to, the tests conducted upon, and diet taken by, the appellant. One witness, Sita Ram, PW7, appeared being the owner of the vehicle in which the appellant is stated to have been taken to PGIMER, Chandigarh 5 times, with the bills in respect of the journey, proved by him.

8. As per Dr. Ajay Sharda, PW2, the appellant was admitted to the Jindal Hospital with multiple injuries and he had written out the MLR showing therein a fracture of the pelvis, a rupture of the urethra bladder and anterior rectal wall and he was also operated upon in that hospital.

Dr. M. R. Sapra appeared as PW1 and testified that he had treated a seriously injured patient who had been run over by a bus, with the lower part of his abdomen and pelvis completely crushed and a massive tear present in his intestine, colon and urinary bladder.

There was also multiple fractures of his pelvis, pubic bone, right neck of the femur.

He was discharged after six and half months of treatment, during which two major surgical operations were performed to restore his normal urine repaces and for reconstruction of his anus and rectum.

This witness also testified to prove his opinion, Ex.P1, further stating that the patients' stools were passing through colostomy, and the urine

was being passed through a supra pubic tube, with an opening on the abdomen on its right side.

The doctor further testified that there was permanent impotency because of the injury to the nerves and that the original treatment record had been brought by him, thereby proving Ex.P7.

Yet further, the doctor testified that it was not possible to restore the normal urinary and faecal passage and that the operations were difficult.

He also proved various bills and prescriptions purchased from the hospital, identifying the signatures of the person incharge of the drug store.

Lastly, he deposed that the patient used to come for follow up treatment and for change of the urinary tube which used to get blocked frequently, and even thereafter, hygiene was required to be maintained. As per the doctor, the appellant was required to take medicines for his entire life.

9. For the respondents, respondent no.1, i.e. the driver of the bus, Yudhvair Singh, was the sole witness who also deposed in terms of his written statement, to the effect that the appellant had got injured due to the fact that he alighted from the bus without waiting for it to stop.

The insurance company simply tendered the policy as Ex.R2, by way of evidence.

10. Upon considering the aforesaid evidence, as regards the issue of negligence, the learned Tribunal found that other than the fact that the appellant himself and PW12, Jaswant Singh, had testified to the effect that the bus had been started while the appellant was getting down, the FIR lodged at 2:40 pm, i.e. within half an hour of the accident having occurred at 2:10 pm, proved that the accident took place because of the negligence of respondent no.1.

Thus, the written statement and testimony of the said respondent was disbelieved, further on the ground that there would have been no urgency on the part of the claimant to alight from the bus without waiting for it to stop.

11. On the basis of the testimonies of the doctors and those who proved the bills qua the treatment, the Tribunal came to the conclusion that the bills proved on record were amounting to Rs.3,38,259/-, which included the amount paid to the doctors for operations, the hospital charges, transportation charges, purchase of medicines, blood etc.

Thus, that amount was accepted to be the amount spent on the treatment of the appellant.

12. To compensate for his impotency and loss of marriage prospects, Rs.50,000/- was awarded and the same amount was also awarded for the pain and suffering that the appellant went through.

Towards loss of income for the six months that he spent in hospital, Rs.15,000/- was awarded and an alike amount awarded towards general damages.

Hence, a total amount of Rs.4,68,259/- was awarded, which was rounded off to Rs.4,70,000/-.

13. The issues framed on the liability of the insurance company to make payment of compensation and maintainability of the claim petition, are shown to have been not pressed before the Tribunal.

14. Accordingly, the aforesaid amount of Rs.4,70,000/- was awarded alongwith 6% interest running thereupon, from the date of institution of the petition till the realization of the amount, to be paid jointly and severally by the respondents.

Minor cost was also awarded to the appellant.

15. After this appeal was listed for hearing in the year 2007, the case file and record was burnt alongwith several other cases, in the fire that took place in the record room of this Court on 30.01.2011. Hence, that being a period prior to complete computerization, the previous orders are not available on record.

The file was thereafter reconstructed by the office of the Advocate General, Haryana and the paper book supplied to the Registry of this Court, as can be seen from the order of this Court dated 06.04.2011. Mediation proceedings before the Lok Adalat having failed, it eventually came up for actual hearing (with an application for an actual date of hearing filed).

16. However, in the meanwhile, CM-22580-C-II-2013 had been filed on 29.10.2013 on behalf of the appellant (accompanied by his affidavit), seeking to lead additional evidence by invoking under Order 41 Rule 27 CPC.

Alongwith the said application, a very large number of bills/cash memos have been annexed, which are seen to be dated between 2007 to 2012, though with none seen for the years 2010 and 2011. The total amount shown to have been spent, as per these bills, is Rs.3,93,928/-.

One of the bills has been issued by the Sapra Hospital, Hisar, showing that the appellant under went yet another surgery between 05.04.2009 and 20.04.2009, with a total sum of Rs.37,300/- paid by him, on account of the operation and other hospital expenses. That bill is dated 20.04.2009.

Yet another bill dated 05.07.2008 is also seen annexed with the application, issued by the same hospital, showing that the appellant had undergone another operation in that period for which the hospital bill is seen

to be Rs.1,39,500/-.

An undated case summary, obviously issued after the year 2009, has also been annexed with the application, shown to be issued by Dr. Tarun Sapra, Consultant Surgeon and Incharge of the Emergency and Trauma Unit of Sapra Hospital, Hisar, wherein other than giving the earlier history of the patient, it has been stated that he was re-investigated upon approaching the hospital on 15.11.2007 and had to undergo urethero plasty and colostomy closure.

Despite the fact that he responded well to the treatment, thereafter he had to undergo another surgery after three weeks as he had developed a urinary leak which kept on right upto 2009 and as per the said certificate, he was eventually referred for a second opinion, to a “higher centre”.

Lastly, at the end, the certificate states that the appellant was still undergoing treatment off and on for urinary incontinence.

17. In the aforesaid background, vide an order of this Court dated 31.03.2016, the appellant had been directed to appear before the Director, Post Graduate Institute of Medical Education & Research (PGIMER), Chandigarh, with a request to the Director to constitute an appropriate Medical Board to examine the extent of permanent disability suffered by the appellant in respect of performing his normal day to day activities, as also with regard to his locomotive and other abilities, so as to determine as to whether he has a capacity to earn a living and to perform other normal functions.

Such a Board having been constituted, a report was received from the Director, PGIMER, Chandigarh, dated 30.06.2016, in which it was stated as follows, as reflected in the order of this Court dated 14.07.2016:-

“Mentally fully alert.

Has limitation to movements due to previous bony injuries: walks with difficulty due to shortening of right lower limb, has significant difficulty to squat and is unable to squat fully.

His urethra is damaged beyond repair and although he passes urine normally has got significant degree of urinary incontinence (loss of control over urination) requiring continuous use of diaper.

He also has fecal incontinence.

For further quantification of extent of Orthopaedic disability, he will need evaluation by the Disability Board.”

(Emphasis applied by this Court).

18. A disability Board had thereafter been constituted and the final report of the PGIMER, Chandigarh, was received in the office of the Registrar (Judicial), which reads as follows:-

“The patient Mohinder Singh, S/o Sh. Krishan appeared in front of the board on 02-09-2016 at 2.40 pm with alleged history of road side accident on Feb 2013. The patient had Pelvis fracture with Urethral injury and rectal injury and was initially treated in local hospital, Hisar.

As directed by Hon'ble Court, patient was examined on 02/09/2016 for Disability by the Medical Board. On examination of Mohinder Singh, the Board found that the patient has:-

- i) Severe urinary incontinence.
- ii) B/L degenerated arthritis of hip.

As per Disability guidelines by Ministry of Social Justice and Empowerment, patient Mohinder Singh has

- 1) 100% Physical disability in relation to Urinary bladder.
- 2) 50% Physical disability in relation to lower limb.

Dr. Siddarth Sharma
Member

Dr. D V R Kiran,
Convener

Dr. Pebam Sudesh,
Chairman”

(Emphasis applied by this Court).

19. Hence, very obviously even more than 13 years after the accident, the appellant has not recovered from the after effects thereof and as regards his bladder functions, he is 100% physically disabled, with 50% physical disability in relation to the lower limb.

Seen with the earlier report of the Board constituted in the same hospital (report dated 30.06.2016), he has also faecal incontinence.

In other words, his physical condition is far from being anywhere near normal and with a urinary incontinence, seen with faecal incontinence also, obviously he needs consistent diapers and periodical check ups and possible minor/major surgeries, to ensure stoppage of infection due to such incontinence.

With a complete urinary dis-function, it is also obvious that what was found by the Tribunal, to the effect that he has been rendered permanently impotent, is not an incorrect finding.

20. In the aforesaid background, Mr. Pawan Hooda, learned counsel for the appellant submitted that the compensation of Rs.4,70,000/- awarded by the Tribunal is highly inadequate on all counts and as a matter of fact, the amount of Rs.25,00,000/- prayed for as compensation in the claim petition itself, was not excessive in any manner.

Mr. Hooda reiterated that even after the date of the Award of the Tribunal, i.e. after 21.12.2006, the appellant has spent a sum of Rs.3,00,000/- even if calculated from the number of bills that he could retain between 2007 to 2012.

He submitted that other than that fact, he continues to incur

expenditure on treatment even after 2012, and that bills for the years 2010 and 2011 could not be found by him.

21. Further, learned counsel submitted that even if the break up of compensation awarded by the Tribunal is to be looked at, the amount of Rs.50,000/- awarded for permanent impotency and loss of marriage prospects and a like of amount of Rs.50,000/- only, for the extent of pain and suffering that the appellant went through and is still going through, and would be so for the rest of his life, are highly inadequate amounts.

This is to be seen with the fact that he has obviously no chance of any procreation, and even his ability to earn has been severely curtailed. Obviously, with a consistently bad health, even his supervisory capacity for conducting agricultural operations is highly reduced, with the appellant also not able to perform any agricultural operations himself, due to 50% disability in his lower limbs (on account of the arthritis caused by the fractures).

22. Mr. Rajneesh Malhotra and Ms. Vandana Malhotra, learned counsel who had appeared for the insurance company on different dates, on the other hand had submitted that with the respondent-driver having testified to the effect that the appellant had jumped from the bus before it stopped and even thereafter, he having been adequately treated, no further enhancement of compensation is due to him.

23. Before considering the aforesaid arguments, as also the impugned Award of the Tribunal and the additional evidence led before this Court, firstly, it needs to be observed that with no reply filed to the application seeking to lead such additional evidence, despite notice having been issued way back on 18.12.2013, the documents sought to be led by way of evidence

were ordered to be taken on record vide an order dated 31.03.2016. (Though no specific exhibit number had been assigned to them vide the said order, they would be treated to have been taken on record as Ex.AC1 collectively, they all being part of medical record).

24. Similarly, with this Court having also having called for additional evidence by way of a report of the PGI, Chandigarh, as to the present condition of the appellant, and those reports also having been received, not refuted by the insurance company, they are on record as Ex.AC2 collectively, i.e. the report dated 30.06.2016 and the one dated 02.09.2016.

It needs to be noticed at this stage itself that in the report dated 02.09.2016, the year of accident has been wrongly mentioned as February 2013, though in report dated 30.06.2016 it has been shown that after his road side accident (with no date given in the report), the condition of the appellant had been evaluated at the PGIMER, Chandigarh, itself, in the year 2004.

25. Going on to considering the appeal of the claimant, firstly, of course, it is to be seen that there is no challenge by the respondents, even by way of cross-objections, to the findings on negligence recorded by the Tribunal and therefore, this being the claimants' appeal seeking enhancement of compensation, it is only to be seen whether such enhancement is justified, and if so, to what extent.

Though learned counsel for the insurance company has referred to the testimony of respondent no.1, i.e. the driver of the bus in which the appellant was travelling, to the effect that the appellant actually alighted from a moving bus, I see no reason to reverse the finding of the Tribunal on that count, discarding that testimony; because firstly, as said, the insurance company is not in appeal against the said finding, and in any case, with the

appellant and the eye witness examined by him both having testified to the effect that the appellant had actually been in the process of alighting when the bus was started, with an FIR also having been registered against respondent no.1, I see no reason to interfere with the finding of the Tribunal, in the absence of any other evidence to the contrary.

26. As regards whether any enhancement of compensation is due to the appellant, in the opinion of this Court, the compensation of Rs.4,70,000/- awarded by the Tribunal is highly inadequate, on almost all counts, in view of the medical and physical condition of the appellant.

Of course, as regards the compensation of Rs.3,38,259/- awarded by the Tribunal towards medical expenses actually incurred upto that point of time by the appellant, no fault can be found in the Award, because such compensation was as per bills led by way of evidence at that stage.

However, thereafter, the appellant has obviously incurred further medical expenses due to invasive procedures (surgical operations) conducted upon him in the years 2007, 2008 and 2009 and constant medication in between and thereafter.

As already seen, bills for an amount of Rs.3,93,928/- have been placed on record by way of additional evidence, which again have not been refuted by the respondent-insurance company. However, they would be discussed further in this judgment.

27. Therefore, in the background of the appellants' condition, this Court would divide the compensation to be paid under five heads:-

- a) Compensation for medical expenditure already incurred, before and after the Award of the Tribunal;
- b) Compensation for medical expenditure still to be incurred;
- c) Compensation for permanent disabilities to the extent of

100% impotency (as already found by the Tribunal and not challenged), 100% urinary mal-function and indeterminate percentage of faecal incontinence, as also a 50% disability in both the lower limbs due to degenerative arthritis and shortening of a limb (which would either further degenerate or very obviously the appellant would require hip replacement at some point, if otherwise he could undergo that operation, in respect of both hips);

- d) Compensation for pain and suffering; and
- e) Compensation for loss of earning ability.

28. As regards the expenditure already incurred by the appellant, in addition to Rs.3,38,259/- already awarded by the Tribunal, on the basis of the bills proved before it, as already noticed, bills of an amount of Rs.3,93,928/- have been placed on record by way of additional evidence (now treated as Ex.AC1 by this Court), but in respect of which no witness has been examined, though they have not been specifically refuted by the insurance company.

Seeing that some of the bills are almost identical and also seeing that right up to the PGI the physical and mental condition of the appellant has been found to be as has been argued in Court by his learned counsel, I would award at least Rs.2 lakhs in addition to what has been awarded by the Tribunal under the first head, i.e. the amount already spent for treatment, also for the reason that at least four surgeries (major or minor) having been conducted between 2007 and 2009, as per the case summary given in the document annexed with the application for additional evidence, i.e. Ex.AC1. (A copy of the case summary is seen to be written out by Dr. Tarun Sapra aforesaid of the Sapra Hospital, Hisar, which is a part of the medical bills taken on record, as Ex.AC1). As already noticed earlier, for the surgery

undergone in 2008, a bill dated 05.07.2008 is on record, for an amount of Rs.1,39,500/-.

29. As regards the future expenses to be incurred by the appellant by way of diapers, normal follow up treatment, treatment on account of urinary leakages stated to be present from the faecal passage, and on account of arthritic degeneration, a sum of Rs.50,000/- is awarded.

As regards compensation to be awarded under the heads for permanent disability of control over the urinary bladder, faecal incontinence, impotency and 50% disability of the lower limbs, in the opinion of this Court, it would be appropriate to club such compensation, as a lumpsum, with the compensation to be awarded for pain and suffering.

Thus, under these heads, a lumpsum compensation of Rs.5,00,000/- is awarded to the appellant.

30. Coming last to the issue of loss of ability to earn, seeing that there is 50% locomotor disability in the lower limbs and also 100% urinary incontinence and some faecal incontinence, the total disability qua the whole body would be 60% in the opinion of this Court, due to the obvious continuous discomfort of faecal and urinary incontinence, seen with the 50% disability to the lower limbs.

Rs.15,000/- was awarded by the Tribunal for loss of income for 6 months (to cover the period between February to August 2003). Hence, keeping in view the fact that the occurrence took place in the year 2003 when the appellant was 23 years of age, and in that year the minimum wages for a semi-skilled labourer in Haryana were approximately Rs.2500/- per month, which would be what the appellant would pay anybody to work in his place on the fields, in the capacity of supervisor and labourer, thereby making it a semi-

skilled work, 60% of that amount would be Rs.1500/- per month or Rs.18,000/- per annum.

As per the judgment in Smt. Sarla Verma and others vs. Delhi Transport Corporation and another (2009) 6 SCC 121, in the case of a victim who has died, towards loss of income to his dependents, a multiplier of 18 is to be applied, if the victim was between 15 to 25 years of age. In the present case therefore, that multiplier is also to be applied, in respect of the loss of income as per the 60% disability assessed.

Applied thus, the compensation payable towards loss of ability to work (after factoring in the fact that the appellant is 60% disabled), works out to Rs.3,24,000/-.

31. Accordingly, as per the discussion aforesaid, the compensation now awarded to the appellant is as follows:-

a)	For expenditure on treatment already incurred	Rs.3,38,259/-
	i) For the expenses incurred upto the time of the impugned Award	(as awarded by the Tribunal)
	ii) For expenses incurred thereafter	Rs.2,00,000/-
b)	Towards future expenditure on treatment	Rs.50,000/-
c)	Towards permanent impotency, 100% urinary bladder dis-function, faecal incontinence and 50% disability in the lower limbs and towards pain and suffering	Rs.5,00,000/-
d)	Towards loss of ability to earn to full capacity	Rs.3,24,000/-
	Total	Rs.14,32,259/-
		rounded off to Rs.14,32,000/-

The Tribunal having awarded Rs.4,70,000/-, the amount awarded by this Court now is Rs. 9,62,000/- more than that.

The aforesaid enhanced amount of Rs. 9,62,000/- would carry an

interest @ 5% per annum, running from the date of the Award of the Tribunal,
till the date of payment by the insurance company.

32. The appeal is thus partly allowed but since the enhancement of
compensation is considerable, there shall be no order as to costs.

April 21, 2017
dinesh

(AMOL RATTAN SINGH)
JUDGE

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