

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-1515-2002(O&M)

Date of decision:-19.12.2018

Kishna Ram alias Krishna Ram

...Appellant

Versus

Avtar Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Harsh Aggarwal, Advocate
for the appellant.

Ms.Shakshi Bakshi, A.A.G., Punjab.

H.S. MADAAN, J.

Petitioner/claimant Kishna Ram alias Krishna Ram son of Amru, resident of village Jeewanpur Gujran, Tehsil Garhshankar, District Hoshiarpur through his brother Mohinder Pal had filed a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Avtar Singh – driver (respondent No.1), General Manager, Punjab Roadways, Hoshiarpur, State of Punjab through Secretary Transport Secretariat, Chandigarh – owners of bus No.PB12-8405 (respondents No.2 and 3) as well as Tarsem Singh – driver and M/s Kartar Bus Service - owners (respondents No.4 and 5) and National Insurance Company Limited – insurer of bus No.PB-08-J-9851 (respondent No.6) claiming compensation on account of suffering injuries in the road side accident.

Briefly stated, facts of the case as set up in the claim petition

are that on 4.6.1998 petitioner/claimant along with his wife Chhindo had boarded bus No.PB-12-8405 of Punjab Roadways, Hoshiarpur for going to village Herian via Hoshiarpur; that respondent No.1 – Avtar Singh was driving that bus in a very rash and negligent manner; that at about 3:30 p.m. when the bus reached in the area of village Dohlrion on Garhshankar-Hoshiarpur road then a bus bearing No.PB08-J-9851 belonging to M/s Kartar Bus Service, Jalandhar came from the opposite side; that Avtar Singh driving bus No.PB-12-8405 on account of excessive speed could not control his bus and by going on wrong side of the road hit against bus No.PB-08-J-9851, which was going on its correct side, thereafter the Punjab Roadways bus struck against a *SHISHAM* tree; that the persons travelling in the bus received multiple injuries, which included the claimant and his wife; that they were removed to Civil Hospital, Mahilpur from there the claimant and his wife were referred to Civil Hospital, Hoshiarpur on the same day; that formal FIR regarding the accident was registered. The petitioner/claimant by way of filing the present claim petition prayed for grant of compensation of Rs.10 lacs.

Notice of the claim petition was given to respondents, who put in appearance. Respondent No.1 in the written reply filed by him took up preliminary objections that petition is not maintainable and Mohinder Pal has no locus standi to file the present petition. According to this respondent, he was driving the bus at a very normal speed, whereas respondent No.4 – Tarsem Singh was driving the private bus belonging to M/s Kartar Bus Service, Jalandhar in a very rash and negligent manner and by bringing the bus on the wrong side struck against Punjab

Roadways bus driven by him.

Respondent No.2 had filed a separate written reply taking almost the same pleas as that of respondent No.1.

Respondents No.4 and 5 in the joint reply filed by them took up plea that the accident had taken place on account of rash and negligent driving of bus No.PB-12-8405 by respondent No.1 and bus No.PB-08-J-9851 was coming on the correct side of the road on the normal speed and there was nothing wrong in the driving of respondent No.4.

Respondent No.6 – Insurance company of bus No.PB-08-J-9851 in the separate written reply took up preliminary objections that it has wrongly been impleaded in the claim petition by the petitioner/claimant. It is contended that in case the Tribunal comes to the conclusion that respondent No.4 was guilty of rash and negligent driving, then he was not holding any effective driving licence to drive bus No.PB-08-J-9851; that the insurance company is not liable to pay any compensation. Remaining assertions of the claim petition were denied.

In the end, the respondents prayed for dismissal of the petition.

On the pleadings of the parties, following issues were framed vide order dated 9.10.1999:

1. Whether the accident took place due to rash and negligent driving of bus No.PB-12-8405 by Avtar Singh respondent No.1 resulting into injuries to the claimant? OPP.
2. To what amount of compensation, the claimant is entitled to and from whom? OPP.

3. Whether the accident took place due to contributory negligent of bus No.PB-08-J-9851 driven by Tarsem Singh respondent No.4? OPR1.
4. Whether the respondent No.4 was having a valid driving licence at the time of accident? OPR6
5. Relief.

Both the parties led evidence in support of their respective claims.

After hearing arguments, the Tribunal while allowing the petition vide award dated 17.10.2001 granted compensation of Rs.84,461/- along with interest @ 9% per annum from the date of filing of the petition till realization, for which all the three respondents were jointly and severally liable.

Feeling that the compensation awarded to him was on lower side, the claimant has filed the present appeal, notice of which was given to respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the appellant/claimant submitted that the Tribunal has taken income of the claimant as Rs.600/- per month and his age to be 50 years solely for the reason that Dr.JS Dhami – AW5, a witness examined by the claimant in his cross-examination had stated that the claimant/injured had got recorded his occupation as labourer and given his income as Rs.600/- per month as per his bed head ticket and age of the appellant/claimant is recorded as 50 years in the first bed head

ticket, though in the second bed head ticket age is mentioned as 45 years. Learned counsel has contended that as per average daily wage rate for unskilled labourer in the State of Punjab during the year 1998-99, it was Rs.73.06, which comes out to Rs.2,191.80 per month, as such the monthly income of injured/claimant be taken to be so and his age as 45 years.

Whereas these contentions are controverted by learned State counsel submitting that when the injured himself had given his monthly income to be Rs.600/- per month, his age as 50 years, occupation as labourer, those particulars to be accepted as such.

After hearing the rival contentions, I find that the appellant/claimant is an illiterate person. At the time of admission in the hospital generally, there is a tendency to give the monthly income of the injured/patient to be on the lower side so as to seek waiver/concession of the hospital charges. Even if it is taken that the appellant/claimant had given his monthly income to be Rs.600/- per month at the time of his admission in the hospital that does not mean that the Tribunal should have taken it to be gospel truth and fixed that figure to be monthly income of the appellant/claimant. Though the minimum wages of an unskilled labourer are not to be taken as final word while calculating income of a labourer, who is unskilled but that does provide an indication of the probable wages of an unskilled labourer at the relevant time, which comes out to Rs.2,191.80, to make it round figure Rs.2,192/-. Therefore, the Tribunal clearly fell in error in taking monthly income of the appellant/claimant to be Rs.600 instead of Rs.2,192/-.

However, as regard taking age of the appellant/claimant to be

50 years, it was rightly taken to be so. As per the statement of Dr.JS Dhami – AW5, the claimant had injuries on both legs and on his right arm besides having an injury on his forehead, which was stitched and it comes out that an iron plate was installed in leg of the claimant, which was required to be removed after a passage of time. The Tribunal has noted down that there was permanent disability of 25% qua the claimant in terms of the disability certificate brought on record. The Tribunal had awarded compensation to the claimant under following heads:

- (i) Rs.22,861/- on account of medical expenses;
- (ii)Rs.3,000/- on account of hospitalization for five months;
- (iii)Rs.2,000/- on account of special diet;
- (iv)Rs.21,600/- on account of 25% permanent disability;
- (v)Rs.25,000/- on account of pain and suffering; and
- (vi)Rs.10,000/- on account of future operation.

As far as first head is concerned, i.e. Rs.22,861/- on account of medical expenses that figure has been arrived at keeping in view the evidence adduced by the claimant in that regard in the form of bills etc. therefore, no interference with said figure is called for.

As regard amount of Rs.3,000/- awarded to the claimant on account of hospitalization for five months, the Tribunal has taken his monthly income to be Rs.600/- while arriving at figure of Rs.3,000/-. In view of the discussion above taking monthly income of injured/claimant to be Rs.2,192/- per month that amount is worked out to Rs.10,960/-, say Rs.11,000/-.

This fact has not been taken into consideration that even after

being discharged from the hospital, the appellant/claimant would not have been able to carry out his normal work for quite some time keeping in view the nature of seat of injuries. For that reason some compensation ought to have been awarded to him, which was not so done by the Tribunal. A sum of Rs.4,500/- is given to the appellant/claimant on that account.

As regards grant of Rs.2,000/- on account of special diet, the amount is on lesser side keeping in view the nature of injuries, the period of hospitalization and the operations having been performed for joining of fractures. That amount is enhanced to Rs.5,000/-.

The Tribunal has awarded Rs.21,600/- to the appellant/claimant on account of 25% permanent disability taking his monthly income to be Rs.600/- using multiplier of 12. However, keeping in view the ratio of authority **Ram Kiran Goyal Versus Sub Divisional Engineer, Mechanical and others, 2008(2) RCR(Civil)103**, Rs.2,000/- should be awarded for 1% of permanent disability. The amount is required to be enhanced to Rs.50,000/-.

A sum of Rs.25,000/- has rightly been awarded to the appellant/claimant towards pain and suffering and Rs.10,000/- for future operation.

The Tribunal has not awarded any compensation on account of travelling expenses. Keeping in view the period of hospitalization and nature of injuries and that claimant would have gone to the hospital for follow up treatment also, a sum of Rs.10,000/- is awarded to him on that account.

The Tribunal has awarded a total sum of Rs.84,461/- as compensation along with interest @ 9% per annum from the date of filing of the application till realization.

In that way, the enhanced amount comes to Rs.53,900/-. The appellant/claimant shall be entitled to recover the enhanced amount from respondents No.1 to 3 jointly and severally with interest at the rate i.e. 7.5% per annum from the date of filing appeal till actual payment.

With such modification, the appeal is allowed partly.

19.12.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No