

In the High Court of Punjab and Haryana at Chandigarh

FAO No.860 of 2003 (O&M)

Reserved on: 24.5.2018

Date of Decision:-1.6.2018

Vijay Sehgal

.....Appellant

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. Amit Thakur, Advocate, for the appellant.

Ms. Jasleen Kaur, AAG, Punjab.

GURVINDER SINGH GILL, J.

1. Claimant-Vikas Sehgal seeks enhancement of compensation as awarded to him vide award dated 9.5.2002 passed by learned Motor Accident claim Tribunal, Jalandhar on account of injuries sustained by him in a vehicular accident which occurred on 1.9.2000.
2. As per the case set up by the claimant, he boarded a bus bearing registration No.PB-12B-9411 belonging to Punjab Roadways Ludhiana on 1.9.2000 from Amritsar for going to Jalandhar which was being driven by respondent-Kulbir Singh negligently and at a high speed. At about 2 P.M. when the bus reached near Dhussi Band, the petitioner started opening the window pane but in the meantime the driver of the bus took the bus towards the right side at the turning and the rear right side of the bus struck against a truck coming from

the Jalandhar side and resultantly his right arm was chopped off. The claimant was admitted in Radha Soami Hospital, Beas where he was administered first aid and was shifted to Civil Hospital, Jalandhar but since he could not get proper treatment there, he was shifted to Janta Hospital, Jalandhar where he remained admitted from 1.9.2000 to 13.9.2000. It is asserted that he was aged 35 years at the time of accident and was doing business of supplying maps, charts to various schools of Punjab, UP, MP, J&K etc. and was earning ₹4000/- per month and that on account of amputation of his right arm he is unable to carry his luggage i.e maps etc. for supplying the same at various places. Thus a compensation to the tune of ₹10,00,000/- was claimed.

- 3 Respondents No.1 and 2 in their reply denied all the material averments of claim petition including the factum of accident itself. Respondent No.3 driver of the above said bus in question filed a separate reply denying the factum of accident. The parties were put to proof the following issues:

- “1. Whether Vijay Sehgal claimant received injuries in motor vehicle accident caused by rash and negligent driving of Bus bearing No.PB-12-B-9411 of Punjab Roadways, Ludhiana by respondent No.3 Kulbir Singh on 1.9.2000 near Bus stand of Village Miani, P.s. Dhilwan Distt. Kapurthala? OPP.
2. Whether claimant is entitled to compensation, if so to what extent and from which of the respondents? OPP.
3. Relief.”

4. Both the parties led their evidence. The learned Tribunal upon appraisal of the evidence on record returned its findings to the effect that the driver of the bus as well as the truck driver and also the claimant himself were at fault.

Thus, while assessing the amount of compensation of ₹1,20,000/-, it was held that the claimant is entitled to 50% of the assessed amount i.e. to ₹60,000/-.

5. The learned counsel for the claimant, while assailing the impugned judgment, has submitted that the learned Tribunal fell in error in holding it to be a case where claimant was also partly negligent whereas the evidence on record does not suggest that the claimant was at fault. The learned counsel has further submitted that though the claimant had lost his arm and had sustained permanent disability to the extent of 85% but the amount assessed is very much on the lower side and needs to be enhanced.
6. On the other hand the learned counsel representing the State has submitted that there is no infirmity in the impugned award and that no case for enhancement is made out especially when the claimant himself was careless and had taken his arm out of the window resulting in amputation of the same.
7. I have considered rival submissions addressed before this Court. As regards the factum of accident, while the claimant alleges that it was caused on account of negligent driving of the driver of the bus in which he was traveling, the respondents on the other hand have absolutely denied the factum of the accident. The accident had taken place on 1.9.2000 and the matter had been reported to the police on 4.9.2000 and an entry was made in the DDR (Ex.PD) but no FIR appears to have been lodged. The claimant in order to substantiate his case himself stepped into the witness box wherein he deposed in tune with the averments made in the claim petition. He has specifically stated that the driver of the bus in question was driving the bus at a high speed and in a negligent manner and that while he was opening the window pane his right arm went out of the window pane and at that moment when the bus was taking a turn, a truck came from the opposite side and

struck against his right arm resulting in amputation of his arm. He has however admitted that the bus did not touch the truck at all and that there was a gap between the bus and the truck. The claimant also examined AW-6 Gurdial Chand who stated that he was also sitting in the bus in question and that the bus was being driven rashly and negligently and that when the claimant was opening the window pane his right arm went outside the window and a truck coming from the opposite side struck against his arm resulting in amputation of the same.

8. As against the aforesaid depositions, the driver of the bus in question himself stepped into the witness box as RW-1 and absolutely denied the factum of accident and also the factum of amputation of his arm. He also denied that AW-6 Gurdial Chand was travelling in the bus. Though, the driver has denied the factum of accident and also the amputation of arm of the claimant, but I find that both AW-5 Kulbir Singh and AW-6 Gurdial Chand have consistently stated regarding the fact that the claimant had lost his arm while he was opening the window pane and when a truck came from the opposite side and struck against his arm which was protruding outside the bus. The factum of amputation of arm cannot be doubted in view of the testimony of PW-1 Dr. S.K.Sharma and AW-4 Dr. Amarjit Singh. The question to be examined is as to whether the injuries on the right arm of the claimant resulting in amputation of his arm was sustained by him as a result of negligent driving on part of the bus driver and truck driver or as to whether it was on account of the carelessness on part of the claimant himself.
9. Though, the claimant in his claim petition has stated that the truck had dashed into the rear side of the bus in question, but there is no evidence to suggest any such collision between the two vehicles. No evidence regarding any

damage sustained by the bus has been brought on record. In fact the claimant and the other witness examined by him have not stated anything to this effect. Thus, it transpires that the bus and the truck had not collided with each other and the injury had been sustained by the claimant only on account of the fact that his arm had protuded out while he was adjusting the window pane when a truck coming from the opposite side hit against it.

10. It is pertinent to mention here that though all the defendants including the driver of the bus in their separate written statements have denied the factum of accident but interestingly PW-1 Dr SK Sharma, SMO, Civil Hospital Jalandhar during his examination-in-chief has specifically stated that as per record the claimant had been brought to the hospital by driver Kulbir Singh and conductor Sewa Singh of Punjab Roadways, Ludhiana and necessary entry was made in emergency OPD. Not even a single question to dispute the said fact was put to the witness during cross-examination.
11. The learned counsel cites State of Punjab v. Smt Guranwanti, AIR 1960 Punjab 490, wherein it was held that it is well known that often passengers travel with their elbows resting on the window of the car, and that it cannot be held in these circumstances that those passengers were guilty of negligence. Another judgement to similar effect i.e. Punjab Roadways, Nawanshahr vs. Dhannu Ram and others 2007(1) RCR(Civil) 531 has also been pressed into service.
12. This Court in Nirmal Singh v. Haryana Roadways, (1998) 3 RCR (Civil) 490 : PLR (1998) 120 P&H 88 in identical circumstances where the claimant had lost his arm when he had taken his elbow outside the window and a truck coming from opposite side grazed against, while discussing case-law

including an earlier judgement of this Court in Smt Guranwanti's case(supra), held as follows:

“8. Can under these circumstances it be held that it was negligence on the part of the appellant himself or it was that of respondent Des Raj driver of the bus? It is common knowledge that passengers travel in the bus with their elbows resting on the window-sill. It is not proved on record that there is any prohibition against it. Keeping in view the same, the appellant cannot be held to have failed to use reasonable care for his safety.

x x x x

15. In these circumstances, keeping in view the settled principle that has been referred to in various precedents above, it is clear that respondent Des Raj who was the driver of the bus did not leave enough space between the vehicle that he was driving and the truck. Because of grazing, right elbow of the appellant was fractured. The driver was driving the bus negligently and it is because of his negligence that the accident took place. The blame cannot now be placed on the appellant. The findings of the learned Tribunal in this regard, therefore, cannot be sustained.”

13. Though the Central Motor Vehicles Rules, 1989, as also the Punjab Motor Vehicles Rules, 1989, do not mandate that a person is prohibited from keeping his arm on the window of a vehicle but given the conditions of ill disciplined traffic in most of the places and the assortment and variety of traffic on Indian roads where a bullock cart would be rubbing shoulders with the latest cars and trucks, let aside the stray cows and buffaloes whose ventures on the roads are a common sight, the vehicle drivers often have to swerve suddenly on the roads to avoid a bigger mishap. With such conditions prevalent at most of the

places, the passengers as well as drivers are expected to be extremely careful and cautious.

14. Normally “close” driving is not expected and is infact risky and it would be only in case of some emergent situation that to avoid some mishap that a driver may be constrained to drive in such a manner that the distance between the vehicles coming from opposite side is reduced from a safe distance to a risky distance which is normally called as “close” driving. In the present case the respondents have not led the existence of any such circumstances which could justify close driving by the bus driver. It was on account of the bus having grazed past the truck coming from the opposite side that the claimant sustained injury on his arm who was in the process of opening the window pane. Passengers do adjust the window panes of the buses and in which process some part of the arm or elbow may protrude outside. There being no evidence to suggest existence of any circumstance or emergent situation to have forced the bus driver to drive his bus close to the truck coming from opposite side, it is held that the claimant sustained injury solely on account of the close driving on part of the bus driver. The findings of the tribunal are accordingly modified and it is held that the claimant had lost his arm on account of the rash and negligent driving on part of the driver of the bus in which he was travelling.
15. As regards the quantum of compensation, the claimant by examining PW-1 Dr. S.K.Sharma, Civil Hospital, Jalandhar and AW-4 Dr. Amarjit Singh has established that the right arm of the claimant had been amputated and that the disability was 85%. The learned Tribunal assessed the medical expenses at ₹20,000/- and the pecuniary and non-pecuniary loss on account of amputation

as ₹1,00,000/- and after assessing the compensation as ₹1,20,000/- awarded 50% of the same i.e. ₹60,000/- to the claimant.

16. In the present case, I find that the compensation has not been appropriately assessed inasmuch as while assessing the same the actual loss of income, loss of earning capacity, pain and suffering have not been taken into account. It is to be seen as to how the disability of the claimant on account of loss of his right arm would translate into his loss of earning capacity. In a case of compensation on account of the permanent disability sustained by claimant, the same is required to be assessed keeping in view *inter-alia* the loss sustained by him, if any, in his earning capacity on account of functional disability. Such compensation may differ from case to case depending upon the vocation of the claimant. While in case of a person whose income is from physical labour or by way of such vocation which involves usage of his limbs his income and earning capacity would be drastically affected whereas in case of a person who is into office job involving less of physical activity the loss of income would be relatively less. The principle of determination of compensation in the case of permanent/partial disablement has been exhaustively dealt with after referring to the relevant cause law on the subject in Raj Kumar V. Ajay Kumar (2011) 1 SCC 343 in the following words:

“10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of

earning capacity, arising from a permanent disability will be different from the percentage of permanent disability.....

11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.”
17. Bearing in mind the nature of work which the claimant was doing i.e. supplying maps etc. to various schools and institutions, it goes without saying that he was required to carry the same in order to deliver them to various schools and institutions. The loss of his right arm would certainly have resulted in loss of income as he would not be able to effectively carry the same amount of the maps etc. to be supplied by him as he must have been carrying earlier. He would have to employ somebody to assist him for the purpose of delivering the said maps etc. Since, it is stated that the claimant was earning about ₹4000/- per month, it can safely be said on account of amputation of his arm and the nature of his work, his earning capacity must have been reduced by atleast 50%. In other words he would have sustained a loss of about ₹24,000/- per annum.

18. The age of the claimant is mentioned as 45 years in the disability certificate. While in the witness box in the year 2002, he disclosed his age is 47 years. There is no evidence to the contrary. As such this court has no hesitation in holding that the claimant was aged 45 years at the time of the accident in question in year 2000. Bearing in mind the age of the injured i.e. 45 years and by applying a multiplier of 16, the loss of income works out to be ₹3,84,000/-.
19. The claimant must have remained hospitalized for some time and would have taken at least three months' time to recover from his injuries. As such an amount of ₹12,000/- towards loss of income also needs to be added to the compensation. The learned Tribunal has not awarded any amount towards loss of pain and suffering. Bearing in mind the nature of injuries i.e. the amputation of the right arm, an amount of ₹20,000/- towards pain and suffering would meet the ends of justice. Further the claimant also needs to be compensated on account of loss of enjoyment and amenities due to the amputation of his right arm. In my opinion an amount of ₹1,00,000/- on the said account would be appropriate. The amount of ₹20,000/- as awarded by the learned Tribunal towards medical expenses is fairly reasonable. Having lost his right arm, the claimant will need the aid of some artificial limb. By way of affixation of a prosthetic arm, the claimant would be able to attend to some of whose routine chores though certainly not as effectively as a physical natural arm. However, there is no evidence forthcoming as regards the cost of a prosthetic arm. While a cosmetic artificial arm may be available for a few thousand of rupees, a fully functional sophisticated artificial arm may cost lakhs. In the absence of any evidence regarding the same, by a rough

estimation the cost of artificial arm is assessed as ₹50,000/-. The claimant is held entitled to the said amount of ₹50,000/- as well.

20. The different components of compensation as discussed above, when consolidated would give final amount of compensation, which may be stated as follows:

Loss of earning capacity	₹3,84,000/-
Loss of actual income	₹12,000/-
Pain and suffering	₹20,000/-
Loss of amenities	₹1,00,000/-
For artificial limb	₹50,000/-
Medical expenses	₹20,000/-
Total	₹5,86,000/-

21. Consequently the appeal stands accepted and the impugned award is modified and the compensation as awarded to the claimant by the Tribunal is enhanced to ₹5,86,000/- to be paid along with interest 7.5% per annum from the date of filing of the claim petition till realization. All the respondents are held liable to pay the aforesaid compensation to the claimant jointly and severally. The impugned award stands modified accordingly.

June 1, 2018
mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No