

211
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
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FAO-1847-2003

Date of decision : 23.5.2019

Suraj Bhan

..... Appellant

Versus

Mukesh Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.P. Chahar, Advocate,
for appellant.

Mr. Abhishek Goyal, Advocate,
for insurance company.

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KULDIP SINGH J. (ORAL)

Appellant-claimant has filed this appeal against award dated 28.1.2003, passed by Motor Accident Claims Tribunal, Jhajjar (in short 'the Tribunal'), vide which award to the tune of Rs. 62,200/- was passed in favour of claimant-appellant and against respondents, who were made jointly and severally liable to pay compensation. 9% per annum interest was also allowed from date of filing of claim petition till realization.

Facts of case are that on fateful day of 13.6.2000, claimant-appellant accompanied by wife Shankuntla, aged about 23 years, was going on scooter bearing registration No. HR14 A 1399 towards Najafgarh. Near hotel of Raj Singh in between Dhansa Border and Dhansa Village, offending bus bearing registration No. DL1PA 5513, being driven by respondent No. 1 driver Mukesh Kumar came rashly and negligently and hit scooter. As a result of accident, Suraj Bhan Singh received multiple injuries. His left leg was fractured. He suffered 7%

permanent physical disability. His wife Shakuntla, who was 37 weeks pregnant, was removed to Safdarjang Hospital and then to PGIMS, Rohtak. However, she succumbed to injuries on 26.6.2000. Claimant-appellant claimed that his wife was running milk dairy and also performing domestic duties. Claimant-appellant himself had share in brick kiln. Claim petition was filed for compensation on account of injuries received by him and on account of death of her wife and also on account of death of still born child.

Respondents No. 1 and 2 in reply took stand that accident took place due to negligence of Suraj Bhan who suddenly overtook tractor trolley and hit bus after coming to wrong side of road. Respondent No. 3 also denied accident and it was stated that claimant himself was responsible for accident. Besides taking legal pleas, it was also stated that death of Shakuntla was not due to injuries received by her in motor vehicle accident.

From pleadings, following issues were framed :-

1. Whether on 13.6.2000 at 9.30 AM in the area near Dhana Shakuntla died in a road side accident and petitioner Suraj Bhan received injuries in a road side accident, which was caused due to rash and negligent driving of bus No. DL1PA 5513 being driven by respondent No. 1 as alleged ? OPP
2. Whether the petitioner is entitled to receive compensation and if so to what effect and from whom ? OPP
3. Whether the driver of the offending vehicle was not having a valid and effective driving license at the time of accident ?
OPD.-3
4. Relief.

The Tribunal took view that accident took place due to rash and negligent driving of bus. While determining compensation, Tribunal took view that as per statement of Dr. J.K. Bhalla (PW2), claimant-appellant suffered 7% permanent physical disability as per certificates Ex.P13 and P14. Therefore, compensation to tune of Rs. 32,200/- was allowed as under :-

1.	On account of 7% permanent physical disability	:	Rs. 8000/-
2.	On account of pain and suffering	:	Rs. 5000/-
3.	On account of special diet	:	Rs. 5000/-
4.	On account of purchase of medicines (as per cash memos available on record)	:	Rs. 11000/-
5.	On account of transportation for treatment : Rs. 200/- per visit)	:	Rs. 3200/-
Total			Rs. 32200/-

For death of Shakuntla, it was held that she died due to septicemia, respiratory arrest and multiple organ failure. Therefore, it cannot be said that she died due to injuries received by her in accident. Tribunal allowed only compensation on account of injuries suffered by Shakuntla as under :-

1.	On account of fracture of both bones of legs and admission in hospital	:	Rs. 8000/-
2.	On account of pain and suffering	:	Rs. 5000/-
3.	On account of special diet	:	Rs. 5000/-
4.	On account of purchase of medicines (as per cash memos available on record)	:	Rs. 10000/-
5.	On account of transportation for treatment : to various hospital	:	Rs. 2000/-
Total			Rs. 30000/-

I have heard learned counsel for parties and have also carefully gone through file.

So far as compensation to claimant-appellant is concerned, he suffered 7% permanent physical disability. Considering the fact that accident took place in the year 2000 and there is no proof of income of claimant-appellant, I am of view that adequate compensation was awarded to him on account of injuries received by him.

Regarding death of Shakuntla, I am of view that Tribunal has taken a perverse view. The evidence on file shows that immediately after accident, Shakuntla was removed nearby hospital from where she was removed to Safdarjang Hospital and then to PGIMS, Rohtak. She expired on 26.6.2000. During all this period, she remained admitted in one or other hospital. The evidence on file further reveals that both of her legs were fractured. She was 37 weeks pregnant also as per medical evidence. During her hospitalization and due to fracture of both legs and apparently injury to still born child, she developed septicemia and also suffered respiratory arrest and multiple organ failure problems. She also suffered intrauterine death of child as revealed from statement of Dr. Naiya Devgan PW6. Therefore, septicemia, respiratory arrest and multiple organ failure problems were due to injuries received by her in accident. There is no other external cause for such septicemia and respiratory arrest and multiple organ failure. The still born child also died. Therefore, findings of Tribunal in this regard are reversed and it is held that Shakuntla and her still born child died due to accident for which insurance company, who is insurer of offending vehicle is liable to pay compensation.

Coming to compensation for unborn child, two different Single Benches of this Court in Ravinder Versus Surender Kumar and others, 2014 (34) RCR (Civil) 908 and Satish Kumar Versus Ram Swroop and others, 2018 (1) PLR 627, while taking into consideration authority of Hon'ble Supreme Court of India in National Insurance Company Ltd. Versus Kusuma and another 2011 (4) RCR (Civil) 180, awarded compensation to the tune of Rs. 1,80,000/-. I am of view that same compensation meets ends of justice. In this way, Rs. 1,80,000/- are allowed to claimant-appellant on account of death of unborn child.

Regarding death of Shakuntla, Courts have followed authority of Hon'ble Supreme Court of India in Lata Wadhwa and others Versus State of Bihar and others, Writ Petition (Civil) No. 232 of 1991, decided on 16.9.2001) which was followed by this Court in Dayal Singh and others Versus Hardip Singh and others 2008 (14) RCR (Civil) 938 and Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others 2014 (4) RCR (Civil) 895. In case of Dayal Singh (supra), award was passed in the year 1986, showing that accident was prior to that. In present case, accident was of 2000, In both said cases, notional income of house wife was taken to Rs. 3,000/-. Same is taken in present case. Since deceased was 23 years, multiplier of 18 is applied. Amount of compensation comes to Rs. 6,48,000/- (3000x12x18). Same is allowed. Rs. 70,000/- on account of conventional heads are also allowed. Accordingly, amount of enhanced compensation comes to Rs. 7,18,000/-.

The plea of learned counsel for insurance company for deducting the amount awarded by Tribunal to wife on account of pain and suffering, medicines, special diet etc. is declined since she was allowed

compensation by Tribunal for her admission in hospital from the date of accident i.e. 13.6.2000 till 26.6.2000. For these 13 days, she had to undergo pain and suffering due to fracture of both legs. For fracture, treatment was given. Compensation for same is to go claimant-appellant.

The plea of learned counsel for insurance company that two separate claim petitions should have been filed on account of injuries received by claimant-appellant and on account of death of Shakuntla is repelled since it was one cause of action and one claim petition is maintainable.

In view of foregoing discussion, appeal is allowed and enhanced compensation comes to Rs. 8,98,000/-. 7.25% per annum interest is also allowed from the date of filing of claim petition till realization.

(KULDIP SINGH)
JUDGE

23.5.2019
sjks

Whether speaking order	:	Yes / No
Whether reportable	:	Yes / No