

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

FAO-2660-2005(O&M)

Date of decision:-9.1.2019

Surjit Singh(since deceased) through his LRs

...Appellant

Versus

Kapil Verma and others

...Respondents

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

Present: Mr.Akash Sridhar, Advocate
for the appellant.

Mr.Paul S.Saini, Advocate and
Mr.Vipul Sharma, Advocate
for the respondent No.3 – Insurance Company.

H.S. MADAAN, J.

Petitioner – Surjit Singh had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Kapil Verma – driver, Bharat Verma – owner, National Insurance Company Ltd. – insurer of car bearing registration No.UP-15-H-7033(hereinafter referred to as the offending vehicle) claiming compensation to the tune of Rs.10 lacs on account of injuries suffered by him in the accident.

According to the claimant, he was employed as Head Constable with G.R.P.Ambala Cantt. getting salary of Rs.10,000/- per month; that he was aged about 45 years; that on 5.8.2002 at about 11:30 P.M., he was going on foot from Ambala side towards bus-stand Ambala

Cantt. on left hand side of the road; in the meanwhile, a Maruti car being driven in a rash and negligent manner by respondent No.1 – Kapil Verma came from behind and hit the petitioner by going on the extreme left side of the road, resultantly, the petitioner fell on the pucca berm and received multiple simple and grievous injuries including fracture of left femur. After the accident, the petitioner was taken to Civil Hospital, Ambala Cantt. where he remained admitted up to 16.8.2002. He was operated upon for K-nailing on 9.8.2002; that traction was applied from 5.8.2002 to 9.8.2002; that he was still getting treatment at the time of filing of the claim petition and had spent a sum of more than Rs.40,000/- towards his medical treatment, transportation etc. The petitioner claimed that he had become permanently disabled on account of suffering injuries in the said mishap and was not able to do any work; that his chances of promotion has also been ruined; that he had taken leave from his duty due to the injuries suffered by him in the accident.

On notice, the respondents appeared. Respondents No.1 and 2 had filed a joint written reply in which they had taken up a plea that respondent No.1 was driving Maruti car at a normal speed; that the petitioner tried to cross the road all of a sudden, resulting in the accident; that he himself was negligent.

The respondent No.3 – insurance company in the separate written reply refuted the assertions in the claim petition and had taken various pleas including that the respondent No.1 was not having a valid and effective driving licence at the time of accident.

Finally, all the respondents came up with a prayer for

dismissal of the claim petition.

On the pleadings of the parties, following issues were framed on 30.4.2003:-

1. Whether accident in question, in which injuries were suffered by the claimant, was caused because of the rash and negligent driving of Maruti Car, bearing registration No.UP-15-H-7033, by respondent No.1? OPP.
2. Whether the claimant is entitled to a compensation of Rs.10 lacs or to any other amount for the injuries suffered by him in the accident, how much and from whom? OPP.
3. Whether the petition is bad for non-joinder of necessary parties? OPR.
4. Whether the petition has been filed by the petitioner in collusion with respondents No.1 and 2? OPR.
5. Whether the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident? OPR.
6. Whether respondent no.3 was not liable to pay any compensation on account of the accident in question as alleged? OPR.
7. Relief.

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

In support of his case, the claimant himself appeared as PW3. He further examined Dr.P.K.Nigam as PW1, Sh.Ashok Kumar, Criminal Ahlmad as PW2, ASI Pawan Kumar as PW4 and Dr.Ashok Nandra as PW5.

On the other hand, respondent No.3 – insurance company had tendered in evidence document Ex.R1.

After hearing arguments, the petition was accepted partly with costs by the Tribunal and compensation of Rs.89,721/- along with interest @ 9% per annum from the date of filing of claim petition till realization was awarded to claimant payable by respondents No.1 to 3 jointly and severally.

This award left the claimant aggrieved and he had approached this Court by filing the present appeal seeking enhancement of the compensation awarded to him. During pendency of the appeal the appellant expired on 7.8.2015. On an application having been filed, his legal representatives were allowed to be brought on record.

Notice of the appeal was given to respondents. The appeal is being contested by respondent No.3 only, whereas service of respondents No.1 and 2 has already been dispensed with.

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

Learned counsel for the insurance company has submitted that with death of the appellant, the appeal is to be taken as abated. In support of his contention, he has referred to Full Bench judgment by Karnataka High Court i.e. **Kannamma Versus Deputy General Manager, Karnataka State Road Trans.Corporation, 1991 ACJ 707** wherein it was observed that a claim for compensation for personal injuries and also towards expenses, loss of income, loss to the estate abates in toto if the injured-claimant dies not as a result of injuries sustained in the accident. It

was further observed in this authority that where the injured-claimant dies as a consequence of the bodily injuries sustained in the motor accident then his legal representatives can prosecute the claim in so far as it relates to loss to the estate of the deceased.

Learned counsel for the insurance company submitted that the appellant in this case had suffered a natural death and had not died as a result of injuries suffered by him in the accident. Therefore, his legal representatives are not entitled to get any compensation on account of loss of estate even. He has further placed reliance upon authority **Smt.Ram Ashari and others Versus H.R.T.C. and another, 2005(3) RCR(Civil) 128** by Himachal Pradesh High Court wherein dealing with a similar situation where appellant was injured in an accident, however he died during pendency of his appeal for enhancement of compensation. The appeal was found to have abated observing that since it was filed for personal injuries, it cannot be continued by his legal representatives and an action in torts for claim of compensation for damages on account of injuries by an injured is a right personal to the injured, which cannot be continued by the legal heirs.

Learned counsel for the insurance company has further placed reliance upon Full Bench judgment of Madhya Pradesh High Court in that regard i.e. **Bhagwati Bai and Anr. Versus Bablu @ Mukund and Ors., 2007(1) RCR(Civil) 723.**

On the other hand, learned counsel for the claimant has referred to authority **Divisional Manager, New India Assurance Co. Ltd., Namakkal Versus S.V. Mani and others, 2010 ACJ 1540** by Madras

High Court wherein it was observed that in view of Section 306 of the Indian Succession Act, an action for a bodily injury does not survive on death of person injured though other claims viz. special diet, medicine, conveyance etc. relate to loss of property and legal representatives are therefore entitled to prosecute appeal and the same would not abate on the death of the deceased.

After hearing learned counsel and going through the authorities referred to by them, I find that on death of appellant Surjit Singh, which does not come out to have any nexus with the injuries suffered by him in the accident, the appeal is bound to abate. Even otherwise on merits also, no case for enhancement of compensation is made out. The main grouse of the appellant was that the disability certificate proved by him in the evidence by examining PW1 Dr.P.K. Nigam showing 20% disability has not been taken into consideration by the Tribunal while assessing compensation. However, that grouse is without justification since the Tribunal has given valid reasons for not relying upon said certificate while discussing the deposition of Dr.P.K.Nigam, who had stated that on 9.8.2002, he had done K-nailing; that after performing surgery upon Surjit Singh, he was discharged on 16.8.2002; that the petitioner/claimant had remained under his treatment as OPD patient proving discharge slip Ex.P1 and OPD slips Ex.P2 to Ex.P8, further stating that on 23.7.2003, he was member of the Board and on that day, he along with other members of the Board examined Surjit Singh and found that he was having 20% permanent disability of partial stiffness left knee and left hip joint; certificate issued in that regard being

Ex.P9. In his cross-examination, he had stated that disability certificate was issued after 11 ½ months from the date of injury suffered by the injured and the bone of petitioner has fully healed. He had admitted that the word 'permanent disability' was not mentioned in Ex.P9 and that as per document Ex.P5 dated 24.10.2002, the petitioner was directed to walk without support, though rest for a period of 10 days was advised to him. For such like reasons, the Tribunal was justified in not relying upon certificate Ex.P9.

Furthermore, petitioner happened to be in Government service being employed as Head Constable in Government Railway Police. There is nothing on record to show that there was any decrease in his salary on account of the injuries suffered by him or that he suffered any pecuniary loss on that count, rather it comes out that he remained on leave of various types during the period of his treatment and had retired from service on attaining age of superannuation getting all usual retiral benefits. Thus there is no question of he being entitled to any compensation on account of permanent disability, which might have resulted in loss of his earning capacity. Though as per evidence adduced by the petitioner/claimant, he had remained on leave for a period of 207 days but then it also comes out that he was still having medical leave of 103 days in his account. There is nothing to show that he had been granted leave without pay or had suffered financial loss in encashment of his unavailed earned leave. Though an attempt was made to put up a contention that the claimant could not appear in a promotion test on account of injuries suffered by him in the accident, which was in the year

2003 but then it has also come out from the evidence brought on record by claimant himself that he had not appeared in the promotional test in the next year. Therefore, injuries suffered by him could not taken to be reason for coming in the way of his promotion. The claimant had retired in the year 2013. The Tribunal has arrived at the conclusion that there was no difference in the pay scale of a Head Constable and promotional pay scale of an ASI. After detailed analysis of the evidence and facts and circumstances of the case, the Tribunal has awarded compensation to the claimant under various heads. For pain and suffering undergone by petitioner because of injuries suffered by him in the accident and also fracture of shaft femur left and 20% disability as well as the period of hospitalization in Civil Hospital, Ambala Cantt. from 5.8.2002 to 16.8.2002, a compensation of Rs.35,000/- has been awarded. On account of medical expenses, a sum of Rs.22,500/- has been awarded to the claimant.

The Tribunal has not examined the aspect that a Government servant is entitled to reimbursement of the medical expenses incurred by him for himself and his dependent family members. If that was so, then the amount might not have been awarded to the claimant and if the value of the medicines purchased were over and above the amount reimbursed by the Government, then this figure might have come down. But even then this amount is allowed to remain as intact. The Tribunal by giving a detailed reasoning has come to the conclusion that petitioner was not operated upon by PW5 Dr.Ashok Nandra and bill Ex.P17 had been procured by him from PW5 Dr.Ashok Nandra in order to get higher

compensation. Similarly bills dated 7.9.2004, 22.8.2004 and 9.8.2004 were found to be of doubtful authenticity, as such not taken into consideration. Though claimant was granted Rs.2,000/- towards special diet, Rs.1,500/- towards private transportation. Since the massage-man and attendant allegedly hired by the petitioner were not examined, no compensation on account of alleged dues paid to them was granted. The Tribunal was generous enough to grant compensation of Rs.28,671/- to the claimant for commuted and medical leave for 90 days for the period when petitioner had remained on leave. As already mentioned, there is nothing on record to show that the said leave was without pay. Nevertheless I do not find it proper and appropriate to interfere with grant of such amount in the appeal more particularly when no cross-objections etc. had been submitted by the insurance company or any of the respondent. The compensation awarded as Rs.89,721/- with interest @ 9% per annum is found to be adequate and sufficient without there being any reason to enhance the same.

Thus, the appeal stands dismissed.

9.1.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No