

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

Date of Decision: 06.05.2019

1. RSA No3233 of 2007(O&M)

**Jagan Nath Goel (since deceased) through LRs
.....Appellant(s)**

Versus

MC SangrurRespondent

2. RSA No.2483 of 2007(O&M)

MC SangrurAppellant

Versus

**Jagan Nath Goel (since deceased) through LRs
.....Respondent(s)**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Ajay Pal Singh, Advocate for the appellant(s)
in RSA No.3233 of 2007 and for the respondent(s)
in RSA No.2483 of 2007.

Mr. Sukhwinder Singh, Advocate for the appellant
in RSA No.2483 of 2007 and for the respondent
in RSA No.3233 of 2007.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, RSA No.3233 of 2007 titled
Jagan Nath Goel (since deceased) through LRs Vs. MC Sangrur
and RSA No.2483 of 2007 titled MC Sangrur Vs. Jagan Nath Goel

(since deceased) through LRs are being decided. Facts are being noticed from RSA No.3233 of 2007.

[2]. Plaintiff/appellant filed a suit for damages and other litigation expenses on account of receiving injuries due to negligence of the defendant. Plaintiff/appellant pleaded that on 30.05.1997 at about 7:30 PM when he was coming back to his house from the market and reached near the gate of Ranbir Club, Sangrur, he fell into the ditch from his bicycle and received fractures in his left ankle in two places and from both sides. Appellant is an Advocate. In the morning at about 9:00 A.M., he went to the Court through the same road and the road was absolutely fine as there was no ditch on the road. The ditch came to be in existence only during day hours after 9:00 AM. At the time of occurrence, there was quite dark and there was no street light in operation, therefore, the ditch could not be seen by the plaintiff. The suit for damages was filed on the ground that it was the duty of the defendant to maintain the moterable road for the public and the injuries suffered by the plaintiff were the direct result of inaction on the part of the defendant in not removing the ditch which was about two feet wide and was spread all over the road widthwise and bricks were scattered around the ditch. There was no sign board displayed at the place for the purposes of giving warning to passer-byes. The occurrence took place due to negligence of the defendant and the suit was filed to make the defendant liable for tortuous negligent act. The plaintiff had to

undergo treatment for the injuries. Plaintiff had to undergo rigorous sufferings as he was already the patient of kidney transplantation. Doctors expressed their inability to help him due to the aforesaid ailment. Plaintiff remained admitted in Kakkar Hospital for 10 days. He got treatment for his fracture ankle and remained confined to bed for more than 2 months. He was operated for his ankle treatment and two screws were fixed in the ankle and thereafter, remained confined to bed for further three months. During the period of confinement, the plaintiff could not work as an Advocate and became disabled to the extent of 15%. The expenses incurred by the plaintiff were borne by his younger brother. Plaintiff suffered physical, mental and monetary sufferings due to negligent act of the defendant. Plaintiff claimed compensation to the tune of Rs.8,41,000/- under different heads.

[3]. Defendant contested the suit on the premise that there was no ditch dug out by the defendant on 30.05.1997. The allegations made by the plaintiff were denied tooth and nail on account of it being not been existed in front of gate of Ranbir Club. No other person had ever made any complaint regarding pit/ditch on the road. Defendant further resisted the claim on the ground that on 30.05.1997, there was no repair work done by the defendant on the road as claimed by the plaintiff, therefore, there was no question of displaying any sign board or making any fencing around the alleged pit. There was no fault on the part of

the defendant, therefore, the plaintiff cannot claim any damages against the defendant.

[4]. Both the parties went to trial on the definite issues which are to the following effect:-

“1. Whether plaintiff received injuries due to the negligence of defendant committee? OPP

2. Whether plaintiff is entitled to the damages, if so, to what extent? OPP

3. Whether proper court fee has not been paid, if so, its effect? OPD

4. Relief.”

[5]. Plaintiff examined Paramjit Pal, Photographer as PW 1, Ashok Gupta, Advocate as PW2, Dr. Karamjit Singh as PW 3, Pawan Gupta, Advocate as PW 4, Partap Singh as PW 5, Sudesh Kumari, Staff Nurse as PW 6. Plaintiff himself appeared as PW 7 and further examined Paramjit Pal, Photographer as PW 8. On the other hand, defendant examined Labh Singh, Building Clerk as DW 1 and thereafter, closed the evidence. Plaintiff did not lead any evidence in rebuttal.

[6]. Trial Court dismissed the suit vide judgment and decree dated 23.11.2004, whereas in appeal, Lower Appellate Court vide judgment and decree dated 28.03.2007, accepted the claim of the plaintiff partly to the extent of awarding compensation/damages to the tune of Rs.71,000/- on account of

injuries suffered by the plaintiff due to negligence of the defendant along with interest @ 6% per annum.

RSA No.3233 of 2007

[7]. This appeal has been preferred to modify the judgment and decree dated 28.03.2007 passed by the Lower Appellate Court vide which judgment and decree dated 23.11.2004 was set aside.

[8]. After hearing learned counsel for the parties, I proposed to consider the following law point for decision of the case:-

1. Whether the suit for damages on the basis of permanent disability and tortuous liability of the defendant can be decided after following multiplier method?

[9]. Perusal of the record would show that after dismissal of the suit by the trial Court, the plaintiff/appellant went in appeal wherein the factum of existence of ditch on the road was found and the injuries suffered by the appellant were held to be the result of his falling in the ditch. Lower Appellant Court did not consider the fact that photographs were clicked only on 15.08.2002 in respect of occurrence which took place on 30.05.1997. The ocular versions of PW 2 Ashok Gupta, Advocate and PW 4 Pawan Gupta were considered to be sufficient to presume that the occurrence took place due to negligence on the

part of the defendant in not fencing the site of the ditch in an appropriate manner. The ankle of the plaintiff/appellant was fractured at two places of both bones.

[10]. Initially, the plaintiff was hospitalized in Kakkar Hospital, where he got first aid. Thereafter, the plaintiff was shifted to Civil Hospital, Sangrur, where his left leg was plastered and was advised to take rest for 42 days. Plaintiff remained confined to bed. Thereafter, he was again advised for second plaster as the early plaster was not proper. Plaintiff had gone to Amritsar for treatment and remained under treatment for six months. Dr. Karamjit Singh (PW 3) corroborated the stand of the plaintiff inasmuch as that the plaintiff came to the Hospital and Dr. Rajneesh Jindal applied POP cast on his left ankle for four weeks. The fracture was fresh and the ankle was fractured at two places of both bones. On 26.06.1997, cast was again applied on the left ankle and left leg for two weeks by the same Doctor. Doctor made a statement with reference to OPD slip Ex.P1. The plaintiff was again attended on 12.07.1997 and POP cast was removed and x-ray was done. Thereafter, POP cast was again applied for three weeks. Again the plaintiff approached the Doctor on 22.07.1997 as POP cast was broken at two places. It was removed and the Doctor came to know that the plaintiff was also a patient of kidney transplantation and diabetic. Plaintiff was advised to get treatment in some higher institution. The witness has proved the x-ray films Exs.P2, P3, P4 and P5 to prove the extent of disability of the

plaintiff to the tune of 15% and during the period of POP cast, he remained confined to bed and could not do any work. Statements of PW 2 and PW 4 coupled with statement of PW 5 proved that the plaintiff was in a miserable state of health. PW 5 Partap Singh had deposed in respect of early ailment of the plaintiff in the year 1996 for which he was treated in Kakkar Hospital and his kidney was transplanted.

[11]. It has been proved on record that the plaintiff was having previous history of ailment and the present occurrence further aggravated his physical state of health and he was forced to remain away from his normal work of Advocacy. Labh Singh, Building Clerk (DW1) even though stated with regard to non-existence of ditch, but could not advance the case of the defendant as against the corroborated version of the eye-witnesses namely Ashok Gupta, Advocate (PW 2) and Pawan Gupta, Advocate (PW 4). The factum of receiving injuries by the plaintiff/appellant was proved by overwhelming evidence of the Doctor and eye-witnesses. The cross-examination of the plaintiff's witnesses could not yield any incriminating information in favour of the defendant. Public roads are being managed by the defendant. It was the duty of the defendant to notify the ditch in order to ensure personal safety of the residents. Adequate notice was required to be given to the users of the road to take precaution for avoiding the accident. The ditch should have been ear-marked and proper indication was required to be made at the site. Sign

board was required to be installed for blocking the ditch and warning should have been given to the passers-by. Even in case of sudden break down of such requirement, the injured person has a remedy to claim damages under common law. The maintenance of the roads within Municipal Corporation is the responsibility of the Municipal Corporation.

[12]. Lower Appellate Court after appreciating the material on record has rightly held that the plaintiff had received injuries due to negligence of the defendant. Plaintiff/appellant was awarded an amount of Rs.41,100/- towards medical expenses and Rs.30,000/- towards pain and sufferings on account of 15 % disability. In this way, Lower Appellate Court has assessed compensation/damages to the tune of Rs.71,000/- for the injuries suffered by the plaintiff/appellant due to negligence on the part of the defendant along with interest @ 6% per annum. Appellant is aggrieved only to the extent of inadequacy of compensation.

[13]. In case of injury suffered by the plaintiff on account of negligence of the defendant, mechanism to award damages can be followed like in a case of compensation arising out of Motor Accident Claims Tribunal. Damages can be awarded towards expenses relating to treatment, hospitalization, medicines, transportation, special diet and miscellaneous expenses. Loss of earning and other gain which the injured would have got had he not been injured in a vehicular accident case. This head includes:-

loss of earnings during period of treatment and loss of future earnings on account of permanent disability. Future medical expenses can also be construed keeping in view the gravity of the injuries. Non-pecuniary damages/general damages are also required to be assessed towards pain, suffering and trauma as a consequence of the injuries. Loss of amenities in life including loss of marriage prospectus is also one of the component for which just compensation/damages can be assessed. Loss of expectation of life i.e. shortening of longevity of life in the facts and circumstances of the case will also play some important role as the plaintiff/appellant was already a patient of kidney transplantation.

[14]. In case of permanent disability, the injured is entitled to grant of compensation/damages towards permanent disability as well as loss of earning capacity. The determination of compensation/damages for loss of earning capacity on the basis of multiplier method was held to be a proper exercise in view of ratio laid down in **K. Suresh Vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312**. In such determination, some guess work and hypothetical considerations based on sympathy cannot be ruled out, but ultimate purpose is to apply objective standards without undertaking flight in fancy. The amount should correspondent to reasonableness and should be in consonance with conventional norms. In any case, the endeavour

should be made to award just and proper damages in view of sufferings of the injured persons.

[15]. The determination of just damages cannot be equated to a bonanza. It has to be based on equitable considerations. Duration of hospitalization, medical expenses, pain, suffering and loss of amenities of life are the considerations which should weigh to the Court for the purposes of granting just damages. A distinction has to be drawn between damages and compensation. Damages are given for the injuries which the injured suffered, whereas the compensation is to be paid for atonement of the injury caused and to put back the injured as far as possible in the same manner, as if injury has not taken place. The principle highlighted in case of **Yadava Kumar Vs. The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155** can be relied in the present context.

[16]. In view of aforesaid legal position, the controversy can be summed up by assessing the damages. Plaintiff is an Advocate. After perusing the financial status and medical status of the plaintiff, it can be gathered that he was not well in terms of finances as the occurrence took place when he was plying his bicycle. The plaintiff has a history of kidney transplantation. No definite evidence of income has come on record. Injured/appellant is an Advocate. The monthly income of the injured even with some guess work and hypothetical consideration can be

assessed. The accident took place on 30.05.1997. In view of attending facts and circumstances, income can be assessed as Rs.10,000/- per month. Plaintiff/appellant has suffered permanent disability to the tune of 15% in relation to left leg. If the aforesaid permanent disability is taken to be qua the whole body, it has to be slashed down to 50%. In view of facts and circumstances of the case, I consider permanent disability of the injured to the tune of 8% qua the whole body. In this way, monthly loss of Rs.800/- would be caused to the plaintiff/appellant i.e. Rs.9600/- per annum. Keeping in view the age of the injured to be 48 years and his medical condition and in view of ratio laid down in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77 (SC)**, multiplier of 13 would suffice for awarding future damages on the basis of permanent disability. In this way total amount towards damages under this head would come out to be Rs.1,24,800/-. Lower Appellate Court has assessed an amount of Rs.30,000/- towards pain and sufferings on account of 15% permanent disability. Considering the period of hospitalization and duration of treatment of the plaintiff/appellant, the aforesaid amount is just and proper. So far as medical expenses are concerned, the aforesaid figure is based on evidence led by the plaintiff/appellant, therefore, the said head needs no enhancement and the amount of Rs.41,100/- towards medical expenses is just and appropriate.

[17]. For the reasons recorded hereinabove, question of law is answered in affirmative and in the light of observations made hereinabove, the plaintiff is entitled to addition of Rs.1,24,800/- as damages towards future loss of earning. Other components would remain the same.

[18]. In view of above reasonings, this appeal is partly accepted, enhancing the amount of damages to the tune of Rs.1,24,800/- in addition to the damages already granted by the Lower Appellate Court. The enhanced amount of Rs.1,24,800/- shall carry interest @ 6% per annum from the date of judgment and decree passed by the Lower Appellate Court.

RSA No.2483 of 2007

[19]. This appeal has been preferred against the judgment and decree dated 28.03.2007 passed by the Lower Appellate Court vide which judgment and decree dated 23.11.2004 passed by the trial Court was set aside.

[20]. For the reasons recorded in RSA No.3233 of 2007, this appeal is dismissed.

06.05.2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable

Yes/No