

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 1386 of 2007
Date of decision: 27.08.2019

Kahlon @ Jasmail Singh Kahlon (deceased)
through his legal representative
Smt. Narinder Kahlon Gosakan

...Appellant

V/s.

K. Paramasivam and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

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

Ms. Madhu Sharma, Advocate for respondent No. 2.

RITU BAHRI, J. (Oral).

The claimant (since deceased) has come up in appeal against the award of the Tribunal dated 02.11.2006 whereby he has been awarded compensation of Rs.1,00,000/- on account of injuries suffered by him in a road accident which took place on 02.05.1999.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 02.05.1999 claimant alongwith his wife Smt. Kulvinder Kahlon and daughter Miss Narender were returning from Chennai after attending official work in Car No. TN-31V-8888. Car was being driven by Sunder and was on GST Road, near Pathiri Village. Tractor was coming from the opposite direction. In the meantime Lorry No. TCZ 9008 came. Lorry was being driven rashly and negligently and after over taking sugarcane laid Tractor had hit the car driven by Sunder. Front portion of the Car was completely damaged.

Occupants of the Car i.e. the claimant, his wife and daughter were badly

injured. The claimant was given first aid and was shifted to Government Hospital, Tindivanam and later on to Appolo Hospital, Chennai. He suffered multiple grievous injuries. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

The parties are not in dispute with respect to finding on issue No. 1 that the cause of the accident was due to rash and negligent driving of respondent No.1. This finding has been rightly given in favour of the claimant keeping in view report of Investigator Ex.R-1 and copy of rough sketch (Ex. R-3).

The claimant led in evidence disability certificate Ex. A6 which was proved by Dr. Raj Kumar Sharma, who appeared as AW3. As per disability certificate (Ex.A6) the claimant was suffering from 75% disability. Further the Tribunal took notice of the statement made by Dr. Raj Kumar Sharma in cross-examination in which he stated that the possibility of disability due to some other causes other than road side accident cannot be ruled out and keeping in view this statement in the cross-examination, the Tribunal returned a finding that the 75% disability suffered by the claimant was not on account of this accident and awarded lumpsum compensation of Rs.1,00,000/- to the claimant along with interest @ 9% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant preferred the present appeal.

Learned counsel for the appellant has referred to the disability certificate dated 16.06.2000 (Mark C) which the claimant had placed before the Tribunal. This disability certificate has been issued by Govt. Head Quarters Hospital, Cuddalore. The disability reflected is as under:-

1. Head injury multiple lacerated wounds
2. Cervical cord injury will be quadriplegia
3. Trimalar fracture Rt. Ankle.

It is further stated in the disability certificate (Mark C) that there is no movement of right ankle and he is unable to do any work without assistance and he is 100% permanently handicapped.

Learned counsel for the respondent states that after the accident in 1999, the claimant was retired in 2001 after attaining the age of 54 years and till the age of 54, there was no loss of income. He was given full salary. As per salary certificate Ex. A1 which was proved by Somesh Chandra Roy, Chief Manager (Personnel) of NLC Limited, the pay of the claimant was Rs. 25,759/-

She has further referred to the judgment of the Madras High Court passed in ***Divisional Manager, New India Assurance Co Ltd. V/s. S.V. Mani and others*** 2010 ACJ 1540 to contend that after the death of the claimant, compensation under the head of pain and suffering will not be given. The facts of that case are not applicable to the present case as the claimant has died in the year 2015 and from 1999 till 2015 he has suffered lots of pain and has right to be given compensation under the above said head.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. Finding of negligence has rightly been given by the Tribunal and it does not require any interference on that account.

A perusal of disability certificate dated 16.06.2000 (Mark C) shows that it had been issued by Dr. R. Venugopal of the Government Head Quarters Hospital, Cuddalore and the designation of the claimant has been reflected as Deputy Manager. This disability certificate reflects hospital No. 629915 and bed No. E/345. It further shows that the claimant was examined on 16.06.2000 and injuries were suffered on account of accident which took place on 02.05.1999 at about 06:30 p.m. on GST Road, near Pathiri Village. The accident took place due to collision between Ambassador Car against Lorry and he was firstly treated at Govt. Hospital Tindivanam and then was treated at Appolo Hospital, Chennai. The nature of disability in the disability certificate dated 16.06.2000 (Mark C) and in disability certificate dated 08.08.2002 (Ex. A6) is same. Even if the disability certificate dated 08.08.2002 (Ex.A6) proved by Dr. Raj Kumar Sharma is considered, still the disability suffered by the claimant was 75% and as per disability certificate issued by Govt. Head Quarters Hospital, Cuddalore dated 16.06.2000 (Mark C), the claimant was suffering 100% disability and hence in no circumstances, the injuries could have been held to be occurred before the accident and the finding of the Tribunal on this issue is wrong. Even if disability is considered as 75%, keeping in view the injuries reflected in the cervical cord, the claimant had become 100% disable after the accident. Hence, the finding of the Tribunal on the issue of disability deserves to be modified.

As per the statement of AW1 Somesh Chandra Roy, Chief Manager (Personnel) and salary certificate Ex.A1, the details of pay and allowances drawn was as under:-

Pay	:	Rs.19,400
Variable Dearness allowance	:	Rs.5684

P.P. : Rs.675
Total : Rs.25,759/-

The total pay of the claimant was Rs. 25,759/-and the claimant was 52 years of age and died on 06.11.2015 leaving behind her daughter as legal representative.

Hence, to meet the ends of justice, the compensation is hereby reassessed keeping in view the the judgment passed by Hon'ble the Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others*, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Annual Salary	Rs.25759-675 p.p.)=25084/- p.m. X12=Rs.3,01,008
(ii)	15% future prospects	3,01,008+45,151=Rs.3,46,159
(iii)	Multiplier of 11 applied	3,46,159X11=Rs.38,07,749/-
(iv)	10% of the income tax deducted for 15 years (from 02.05.1999 till death 06.11.2015)	Rs.3,01,008 p.a.-1,50,000/- (Tax exemption)=151,008 X10%=15,101X15= -Rs.2,26,515
(v)	Pain and suffering	Rs.2,00,000/-
(vi)	Attendant charges	Rs.1,00,000/-
	TOTAL COMPENSATION AWARDED	Rs. 38,81,234/-
	ENHANCED AMOUNT OF COMPENSATION	Rs.38,81,234-1,00,000/-= Rs.37,81,234/-

The enhanced amount of compensation of **Rs.37,81,234/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of *Dara Singh @ Dhara Banjara V/s. Shyam Singh Varma and others*, Civil Appeal No. 4528 of 2019.

Accordingly, the award stands modified to the above extent and the present appeal is allowed.

(RITU BAHRI)
JUDGE

27.08.2019
Divyanshi

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No