IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-373-2012(O&M)
Date of decision:-22.11.2019

Rishi Bhagi

...Appellant

Versus

Parvinder Singh and others

...Respondents

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

Present: Mr.R.K. Rathore Advocate
for the appellant.

Mr.Vinod Mahendru, Advocate
for respondent No.3.

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H.S. MADAAN, J.

Petitioner/claimant – Rishi Bhagi aged about 21 years, a resident of village Mianpur, Tehsil and District Ropar had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Parvinder Singh – driver, Sital Sukhwinder Singh – owner and National Insurance Company Ltd. - insurer of Mini Bus bearing registration No.PB-11-R-1512 (hereinafter referred to as the offending bus), claiming compensation to the tune of Rs.10 lakhs with interest.

As per the case of the petitioner/claimant on 15.4.2008, he along with his brother Kamal Preet had boarded the offending bus for going to Ropar; the bus was being driven in a zig-zag way in a rash and negligent manner by respondent No.1 Parvinder Singh; the bus was overloaded and claimant was standing in the first door of the bus; at about 8:00 a.m. when the bus had reached near Bhatha Sahib Gurudwara, then respondent No.1 Parvinder Singh – driver took a sharp turn, resultantly the petitioner/claimant fell down from the bus on the road and sustained multiple grievous injuries and his hip joint and right thigh were fractured; FIR No.51 dated 17.4.2008 for the offences under Sections 279 and 338 IPC was registered at Police Station Sadar, Ropar.

According to the claimant, he was aged about 20 years at the time of accident and was student of B.A. Part-I and he used to sell newspapers in the morning hours for helping his parents, in that way, he was earning Rs.5,000/- per month. He prayed for acceptance of the claim petition.

On being put to notice, all the three respondents have appeared and filed separate written statement contesting the claim petition.

In the written statement filed by respondent No.1, he denied that any such accident had taken place involving the bus in question, rather according to him, the accident was result of criminal act and negligence on the part of the claimant and he had filed the claim petition just to grab compensation; the petitioner/claimant was not supposed to stand in the opened door of the bus.

In the written statement filed on behalf of respondent No.2, he denied all the assertions in the claim petition submitting that a wrong FIR was got registered by the complainant in connivance with the police despite the fact that no such mishap had taken place and bus was not involved in the accident.

Respondent No.3 in the written statement filed by it had also contested the assertions in the claim petition taking various legal objections and statutory defences including one that the driver of the bus was not having a valid and effective driving licence and the bus in question was not having a valid route permit.

All the respondents prayed for dismissal of the claim petition.

Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the Motor Accidents Claims Tribunal, Rupnagar (hereinafter referred to as the Tribunal) decided issue No.1 in favour of the claimant and against the respondents holding that the former had sustained injuries including fracture of hip joint as well as right thigh in course of accident in question, that was caused due to rash and negligent driving of the offending bus by respondent No.2. Issue No.2 was decided observing that respondent No.1 was holding a valid and effective driving licence to drive the bus in question and such vehicle was duly insured with respondent No.3; the bus was having a valid registration certificate, therefore, owner, driver and insurer were jointly and severally liable to pay compensation. Issues No.3 and 4 were decided in favour of the claimant holding that the claim petition was maintainable and petitioner/claimant was entitled to get compensation of Rs.2,55,000/- from all the respondents, their liability being joint and several.

The Tribunal while allowing the petition vide award dated 4.10.2010, awarded compensation of Rs.2,55,000/- to the claimant, payable by all the respondents jointly and severally. It was directed that such amount be paid within three months from the date of passing of the award, failing which the claimant would be entitled to interest at the rate of 7% per annum from the date of passing of award till actual realization.

Feeling that the compensation awarded to him was on a lower side, the claimant has filed the present appeal seeking enhancement of compensation, notice of which was given to respondents. Only respondent No.3 – insurance company has put in appearance through counsel, whereas respondents No.1 and 2 did not appear despite service.

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

The Tribunal has observed that the Board of doctors which had examined the petitioner/claimant vide disability certificate Ex.P3 had found the disability of 40% due to stiffness of left hip and knee joints after performance of operation undertaken for fixation of screws and reconstruction plate. The Tribunal has further observed that the disability of 40% of the claimant is not permanent or temporary, as such it is not proved to be of permanent in nature. But I find that such observation is not proper. If we see testimony of PW3 Dr.Davinder Kumar Arora, Medical Officer, Civil Hospital, Ropar, who was member of the Board for assessing disability of petitioner/claimant and had proved the disability certificate, in the concluding lines of cross examination, he had stated that since the injury was sustained on 15.4.2008 and sufficient time has elapsed so the disability will remain there. It clearly means that the disability is permanent in nature. The Tribunal has taken into consideration the bills proved in evidence by the claimant and the fact that some of the bills may have been lost and claimant might have purchased medicines after discharge from PGI, allowed a sum of Rs.80,000/- on account of expenses borne by claimant on fees of the doctors and medicines. The amount of such bills has been calculated as Rs.76,482/-. The Tribunal has not considered the amount likely to be spent on future treatment and follow up. Therefore, this amount needs ot be increased and it is enhanced to **Rs.1,00,000/-**.

The Tribunal has awarded a sum of Rs.5,000/- as charges for attendant and a sum of Rs.10,000/- towards special diet, Rs.3,000/- towards expenses for transportation and Rs.7,000/- on account of loss of earnings during hospitalization period of two months and four days. However, I find that the amounts are on lower side. The same are accordingly enhanced to **Rs.25,000/-**, **Rs.30,000/-**, **Rs.20,000/-** and **Rs.20,000/-**, respectively.

An amount of **Rs.50,000/-** awarded by the Tribunal on account of pain and suffering during hospitalization and subsequently is found to be adequate.

As far as amount of compensation awarded for 40% disability, which has been observed to be permanent in nature, now in view of discussion above, such amount granted by the Tribunal happened to be Rs.1,00,000/-. The Tribunal has observed that the claimant can sustain loss of earning of Rs.1,000/- per month at least throughout his life and as such considering age of claimant as 20 years, it would be fair and appropriate to allow Rs.1,00,000/- on account of loss of future prospects and earnings. Even if we adopt that very yardstick, the annual loss would be Rs.12,000/- and keeping in view the life expectancy in the State of

Punjab to be 60 years or more, that would go on 40 more years. The amount thus calculated comes out to Rs.4,80,000/-(12,000 x 40).

If we use the yardstick provided in ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77***, when in case of death of a person in a road side accident in the age group of 15 to 25 years, multiplier of 18 is applied and if multiplier of 18 is applied, then the amount comes out to Rs.2,16,000(12,000 x 18).

Learned counsel for the claimant has referred to authority ***Master Mallikarjun Versus Divisional Manager, The National Insurance Company Limited and another, 2013 ACJ 2445*** where it was observed that for ward of compensation to a child who suffered permanent disability in motor accident, structured formula not is not to be followed and in addition to actual expenditure following compensation be awarded in respect of permanent disability:

(i) For permanent disability upto 10% Rs. One Lakh.

(ii) Disability above 10% and upto 30% ₹ 3 lakhs.

(iii) Disability upto 60% ₹ 4 lakhs.

(iv) Disability upto 90% ₹ 5 lakhs.

(v) Disability above 90% ₹ 6 lakh.

Even if, we take that, it was case of a child suffering permanent disability and disability was with respect to entire body, even then the compensation of Rs.1 lakh awarded is on very low side and in my considered view, it would be proper and appropriate if the same is enhanced to **Rs.2,50,000/-** and it is directed accordingly.

The Tribunal has not awarded any amount to the claimant for loss of marital prospects. With such type of injuries and permanent disablement, it would be very difficult for him to get a proper life partner and he needs to be compensated on that account. A sum of **Rs.30,000/-** is awarded to the claimant under that head.

No amount has been awarded to the claimant on account of loss of amenities and loss of expectation of life. The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident and his life expectancy has definitely been affected adversely. A sum of **Rs.25,000/-** is awarded to him under that heads.

Thus, the total compensation comes out to Rs.5,50,000/-.

The Tribunal has awarded compensation of Rs.2,55,000/- payable by respondents No.1 to 3 jointly and severally. The same is enhanced to Rs.5,50,000/-.

In this way, the additional amount comes out to Rs.2,95,000/- (5,50,000 - 2,55,000). The claimant would be entitled to get interest on this amount @ 7.5% per annum from the date of filing of the appeal till actual realization. The other terms and conditions given in the award shall apply to the enhanced amount as well.

With such modification, the appeal is allowed partly with costs.

22.11.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No