

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 7923 of 2015 (O&M)

Date of decision : 24.5.2019

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Mahinder Kumar Aggarwal

.....Appellant

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. V.S. Rana, Advocate for the appellant.

Mr. Harkesh Kumar, Assistant Advocate General,
Haryana

Mr. Sukhdarshan Singh, Advocate for respondent No.4.

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H. S. Madaan, J.

Petitioner – claimant Mahinder Kumar Aggarwal aged about 40 years, had suffered injuries in a motor vehicular accident, which took place on 8.2.2010 at about 10.00 A.M. Near Kali Mata Mandir, Kala Amb. On the fateful day, claimant had purchased kerosene stoves for business purpose from Ambala City and boarded a Haryana Roadways bus bearing registration No. HR 37-C-3420, from Ambala bus stand for Kala Amb. When the bus reached Kala Amb at about 10.00 a.m., in the area near Kali Mata Mandir, claimant asked the driver of the bus to stop. The bus driver accordingly did so, asking the claimant to unload the articles i.e. stoves from the roof of the bus,

where those had been placed. The claimant went up to the roof of the bus for bringing down those stoves but all of a sudden the driver started the bus, driving it in a rash and negligent manner. As a result, the claimant fell down alongwith his articles and suffered a fracture in his left leg besides other multiple and grievous injuries on his body. FIR No. 53 dated 10.2.2012 for offences under Sections 279, 337, 338 IPC, was registered at Police Station Naraingarh, District Ambala, Haryana against respondent No.3 Parampal @ Pammi @ Parminder – driver of the offending bus, on the basis of statement made by the claimant. According to the claimant, he was running a utensils, kerosene store shop at Kala Amb, District Ambala, and was earning a sum of Rs.20,000/- per month. However, due to injuries suffered by him in the accident, he remained hospitalized for a number of days and is still getting his treatment and he has spent a sum of Rs.1,25,000/- on his medical treatment so far. He prayed for grant of compensation of Rs.15,00,000/- , by way of filing a claim petition under Section 166 of the Motor Vehicles Act, against respondents, i.e. State of Haryana through Secretary, Department Haryana Roadways, Chandigarh, Haryana Roadways Ambala Depot through its General Manager, Chandigarh – owners, as well as Parampal @ Pammi @ Parminder – driver alongwith The New India Assurance Company, Chandigarh – insurer of bus bearing registration No. HR 37-C-3420(hereinafter to be referred to as 'the offending bus').

On notice all the four respondents appeared. Respondents

No. 1 and 2 filed joint written statement, which was adopted by respondent No.3. Whereas respondent No.4 Insurance company came up with a separate written statement. In the joint written statement filed on behalf of respondents No. 1 and 2, they submitted that as per statement of the bus driver no such accident as alleged by the claimant had taken place on 8.2.2012, neither claimant nor any passenger travelling in the bus had received any injury on his person. Had there been any mishap as alleged by the claimant, the police would have registered the FIR on the same day and impounded the bus. The driver of the bus came to know about the accident on 13.2.2012 when the above mentioned bus was stopped by the police saying that five days earlier one person had fallen from the roof of the bus and received injuries. Refuting the remaining allegations, these respondents prayed for dismissal of the claim petition.

In the written statement filed on behalf of respondent No.4 Insurance company, it came up with a plea that no information qua accident was given by respondents No. 1 and 2 and the bus driver was not having a valid and effective driving licence at the time of accident. Therefore, respondent No. 1 has violated the terms and conditions of the policy, in that way the answering respondent is not liable to pay any compensation. Even otherwise the amount claimed is quite excessive and exorbitant. Denying the remaining allegations, this respondent also prayed for dismissal of the claim petition.

From the pleadings of the parties, following issues were framed:-

1. Whether claimant has sustained injury in a roadside accident alleged to be caused to him by Parampal respondent No.1 while driving bus No. HR 37-C-3420 in a rash and negligent manner? OPP
2. Whether the claimant is entitled to compensation as prayed for ? OPP
3. Whether the alleged driver respondent No.1 was not having a valid and effective driving license at the time of accident? OPR
4. Relief.

In order to prove his case, the claimant himself appeared as PW-1 and examined Madan Lal son of Ram Swaroop as PW-2, Dr. Pradeep Aggarwal, Orthopedics, Raffles Hospital, Panchkula as PW-3 and thereafter closed his evidence after tendering certain documents.

On the other hand, respondents No. 1 and 2 examined Kanshi Ram, Clerk in the office of General Manager, Haryana Roadways, Ambala as RW-2 and Parampal Singh himself appeared as RW-1. Thereafter the evidence of the respondents was closed.

After hearing learned counsel for the parties, the Tribunal decided issue No.1 in favour of the claimant and against the respondents. Issue No.2 was decided in favour of the claimant. Issue No.3 was decided against the Insurance company.

As a result of findings on the issues, the Tribunal vide award dated 30.4.2014, awarded a compensation to the claimant to the tune of Rs.2,06,744/-, with interest and costs. However, the claimant was

not satisfied with the amount of compensation awarded to him. For that reason, he has approached this Court seeking enhancement of compensation, by filing the present appeal, notice of which was given to the respondents, who have put in appearance.

I have heard learned counsel for the parties, besides going through the record and I find that the compensation awarded to the claimant by the Tribunal deserves to be enhanced.

The Tribunal has awarded a sum of Rs.1,00,600/- on account of medical expenses. This amount has been given in view of the bills/receipts proved in evidence by the claimant as Exhibits P-2 to Exhibit P-39 and Exhibit P-52, value of which came out to Rs.1,00,571/- which was rounded off to Rs.1,00,600/-.

However, as has been observed, sometimes it is not possible to keep account of all the expenses incurred on account of purchase of medicines etc. and another factor has to be taken into consideration is that the claimant has suffered a permanent disability due to multiple injuries received by him including fractures in the bone. Some amount deserves to be awarded to him towards future medical treatment. Therefore, amount of Rs.1,00,600/- is enhanced to Rs.1,25,000/-, whereas towards future medical expenses another sum of Rs.30,000/- is awarded to him.

Under the Head, loss of income, keeping in view the period of hospitalization of the claimant and his being unable to do his normal work for four months, in light of the income tax returns filed by him, the Tribunal, assessing his income as Rs.11,536/- per month,

has granted Rs.46,144/- .

On account of injuries, it might not have been possible for him to do his normal work even after the expiry of the period during which he was bed ridden. Therefore, amount on account of loss of income is enhanced from Rs.46,144/- to Rs.50,000/-

In terms of the disability certificate proved in evidence, he has suffered 10% disability qua left leg. A sum of Rs.20,000/- has been awarded to him in that regard, which I find to be on lower side. Even if we take that 10% disability is not qua the entire body and presume the same to be 5% qua entire body or say even a little less than that, in view of the Apex court judgment **Master Mallikarjun vs. Divisional Manager, The National Insurance Company Limited and another 2013 (4) RCR (Civil) 295**, a sum of Rs. 1 lac deserves to be granted to him. Therefore, the sum of Rs.20,000/- is enhanced to Rs. 1 lac.

The Tribunal has awarded a sum of Rs.40,000/- under the head special diet, transportation, pain and suffering, attendants, mental agony etc. However, such approach of the Tribunal was not proper. The claimant deserves to be granted compensation under each head.

A person suffering such type of multiple injuries including fracture in bones does require special diet for early healing of injuries and joining of fractures. It has to be kept in mind that the claimant remained hospitalized and bed ridden for more than four months, as such he deserves to be granted a sum of Rs.30,000/- under the Head

special diet.

Going to hospital time and again, for follow up treatment does result in spending of considerable amount in transportation, specially when it may not be possible to travel in normal buses or trains etc. and special conveyance may be required. Considering that a sum of Rs.5,000/- is awarded, under the Head transportation.

Coming to the Head of pain and suffering only a person who has gone through the trauma of suffering injuries in a roadside accident, including fractures, being hospitalized and bed ridden for a considerable time, can actually feel the pain and suffering undergone by him. It is very difficult to quantify the same in terms of money. However, taking a sensitive and realistic view of the matter, a sum of Rs.30,000/- is awarded to the claimant under the Head pain and suffering.

Now, as far as attendant's charges are concerned, a person admitted in the hospital with injuries suffered in a roadside accident and after being discharged remaining bed ridden for around 4 months, does require assistance of an attendant to look after him. A sum of Rs.25,000/- is awarded under the Head of attendants.

As a result of suffering injuries, normal life span gets effected and a person is unable to walk, run, sit or move around leading a normal life, as he used to do prior to suffering injuries. Thus the claimant is required to be compensated on account of loss of amenities. A sum of Rs.40,000/- is awarded to him under that Head.

Thus the total amount of compensation is worked out as

under :-

<i>Sr. No.</i>	<i>Category</i>	<i>Amount</i>
1	On account of medical treatment	Rs. 1,25,000.00
2	On account of future medical expenses	Rs. 30,000.00
3	On account of loss of income	Rs. 50,000.00
4	On account of 10% disability	Rs. 1,00,000.00
5	On account of special diet	Rs. 30,000.00
6	On account of transportation	Rs. 5,000.00
7	On account of pain and sufferings	Rs. 30,000.00
8	On account of attendant	Rs. 25,000.00
9	On account of loss of amenities	Rs. 40,000.00
	Total	Rs. 4,35,000.00

Thus the claimant is entitled to a total compensation of Rs.4,35,000/-.

The Tribunal has already awarded him compensation of Rs.2,06,744/-. In that way, the claimant is entitled to get additional compensation of Rs. 2,28,256/- (Rs.4,35,000 – 2,06,744). The claimant-appellant shall be entitled to get interest @ 7.5% per annum on the additional compensation from the date of filing of appeal till actual realization. The apportionment and other terms and conditions shall remain the same as in the original award.

The appeal is allowed partly.

24.5.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Whether reportable

Yes/ No

Yes/ No