IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1064-2007 (O&M)

Reserved on: 27.10.2022

Pronounced on: November 01, 2022

Raman Malhotra .... Appellant

Versus

Harbhej Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Mayank Gupta, Advocate for the appellant.
Mr.Vinod Gupta, Advocate for respondent No.3-Insurance Company .

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<u>HARKESH MANUJA, J.</u>

The present appeal lays challenge to the award dated 09.09.2006 passed by the learned Motor Accident Claims Tribunal, Jalandhar (in brevity, 'the Tribunal'), whereby compensation of Rs.6,51,400/- was awarded to the appellant/claimant along with interest @ 8% per annum.

The brief facts of this case are that on 02.01.2004 appellant / claimant was going to Beas from Jalandhar in bus number PB-02-Z-9997. When the bus reached 10 yards short of Beas River Bridge, it stopped in order to enable the appellant to get down. However, when the appellant was getting down from the front door, respondent no. 1 started moving the bus, as a result of which he fell down from the bus and his right leg ,right ankle and right foot were crushed under the rear wheel of bus. Regarding this, an FIR No.3 dated 29.01.2004 under Section-279/337/338 IPC was registered against respondent No 1. Respondent Nos.1 & 2 happen to be the Driver and owner of the offending vehicle respectively; whereas respondent No.3 its insurer.

After going through the claim petition and evaluating the evidence led by both the parties, Learned Tribunal awarded compensation in the following manner:-

Sr.No.	***Nature***	***Amount in Rupees***
1.	*Medical expenses and transportation*	*Rs.10,50,000/-*
2.	*Pain and suffering, loss of earning ,future prospects*	*Rs.1,50,000/-*
3.	*Disability*	*Rs.1,00,000/-*
	TOTAL:	*Rs.13,00,000/-*

With regard to the liability, learned Tribunal held that accident occurred due to the rash and negligent driving of respondent No.1 as well as equally due to contributory negligence of the appellant and, therefore, respondents were directed to pay only 50% of the compensation amount to the appellant.

Being aggrieved against the award dated 09.09.2006, the present appeal has been preferred by the appellant/claimant for enhancement of compensation as well as against the finding of contributory negligence recorded against him.

Learned counsel for the appellant has contended that in the circumstance when the bus was stopped by respondent no.1 so that appellant could get down, respondent no.1 should have been vigilant enough while speeding up the bus and mere fact that it stopped at a place which was not a notified bus stop, could not be a reason to attribute contributory negligence towards the appellant. In support of his argument learned counsel places reliance upon the judgment of Delhi High Court in **"Delhi Transport Corporation vs. Ram Kumar"** reported as 1991 ACJ 872, this High Court in "**Punjab State Bus Stand MGNT Company Limited Vs Harwinder Kaur and others"** reported as 2014 AAC 1628 and Himachal Pradesh High Court in "**Krishanu Ram vs Bhagirath and others"** reported as 2016 latest HLJ (H.P) 244. He further contends that his case is further strengthened from the fact that respondent no.1 did not appear as a witness in this case to support the respondent version. With respect to the compensation amount, learned counsel for the appellant contends that learned Tribunal neither determined the functional disability nor assessed the income of the appellant to calculate the future loss of income and the lump sum amount has been awarded under multiple heads which is on extremely lower side. He also contends that under certain heads like "future prospects", "attendant charges", no compensation has been awarded and therefore, the award of learned Tribunal requires consideration.

On the other hand, learned counsel for respondent No.3-Insurance Company has argued that as appellant was alighting from a moving bus at a place which was not a designated bus stop, there is bound to be contributory negligence on his part. He further contends that as appellant was merely running a ready-made garments shop there is no functional disability in this case and learned Tribunal has rightly awarded a lump sum amount and, therefore, no interference is warranted.

I have heard learned counsel for the parties and perused the paper-book as well as records of this case. Separate discussion regarding

Contributory Negligence / Liability and quantum of compensation is as below.

Contributory Negligence / Liability

I find force in the argument raised by learned counsel for the appellant that when the bus has already stopped so that appellant could get down and in this process appellant was getting down from the bus, no contributory negligence can be attributed to his client. Learned Tribunal held contributory negligence of the appellant merely on the basis that the bus probably stopped or slowed down due to some reason and the appellant tried to get down from the bus at a place where there was no bus stop and driver and conductor cannot be expected to know the appellant intention to get down from the bus. However, a careful perusal of the material available on record shows that specific case of the appellant is that bus was stopped so that he could get down from the bus which has been supported by the testimony of PW5 -Dharam Singh (co- passenger and eye witness) and PW8-appellant himself. Suggestion to the effect that the bus only slowed down as the level of the bridge was higher than the road has been categorically denied by the appellant. This counter version of the respondents has not been supported by any witness as the driver of the offending vehicle did not appear to record his statement so as to prove and establish the plea of contributory negligence, the burden of which was always upon respondents. Apart from that, it is also not the case of the respondents that appellant was standing on the footsteps of the bus and suddenly got down from the bus as it slowed down and even there is no suggestion to this effect.

Even in **Krishanu Ram's** case **(supra),** the judgment relied upon by learned counsel for the appellant, it has been observed by Himachal Pradesh High Court that in terms of the Motor Vehicles Act, 1988, for short 'the Act', read with Motor Vehicles Rules, 1989 conductor was supposed to give signal to the driver and driver was supposed to wait for the signal of the conductor before starting the bus and it is the driver who had to exercise due care and caution. It is beaten law of the land that it is the driver with whom the loss risk lies. Further, the fact that FIR No.3 dated 29.01.2004, under Section-279/337/338 IPC was registered against respondent no. 1 cannot be denied by the respondents.

Learned counsel for responding No. 3-Insurance Company has relied upon **"State of Haryana and another versus Dilbagh Singh and others"** reported as 2017(1) PLJ 37, to argue that contributory negligence has to be attributed to appellant as he was not getting off from the bus at a designated spot. However, a careful perusal of the facts of that case reveals that the above finding was recorded in the specific facts of the case on the basis of presumption that there was no evidence by the claimant that he was alighting from the bus when it has stopped for the purpose of dropping him. While in the facts of the present case, it is the specific case of the appellant that bus was stopped so that he could get down from the bus which has been supported by the testimony of PW5 -Dharam Singh (co- passenger and eye witness). Therefore above mentioned case cannot be relied upon as the facts and circumstances of present case are distinguishable.

In view of the discussion made above, it is the driver (respondent no.1) who should have been careful and not to speed up the bus when the appellant has not completely alighted from it and no contributory negligence can thus be attributed to the appellant. This in turn follows that entire compensation amount has to be paid by respondent no.3-Insurance company and no amount is required to be deducted on account of contributory negligence.

Quantum of Compensation

i) Under Pecuniary Headings

With respect to the quantum of compensation as well, I find force in the arguments of the learned counsel of the appellant that if learned Tribunal found that the accident was caused by the offending vehicle due to the rash and negligent (even though partly) driving by respondent No.1, while calculating the pecuniary compensation, it failed to adopt the appropriate mechanism as neither it assessed the monthly income of the appellant; nor it determined the functional disability to properly assess the loss of future income. Therefore, the just compensation as stipulated in the Act, is required to be determined in view of the law laid down in **R.D.Hattangadi Vs. Pest Control (India) (P) Ltd.,** reported as (1995) 1 SCC 551; **Raj Kumar Vs. Ajay Kumar**, reported as (2011) 1 SCC (Civ) 164 as well as **Pappu Deo Yadav Vs. Naresh Kumar and others**, reported as AIR 2020 SC 4424.

Appellant in his statement has stated that he was involved in supply of Muniari Goods and was running a ready- made garment shop under the name and style of Ganpati Collections. The disability certificate brought on record as EX.PW6/A has been duly verified by Dr.A.Jayanthimala, C.M.C Ludhiana, while appearing as PW6. As per the Disability Certificate, appellant is having permanent disability which is about

42% on the right lower limb, 30% disability on the right ankle joint and 3% on right leg ankle and foot. There was also deformity of right leg and disability of 6% on the foot. In addition, PW4 - Dr Vijay Obed, Professor and Head of the Plastic Surgery Department, C.M.C. Ludhiana in his cross-examination has categorically stated that the patient is having injury which is not properly curable even after treatment. Though due to deformity on right leg there will be restriction in his movements and his work will be affected , however, as the appellant was not involved in a work which required physical fitness and even 42% permanent disability was of right lower limb, in my considered opinion, functional disability should be less than 42% and could be considered at 25% .

With respect to the income of the appellant, no documentary proof has been brought on record, however, it has been stated in his statement that he was earning Rs.10000/- per month from his work. Even otherwise at the relevant period of time, even a skilled worker was earning approximately Rs.3500/- per month, therefore, income of the appellant could be taken to be Rs. 4000/- per month. Further, in view of **Pappu Deo Yadav's** case (supra) and **"National Insurance Company Ltd. Vs. Pranay Sethi and others", 2017(4) RCR (Civil) 1009**, future prospects @ 40% of the annual income are awarded.

With respect to the expenses incurred by the appellant for treatment including medicines, transportation, and other expenditure learned Tribunal has awarded Rs 10,50,000/- after examining the bills brought on record by the appellant and it does not warrant any interference.

For future medical expenses, the fact that the appellant would require medical treatment in future has been supported by the testimony of

PW4 - Dr Vijay Obed, Professor and Head of the Plastic Surgery Department, C.M.C. Ludhiana. An application bearing CM-14950-C-II of 2016 was filed by appellant for bringing on record the bills of medical treatment and taxi bills as annexure P1 to P4, total amounting to Rs.2,01,649/- in the form of additional evidence along with the certificate issued by C.M.C. Ludhiana, so as to show that appellant is still undergoing regular follow up in the OPD and receiving treatment for his foot injury. Notice in this application was issued on 16.08.2016. Vide order dated 09.12.2016 respondent no 3 even took time to file response, however, till date no response has been filed. But as the bills are required to be proved, therefore, at this stage, application has not been pressed by the learned counsel of the appellant, however in view of the statement of PW4 - Dr Vijay Obed, it cannot be denied that appellant would have incurred expenses on subsequent treatment, therefore, Rs 1,00,000/- are being awarded under this head.

From the testimony of PW4 - Dr Vijay Obed, it has also come on record that at the time of his deposition on 23.04.2005, he has stated that appellant would still take 3-6 months to walk. In that case as the accident occurred on 29.01.2004, approximately for a period of 15 months, attendant charges are given @ Rs.2000/- per month and loss of income during treatment is also required to be granted @ Rs.4000/- per month.

ii) Non-pecuniary headings

Under the head of "disability", learned Tribunal has awarded Rs. 1,00,000 which is not being interfered with. However, Rs 1,50,000 has been awarded under the joint heads of pain and suffering, loss of earning, future prospects; but as the appellant has been suitably awarded under pecuniary heads, compensation under this head is being reduced to Rs.1,00,000/-.

In view of the discussions made hereinabove, the appellant is entitled for following enhanced compensation, as detailed in the table given hereunder:-

Sr.No.	***Nature***	***Amount in Rupees***
1.	*Annual Income of deceased (Rs.4000x 12)*	*Rs.48,000/-*
2.	*Add 40% of Future prospects*	*Rs.19,200/-*
3.	*Total Income (Rs.48,000/- + Rs.19,200/-)*	*Rs.67,200/-*
4.	*Multiplier of 18 as per age of 22 years (Rs.67,200/- X 18)*	*Rs.12,09,600/-*
5.	*Loss of future earning capacity/ income [25% (percentage disability) of total income]*	*Rs.3,02,400/-*
6.	*Medical and other Expenses including Transportation (as awarded by Ld Tribunal)*	*Rs.10,50,000/-*
7.	*Pain and sufferings and mental agony*	*Rs.1,00,000/-*
8.	*Disability to the extent of 42% and Loss of amenities and enjoyment of life (as awarded by Ld Tribunal)*	*Rs.1,00,000/-*
9.	*Compensation for attendant (Rs.2000 x 15 = Rs.30,000)*	*Rs.30,000/-*
10.	*Loss of income during treatment (Rs.4000/- x 15 = Rs.60,000/-)*	*Rs.60,000/-*
11.	*Future medical expenses*	*Rs.1,00,000/-*
	Total Compensation	*Rs.17,42,400/-*
	Amount Awarded by the Tribunal	*Rs.6,50,000 /-*
	Enhanced Amount	*Rs.10,92,400/-*

The grant of interest @ 8% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in **Smt. Supe Dei and others Vs. National Insurance Company Limited and other**, (2009) (4) SCC 513, which were approved in a subsequent judgment titled as **Puttamma and others Vs. K.L. Narayana Reddy and another**, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimant from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimant shall be deducted from the enhanced compensation.

Consequently, the present appeal is disposed off in the above terms.

Pending miscellaneous application(s), if any, shall also stand disposed of.

November 01, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*