

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

CM-11465-CII-2022 in/and
FAO-583-2002 (O&M)
Reserved on: 19.01.2023
Date of Pronouncement : 27.01.2023

Lali Singh @ Karamjeet Singh

...Appellant

Versus

Bhola Singh and others

...Respondents

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

Present: Mr. D.S. Walia, Advocate for the appellant.

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

H.S. MADAAN, J.

CM-11465-CII-2022

This is an application for fixing some actual date of hearing in the main appeal. Keeping in view the averments mentioned in the application and considering the fact that the appeal relates to the year 2002, the same is allowed. With the consent of counsel for the parties, the hearing in the main appeal is preponed to today itself.

Main Case

Briefly stated facts of the case are that petitioner/claimant Lali Singh son of Billu Singh had suffered injuries in a motor vehicular accident, which took place on 04.09.1996 at about 7.00 pm in the area of village Gandu Kalan, statedly on account of rash and negligent driving of truck No.PB-03-2027 (for short 'the offending truck') by respondent

No.1 Bhola Singh @ Jagdeep Singh, as such he had filed a claim petitioner under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act') against respondents i.e. Bhola Singh @ Jagdeep Singh-driver, Nachhatar Singh - owner and National Insurance Company Ltd., Hisar-insurer of the offending truck.

2. That claim petition was tried by Motor Accidents Claims Tribunal, Hisar (for short 'the Tribunal') and after contest, it was allowed, vide award dated 06.12.2000, and compensation of Rs.65,000/- was awarded to the claimant, payable with interest @ 12% p.a., from the date of filing of claim petition till actual realization.

3. Feeling aggrieved by that award, the claimant had filed an appeal before this Court, notice of which was given to the respondents, however, only respondent No.3 has put in appearance through counsel to offer a contest.

4. It may be mentioned here that record of this case had got burnt in a fire which broke out in the record room of this Court, however, whatever papers could be salvaged, the record was reconstructed and the case is being disposed of after going through such papers as well as the papers made available by learned counsel for the parties.

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

6. Vide the impugned award, the tribunal while deciding issue No.1 had held that it to be a case of contributory negligence observing that the accident resulting in injuries to the claimant Lali Singh and his brother Simarjit Singh took place on a national highway between two

vehicles coming from opposite direction.

As per case of petitioner/claimant, on the fateful day i.e. 04.09.1996, claimant Lali Singh along with his brother Simarjit Singh, father Billu Singh and uncle Munshi Singh were coming from village Dariyapur after attending marriage of Kirpal Singh, a cousin of claimant/injured. There is statement on oath of petitioner/claimant as PW-4 in that regard, who further stated that they were travelling in a Maruti Car bearing No.HR-22-8750 which was being driven by him and when they reached near village Gandwa, Tehsil Budlada, a truck bearing No.PB-03-2027 came from opposite side and struck against maruti car, as a result of which, he and his brother Simarjit Singh received injuries. Although, PW-4 petitioner/claimant had categorically stated that the accident had taken place due to rash and negligent driving of the offending truck but the tribunal was of the view that the road on which the accident took place is approximately 16 feet wide and two vehicles can cross easily and further though the claimant while getting his statement recorded had placed on file copy of the FIR Ex.P31 but without their being any evidence to show that respondent No.1 truck driver is facing trial in the criminal case, it cannot be held that the accident took place exclusively due to rash and negligent driving of truck by respondent No.1.

7. The tribunal further observed that had the petitioner been careful in driving the car by following traffic rules, the accident would not have occurred. Under the circumstances, it was held to be a case of contributory negligent on account of rash and negligent driving of maruti

car by petitioner/claimant and offending truck by respondent No.1 Bhola Singh.

8. In my view, the tribunal fell in error in arriving at such conclusion which is rather based upon assumptions, surmises and conjectures. The fact remains that petitioner/claimant appearing as PW4 had categorically stated that respondent No.1 truck driver was author of the accident by his rash and negligent driving of the truck. He had proved in evidence copy of the FIR registered against respondent No.1 truck driver with regard to the accident. In judgment **Girdhari Lal Vs. Radhey Sham & Ors., 1994 (1) ACJ 168**, it has been observed that when a driver is tried on account of rash driving that leads to a prima facie conclusion that the accident occurred due to rash and negligent driving of driver.

9. Interestingly, respondent No.1 had not stepped into witness box to depose on oath that he was not at fault in happening of the accident or that the claimant who was driving the maruti car was also at fault. It was the tribunal which arrived at conclusion of contributory negligent without their being sufficient evidence on record. The tribunal proceeded to decide this issue under an impression that it was dealing with a criminal case, forgetting that the case in hand being dealt with, was a claim petition under the Act, which is piece of welfare legislation, where strict rules of evidence and procedure are not applicable. Therefore, the conclusion arrived at by the tribunal is wrong and is not sustainable. The claimant had successfully established that the accident in question had taken place on account of rash and negligent driving of the offending truck by respondent No.1 Bhola Singh, who was guilty of lack

of care and caution while driving the truck and was rather driving it in a wrongful manner. Therefore, finding of the tribunal on issue No.1 is modified and this issue is decided in favour of the claimant and against the respondents, holding that the accident in which the petitioner had suffered injuries had taken place on account of rash and negligent driving of the truck in question by respondent No.1.

10. As regards findings on issue No.2, which has been decided against respondent No.3, no interference therewith is called for. However, verdict with respect to issue No.3 when the compensation payable to the claimant was calculated, the compensation awarded is grossly inadequate and has not been granted under various conventional heads.

11. The petitioner/claimant had successfully established that he had suffered permanent disability to the extent of 54% in the right lower limb. With regard to his medical treatment, the petitioner had examined Dr. M.R. Sapra as PW-1, who stated that on 14.03.1997, Lali Singh son of Billu Singh was admitted in his hospital on account of septic compound fracture on the right leg with K-nail inside. Accordingly, he was operated upon and K-nail was removed on 16.03.1997. The witness further added that on 14.04.1997, the patient got the second operation of external fixator and he was discharged on 01.06.1997. The witness added that the patient was readmitted on 30.08.1997 and discharged on 08.09.1997, then admitted on 27.06.1998 and discharged on 08.07.1998. The total period of hospitalization was stated to be 78 days. As deposed by this witness, Rs.10,000/- were charged for operation and Rs.23410/- for 78 days stay in the hospital vide receipt Ex.P1. The witness had

further proved receipts Ex.P3 for Rs.8000/-, Ex.P4 for Rs.5000/-, Ex.P5 for Rs.5075/-, stating that Rs.10,000/- were charged as fee for the third operation.

PW-2 Dr. M.L. Gupta had stated that he had examined the petitioner on 04.09.1996 at 9.00 pm in CHC Ratia and found two injuries on his person, vide MLR Ex.P1.

PW-3 Tilak Raj, employed as helper in Dr. Karam Singh Hospital at Amritsar identified signatures of Dr. Karam Singh on bills and vouchers Ex.P6 to Ex.P28.

PW-6 Dr. D.L. Bansal deposed that on 24.11.1999, he along with Dr. R.K. Leekha, Senior Medical Officer and Dr. S.P. Mimani examined Karamjit Singh son of Billu Singh and found him disabled to the extent of 54% on account of weakness of the right lower limb with stiffness of right knee, right ankle joint with shortening right lower limb. He proved disability certificate as Ex.P30.

Petitioner/claimant Lali Singh appearing as PW4 had given details of the injuries suffered by him in the accident, period of his hospitalization and amount spent on his medical treatment.

12. Keeping in view the evidence adduced by the claimant and further considering the fact that it is not always possible to keep record of each and every penny spent on purchase of medicines and such like items. The petitioner remained hospitalized for 78 days. The Apex Court in judgment **Raj Kumar Vs. Ajay Kumar, 2011(1) SCC 343**, has observed that a person suffering injuries in a motor accident is to be awarded compensation under following heads:-

Pecuniary damages (Special Damages)

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :
 - (a) Loss of earning during the period of treatment;
 - (b) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

Non-pecuniary damages (General Damages)

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity).

13. Coming to the present case, under the head pecuniary damages, the petitioner is entitled to get Rs. 1 lakh towards expenses relating to hospitalization and medicines.

Money is spent in taking the injured to hospital and coming back home, the injured had to be hospitalized on several occasions and to undergo repeated surgeries, for that a sum of Rs.35,000/- is awarded to him as transportation charges.

Furthermore, a person suffering such types of injuries require special diet and nourishing food for early recovery, though, no direct evidence in that regard is coming forth, nevertheless, a sum of Rs.35,000/- is awarded to the claimant under that head.

14. Even otherwise, considering the nature of injuries, the period of hospitalization and surgeries undergone, he would not have

been able to pursue his regular avocation for a long time. A sum of Rs.35,000/- is awarded to him for loss of earning and other gains, which he would have made if he had not been injured.

For loss of future earning, as discussed above, the claimant has suffered permanent disability to the extent of 54% in his right lower limb with shortening of right lower limb, in that way, he would not be able to pursue his normal avocation and has suffered permanent handicap. His age at the relevant time is said to be 27 years, Rs. 5 lacs is awarded to him towards loss of future earning on account of permanent disability. Under the head future medical expenses, further a sum of Rs.50,000/- is awarded to him.

15. Now coming to non-pecuniary damages, on account of damages of pain suffering and trauma, a sum of Rs.45,000/- is awarded. For loss of amenities that he would not be able to sit, run or walk like a normal human being as he could do prior to the accident, another sum of Rs.50,000/- is awarded and towards loss of expectation of life, a sum of Rs.50,000/- is awarded. Total amount comes out to Rs.9 lacs. Therefore, the compensation awarded is enhanced to Rs.9 lacs payable by all the three respondents jointly and severally with interest @ 7.5% p.a., from the date of filing of claim petition till actual realization.

16. The appeal stands partly allowed accordingly.

27.01.2023

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(H.S. MADAAN)

JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No