

2023:PHHC:149066

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4095-2005 (O&M)
Date of Decision: November 22, 2023

Suresh Kumar

...Appellant

VERSUS

Ram Avtar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rajesh Sheoran, Advocate
for the appellant.

None for respondents No.1 and 2.

Mr.Radhe Shyam Sharam, Advocate
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant Suresh Kumar, thereby, seeking enhancement of the compensation granted by learned Motor Accident Claims Tribunal, on account of injuries sustained by him, in a motor vehicular accident, which took place on 11.05.2001.

So far as the fact of accident and the liability fastened upon the respondents, as such, is concerned, the same is not questioned, as the persons, who were made liable, have not filed any appeal.

On appraisal of the evidence, brought on record, learned Tribunal reached the conclusion that negligence, on the part of respondent

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No.1-Ram Avtar, driver of the bus bearing registration No.RJ-18D-1346 does not stand established, though, he admitted about the factum of accident and therefore, for no fault liability under Section 140 of the Motor Vehicles Act, on account of permanent disability to the extent of 13% suffered by the appellant-claimant, awarded only a fixed sum of Rs.25,000/-.

The essential facts, to be noticed are as follows:-

That, on 11.05.2001, the appellant-claimant Suresh Kumar, while on his way from Jhunjhunu to his native village Kakroli Sardana, on his motorcycle, reached near village Nunia-Gothra, then, a bus bearing registration No.RJ-18D-1346, driven by respondent No.1-Ram Avtar, in a rash and negligent manner, came from the opposite direction and struck against the motorcycle, as a result whereof, Suresh Kumar had fallen down and had sustained injuries. It is further the claim of the appellant that he remained admitted in the hospital for about 17 days and two operations were also conducted and on this account, he had claimed compensation to the tune of Rs.8,25,000/- along with interest.

However, respondent No.1-Ram Avtar, though admitted about the accident, but has pleaded that the accident was not caused due to his fault. In fact, driver of the motorcycle was negligent in driving the motorcycle. Claimant himself wrote an application to General Manager, Rajasthan State Transport Corporation, Jhunjhunu, wherein, he admitted that he lost the balance and struck his motorcycle against the bus and respondent No.1 was not at fault, in any manner.

Respondents No.2 and 3 filed written statement, thereby, making a prayer for dismissal of the claim petition and also asserting that the

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petition has been filed only with the motive to extort money, illegally and unlawfully, under the garb of claim petition. No such accident had taken place with the offending bus.

To establish the fact and maner of accident, appellant-claimant Suresh Kumar, himself stepped into witness box as PW-1 and his sworn testimony, in the form of affidavit is Ex.PW1/B. He also tendered into evidence Ex.P1 to Ex.P3 and Mark A-1 to Mark A-47. Furthermore, he also examined PW-2 Dr.V.K.Nagpal, Orthopaedic Surgeon, General Hospital, Bhiwani, who had proved the disability certificate of the appellant, which is Ex.P4. Thereafter, the appellant-claimant closed the evidence.

On the other hand, respondent No.1-Ram Avtar, stepped into witness box as RW-1 and his sworn testimony, in the form of affidavit is Ex.RW1/A. He reiterated the manner of taking place of the accident as asserted in his reply. Furthermore, he also denied about signatures of claimant having obtained on blank paper. Thereafter, he closed the evidence.

On appraisal of the evidence, learned Tribunal reached the conclusion that the claimant had given a writing Mark R-1 to General Manager, Rajasthan State Transport Corporation, Jhunjhunu, wherein, he admitted that the accident was caused due to his negligence and he admitted that there was no fault of respondent No.1, driver of the bus. On account of no fault liability and in view of the permanent disability, suffered by the claimant, fixed amount of Rs.25,000/- was granted as compensation, together with the interest @ 4.5% per annum, from the date of filing of the claim petition, till actual date of payment.

However, men may tell lies, but circumstances do not. This is apt situation, in the present case.

Throughout the arguments, much emphasis has been laid upon the application, which is Mark R-1 and which is addressed to General Manager, Rajasthan State Transport Corporation, Jhunjhunu. No doubt, as submitted by learned counsel for respondent No.3 that the appellant-claimant, in his cross-examination, has admitted about the same to be bearing his signatures, but however, close perusal of this application Mark R-1 reveals that though negligence is attributed by the author of this application upon himself, in causing the accident, but however, the various circumstances, ought to be taken into consideration, which raises doubt about the manner of application having presented by the appellant-claimant, as claimed by respondent No.1. This application is not bearing any date, as to when it was presented. In this regard, firstly, it is important to refer to the MLR, which is Ex.P1. Besides giving detail of the injuries, found on the person of Suresh Kumar, there is also mention made about SHO, P.S. Kotwali, Jhunjhunu, having been informed. In the last, there is also note given that patient is conscious but confused. This medical examination was conducted, on 11.05.2001 at about 10.45 a.m. Thereupon, it is important to make reference to DDR, copy whereof is Ex.P3. It specifically mentions that when SHO Narender Kumar along with police officials, reached the Government Hospital, in pursuance of information received from Control Room, Jhunjhunu, he reached BDK Hospital, Jhunjhunu, where ASI Jagmohan was already present. He had already found the injured and it was observed by him that injured Suresh Kumar is not fit for making statement. Thereafter, DDR records about Ram

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Avtar s/o Jagan Singh, to be present near the injured, who had stated about the injured to have suffered injuries, after hitting near Nunia Gothra and injured sustained injuries due to fall. In the light of the same, when the appellant-claimant was found to be not fit to give statement, then, in what manner this application Mark R-1, got written by him. Even though, there is no date mentioned about the presentation of the application, but however, it should be noted that RW-1 Ram Avtar, while facing cross-examination, at the instance of his department and insurance company, had admitted a suggestion to be correct that he was not at fault, in the present case and after the accident, he took the injured to the hospital, where, the injured gave in writing, mentioned in Mark R-1, meaning thereby, the said application Mark R-1 was given by the appellant-claimant, in the hospital, after his admission in the hospital, soon after the accident. At one stage, in DDR before the police officials, it is coming that Suresh Kumar was not fit to make statement and thereupon, how this application was made by him. Otherwise also, the handwriting coming forth, on Mark R-1, with regard to the signatures and note given of the name, thereunder, is different from handwriting of the body of the said application. This all the more raises the probability of the signatures, having obtained of Suresh Kumar, on blank papers, as pleaded by him.

Otherwise also, in view of the recitals of DDR, so taken, the question arises, as to whether, further an attempt was made to record the statement of Suresh Kumar, when he was in fit state of mind. Relating to the same, no evidence, as such, has come on record. Even, SHO has not been examined by the respondents in this regard. This all the more raises an element of

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doubt, about collusion to be there of respondent No.1 with the police authorities and the matter was buried. In the light of the aforesaid conclusion, no sustenance, as such can be drawn from Mark R-1, to shut the claim of the appellant-claimant.

In view of the same, it is categoric claim, coming forth, at the instance of the appellant-claimant that the accident had taken place, due to rashness and negligence, on the part of respondent No.1-Ram Avtar.

Very true, as submitted by learned counsel for the insurance company that no FIR, in the present case was got lodged. It was only DDR recorded, wherein also, rashness and negligence, as such, is not spelt out, on the part of respondent No.1 and therefore, it is submitted that the negligence does not stand established. However, the aforesaid submission is bereft of merits. Even though, FIR is not registered in the said case, but however, it matters not much, as FIR is not a *sine qua non*, for filing the petition for claim, arising out of the motor vehicular accident.

Keeping in view clear and specific testimony of Suresh Kumar, coupled with medical evidence, coming on record, with regard to the injuries sustained in the accident in question, it stands amply established that the appellant-claimant sustained injuries on account of accident, having caused due to rash and negligent driving of offending bus by respondent No.1. Accordingly, the findings, so recorded by learned Tribunal stand reversed. Secondly, the order of grant of compensation to the extent of Rs.25,000/-, on account on 'no fault liability' also stands reversed.

In the light of the findings of learned Tribunal, so reversed, now, the question arises, about the computation of the compensation, to be

granted to the appellant-claimant.

Time and again, it has been held by the Courts that the just compensation is adequate compensation and award must be just that ‘**no less and no more**’. The Courts should make an attempt to provide a realistic recompense, having regard to the realities of life, both in terms of assessment of the extent of disability and its impact, including the income generating capacity of the claimant and not only that, even the impact of the accident on his/her life, on account of his/her physical disability.

In this backdrop, reverting to the case in hand, it is pertinent to mention that appellant-claimant has deposed about himself to be working as an agriculturist and also running a photo studio. So far as, both these counts are concerned, there is no evidence, at all coming on record, about his indulgence in agricultural work as well as running the photo studio. In the given circumstances, his earnings, in the modest estimate, keeping in view the date of accident and minimum wages, prevalent at that time, in the State of Haryana, is taken to be Rs.2000/- per month.

PW-2 Dr.V.K.Nagpal has proved the disability certificate of the appellant-claimant, which is Ex.P4. It is reproduced in verbatim, as herein given:-

*“Latest X-ray shows united # patella left, with united # lower radius left with irregular frong margins of Radius
Clinically for patella:
Mild to moderate wasting of thigh muscles left-6%.
C/o Pain on left knee while squatting-3%.
Left writs-Mild to moderate stiffness-4%.”*

Thus, it shows that there was 13% permanent disability. It is also important to refer to the cross-examination of PW-2 Dr.V.K.Nagpal, who

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stated that the patient could do its normal activities like photography.

Keeping in view this extent of disability, the normal routine work carried, being not so affected, but anyhow, fact remains that on account of injuries sustained in the accident in question, which were fracture etc., as detailed aforesaid, definitely, the appellant would not have been in a position to follow his avocation, at least, for a period of three months. His body functionality also ought to have been affected to some extent, which would have resulted in reduction in efficiency, in following his avocation.

Keeping in view of the age of the appellant to be 28 years, which is not disputed, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, addition of 40% ought to be made, on the count of 'future prospects'. Thus, the earnings of the injured-appellant comes to be Rs.2,000+800(40%)=Rs.2,800/- and annual earnings comes to be **Rs.33,600/-**.

In consonance with the *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the suitable multiplier to be applied is '17' and also multiplying the same with 13% of disability and dividing the same by 100, as per standard multiplier process, on account of the same, the loss is assessed as **Rs.33600x17x13/100=Rs.74,256/-**.

The medical bills, which have been tendered into evidence are Mark A-1 to Mark A-47. Much resistance is shown to the said bills, as it is submitted that no witness has been examined by the appellant to prove the said bills and they are only marked documents. However, it should be noted that the Motor Vehicles Act is benevolent and welfare legislation and the mode of conducting the enquiry, as such, can be to the discretion of the

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Court concerned. The original bills are coming on record, which stand in the name of appellant and the same can be taken into consideration. But, at the same time, it should be noted that though it is the version of appellant that he remained admitted in the hospital for 17 days and was operated upon twice, but no evidence, as such, has come on record. At the maximum, keeping in view the nature of the injuries, the bills relating to his treatment, which are for a period of one month, after the accident, can be looked into. In the given circumstances, upto 08.06.2001, can be take into consideration. However, Mark A-1 is the receipt of Anand Nursing Home, which states about operation charges and bed charges, but however, since the admission of the appellant, in the hospital, does not stand established, even no evidence relating to the operation has come on record, in the given circumstances, this receipt, as such, is to be discarded. However, bills Mark A-2 to Mark A-21, can be looked into. The total of the said bills comes to **Rs.7,744/-**.

Obviously, during the period of treatment and some time thereafter, in the minimum, the appellant-claimant must have been put on special rich diet, for the healing process. On this count also, another sum of **Rs.5,000/-** is granted.

Looking at the kind of injuries sustained, the appellant-claimant must have been looked after by a by-stander/attendant throughout. Even if, the appellant-claimant was being looked after only by his family members, they must have diverted their time and energy and remained away from their gainful employment. Thus, on the count of 'attendant charges', a sum of **Rs.5,000/-** is granted.

Keeping in view the injuries sustained by the appellant-

claimant, on the count of ‘pain and suffering’, an amount of **Rs.10,000/-** is granted.

Thus, on various counts, as detailed aforesaid, the compensation is re-computed as herein given:-

1.	Loss of earnings	Rs.74,256/-
2.	Medical Bills	Rs.7,744/-
3.	Special rich diet	Rs.5,000/-
4.	Attendant charges	Rs.5,000/-
5.	Pain and suffering	Rs.10,000/-
	Total	Rs.1,02,000/-

As such, the compensation, so awarded by learned Tribunal, stands enhanced from **Rs.25,000/-** to **Rs.1,02,000/-**. On the amount of compensation, as now awarded, the appellant-claimant shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the claim petition, till realization of the amount of compensation.

The impugned Award dated 04.05.2005 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, the present appeal stands allowed.

November 22, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No