

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

FAO-4721-2017(O&M)

Reserved on:-4.5.2023

Date of Pronouncement:-16.5.2023

Punjab Roadways through its General Manager, Amritsar and others

...Appellants

Versus

Jatinder Singh and another

...Respondents

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

Present: Ms.Guramrit Kaur, DAG, Punjab
for the appellants.

Mr.J.S. Chatrath, Advocate
for respondent No.1.

Mr.Harnoor Singh Majithia, Advocate
for respondent No.2.

H.S. MADAAN, J.

1. Briefly stated, the facts of the case are that petitioner/claimant Jatinder Singh had brought a claim petition under Sections 166/140 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Narinder Singh – driver, Punjab Roadways through its General Manager, Amritsar as well as Punjab State Bus Stand Management Company Ltd., Sector 17, Chandigarh – owners of bus No.PB-02-BF-9847 (hereinafter referred to as the offending bus) besides Depot Manager of respondent No.3, before Motor Accident Claims Tribunal, SAS Nagar (Mohali), on the averments that on

9.12.2014 at 9:30 a.m. petitioner/claimant was going from Kharar to Ropar driving his motorcycle bearing registration No.PB-65-E-9419 and his mother Smt.Dalbir Kaur was pillion riding that motorcycle; when they had reached near Prabh Asra Ashram, a stray animal came in front of the motorcycle on account of which he slowed it down; in the meanwhile the offending bus driven by respondent No.1 – Narinder Singh in a rash and negligent manner came and hit the motorcycle after going on the wrong side and dragged the claimant/petitioner to a considerable distance; in the process, both the legs of the petitioner/claimant got crushed; he was immediately taken to PGI, Chandigarh, where he was operated upon and remained admitted from 9.12.2014 to 11.12.2014; thereafter, he was shifted to Fortis Hospital, Mohali for better treatment where his right leg was amputated due to the fracture; he was discharged on 15.12.2014; he is still under treatment and has spent more than Rs.20 lakhs thereon; due to amputation of his right leg, his normal life has been affected; he was a brilliant student aged about 22 years maintaining good health but after the accident, he has become bedridden and is unable to perform even day to day work; he sought proposal from Otto Bock Healthcare Private Limited, which quoted cost of artificial limb as Rs.45,60,500/-.

Formal FIR with regard to the accident had been registered.

2. On notice, the respondents had appeared and filed written statements denying that the bus No.PB-02-BF-9847 had caused any accident resulting in injuries to the petitioner. They further contended that the FIR was got registered after expiry of five months of the accident. As the version of the answering respondents goes, on the next day of the

accident i.e. on 10.12.2014, DDR No.21 was lodged by claimant himself wherein he stated that respondent Narinder Singh driver of the bus was not at fault and that the accident had taken place when the claimant lost control due to sudden appearance of a stray animal in front of the motorcycle.

The respondents prayed for dismissal of the claim petition.

3. Issues on merits were framed and parties were afforded adequate opportunities to lead evidence in support of their respective claims.

4. After hearing arguments, the Tribunal while allowing the claim petition vide award dated 18.3.2017, granted a compensation of Rs.41,67,805/- rounded off to Rs.41,68,000/- with interest at the rate of 6% per annum from the date of filing of the claim petition till realization to the claimant payable by all the respondents jointly and severally.

5. This award left respondents No.2 to 4 aggrieved and they have approached this Court by way of filing the present appeal.

6. Notice of the appeal was given to the respondents, who have put in appearance through counsel.

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

8. The Tribunal considering the facts and circumstances of the case and evidence brought on record by the parties, has given a clear finding that the accident in which the petitioner/claimant received injuries, had taken place on account of rash and negligent driving of the offending bus by respondent No.1 Narinder Singh. While coming to this conclusion

the Tribunal has considered the statement on oath of claimant appearing as PW5 in the form of affidavit Ex.PW5/A, in which he had repeated on oath his case as given in the claim petition. Though he was cross-examined at length on behalf of the respondents but he remained unshattered. Coupled with that is the formal FIR No.65 dated 9.5.2015 for the offences under Sections 279, 338, 427 IPC.

Although Narinder Singh respondent appearing as RW1 had denied having caused the accident by his rash and negligent driving of the offending bus but then in his cross-examination, he admitted that he is facing trial in the Court of ACJM, Rupnagar after the challan was filed against him in the Court. He stated that he had not approached any higher authority regarding his alleged false implication. The Tribunal has also considered the statement said to have been made by petitioner/claimant before the police on 10.12.2014 Ex.RW1/C and DDR Ex.RW1/B wherein he had allegedly stated that the accident in question had taken place on account of a stray animal coming in front of his motorcycle and bus driver was not at fault. The claimant appearing as PW5 in his affidavit Ex.PW5/A had submitted that his signatures were obtained by the police on blank papers on the basis of which DDR was entered and rather he had made complaints to the police authorities and thereafter FIR was registered. Considering all these facts, the delay of 5 months in lodging of the FIR does not affect the case of the petitioner/claimant adversely. The Tribunal by giving valid reasoning has believed the version of the claimant with regard to happening of the accident, whereas finding the denial offered by the respondents to be not worthy of acceptance. It being

so, the petitioner/claimant was found entitled to claim compensation from all the respondents.

9. While assessing the quantum of compensation payable, the Tribunal has adopted a multiplier method assuming that the claimant might have found a job earning Rs.10,000/- per month had he not met with the accident. His annual income was taken as Rs.1,20,000/-.

10. The petitioner/claimant was found to have suffered 85% disability. Since he had lost his right leg due to injuries suffered in the accident as it had to be got amputated. Though certainly the petitioner/claimant will not be able to live life as that of a normal person on account of amputation of his right leg and suffering injuries on his person but then he cannot be termed as a totally cripple unable to do any work or perform daily chores. He has quoted cost of an artificial limb, that means by using artificial right leg, the disability suffered by him gets addressed to a major extent. In that way, his functional disability can at the most can be taken to be 50%.

11. The Tribunal has wrongly made addition of 50% towards future prospects. As per the judgment **National Insurance Company Ltd. Versus Pranay Sethi and Ors., 2017(4) RCR(Civil), 1009**, 40% is to be added when a person/victim is below 40 years. Doing that the monthly income in this case is worked out as (Rs.1,20,000 + 48000) Rs.1,68,000/-. The loss of earning capacity thus comes out to Rs.84000/-(168000 – 84000). Considering the age of the petitioner/claimant at that time to be 22 years, a multiplier of 18 was rightly applied in view of the law laid down in **Smt.Sarla Verma and others Versus Delhi Transport**

Corporation and Anr., 2009(3) RCR(Civil)77 . Therefore, the amount worked out as **Rs.15,12,000/-** (84000 x 18).

12. The Tribunal has further awarded a sum of **Rs.25,000/-** towards the head pain and suffering, **Rs.25,000/-** on account of loss of amenities of life, **Rs.20,000/-** towards attendant charges, **Rs.20,000/-** towards special diet and transportation. In my considered opinion, such amounts do not call for interference and are kept intact.

13. The Tribunal has further awarded a sum of **Rs.5 lakhs** towards prosthetic limb and **Rs.3 lakhs** for replacing the limb for every 4-5 years. Although it is not established on record that such prosthetic limb requires replacing after every 4-5 years but this amount awarded can be allowed to remain as such considering the facts and circumstances of the case.

14. Further the Tribunal has awarded a sum of **Rs.1 lakh** towards adverse affect on marital prospects, **Rs.1 lakh** on account of loss of enjoyment of life and **Rs.50,000/-** for future medical expenses, which are proper and appropriate and do not call for any interference.

15. The total compensation thus comes out to **Rs.26,52,000/-**.

16. The Tribunal has wrongly awarded compensation of **Rs.41,68,000/-**. The same is reduced to **Rs.26,52,000/-**. The claimants would be entitled to get interest @ 6% per annum from the date of filing of the claim petition till actual realization on the amount of **Rs.26,52,000/-**. Other terms and conditions in the original award shall remain the same. The excess amount if received by claimant be returned by him to the respondents forthwith not later than within one month

otherwise the respondents shall be entitled to recover it by filing an execution application before the Tribunal.

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

Since the main appeal stands allowed partly, the miscellaneous application(s), if any stands disposed of accordingly.

16.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No