

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-3901-2010 (O&M)
Date of Decision: January 16, 2024

Sohan Lal and others
...Appellants

VERSUS

Birender Singh and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.S.K.Yadav, Advocate
for the appellants.

Ms.Manvi Verma, Advocate for
Mr.Rajnish Malhotra, Advocate
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants, thereby, seeking enhancement of the compensation awarded by learned Tribunal, on account damage caused to their property.

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

That, on 24.04.2008, Pankaj Kumar along with Mahesh was standing in front of shop situated in village Dongra Ahir. At about 10.30 p.m., a tanker bearing registration No.HR-66-2728, being driven by respondent No.1-Birender Singh, in a rash and negligent manner, came and lost his balance and hit against Pankaj Kumar and the struck against the property of appellants-claimants and caused damage to their building.

Two separate claim petitions were filed; one at the instance of Sohal

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Lal and others, for seeking compensation, on account of damage caused to their property, and other was filed by Pankaj Kumar, on account on injuries sustained by him. Both the claim petitions were consolidated and decided vide Award dated 12.06.2009. Learned Tribunal had granted compensation to the extent of Rs.37000/- on account of injuries sustained by Pankaj Kumar. Likewise, on account of damage caused to the property of Sohan Lal etc., they were held entitled to compensation to the extent of Rs.6,000/-.

Feeling aggrieved by the aforesaid extent, the appellants-claimants have filed the present appeal.

At the very outset, it should be noted that the persons, who have been made liable to pay the compensation, have not filed any appeal. It is only the appeal filed by Sohan Lal and others, for seeking enhancement of the compensation.

It is categoric claim that the damage was caused to the property of Sohan Lal etc., as a result of striking of tanker bearing registration No.HR-66-2728. Even, Pankaj Kumar, who had sustained injuries, had stepped into witness box as PW-2 and in his affidavit Ex.PW2/A, he had categorically deposed about the damage caused to the property of Sohan Lal, apart from injuries sustained by him. Even, Sube Singh, one of the claimants, had stepped into witness box as PW-1 and in his affidavit Ex.PW1/A, he had categorically deposed that Rs.4 lakh had to be spent, for the reconstruction of the damaged building, as the damage was caused to two shops, one baithak, one stair case, three chaubaras and projection. Besides the same, PW-3 Satyapal, Architect has been examined, who had prepared the damage report Ex.PW3/A and the site plan of the damaged

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property, which is Ex.PW3/B. In the assessment report, he had categorically deposed about having inspected the property in question on 28.04.2008 along with Sohan Lal, claimant No.1. He had taken the measurements and prepared the site plan, which is Ex.PW3/B. He had also stated in the report about having examined damaged portions of the building and in paragraph No.5, the assessment of loss/damage to the building, has been categorically stated. It relates to Baithak, two shops, upstairs upto 5' wide, at ground floor, three rooms and Chhajja. He further categorically stated that to assess the loss/damage to the building, the cost of construction was taken at the prevalent bazar rate. The pre-accidental condition of the damaged portions of the building was very good and it was well maintained. He also stated in the report that the construction of the damaged portion of the building is II Class construction. The walls 14' wide were made of bricks in cement mortar and having plaster on both sides. The flooring was cemented, one with marble chips. The roofs were supported on iron girders of 6" x 3" size, supporting stone slabs and they, in turn, supporting the cement concrete terraces. Furthermore, he has also given the detail of height of the construction and so working upon, while taking the construction cost of covered area, the construction cost was worked upon as Rs.3,86,300/-. Also, it is stated in the report that besides the loss of Rs.3,86,300/- as economic loss to the building, in addition, the appellant-claimants have also suffered physical as well as mental agony.

However, no evidence, as such, has been led by the respondents to controvert the report Ex.PW3/A, prepared by PW-3 Satyapal.

Keeping in view the aforesaid fact situation, one thing becomes

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very certain that extensive damage had been caused to the building of the appellants-claimants, the site plan whereof is Ex.PW3/B. In the report Ex.PW3/A, PW-3 Satyapal had categorically deposed about actual damage and the cost of repairing. Even though, PW-1 Sube Singh had stated about Rs.4 lakh, having been spent, for reconstruction, but however, his testimony, as such, has not been believed by learned Tribunal. In fact, learned Tribunal had granted a sum of Rs.6,000/-, on account of the damage caused to the building, in the accident in question.

However, the compensation, so awarded, is definitely on lower side, which calls for extensive enhancement, on various counts, to which, amiss has been given by learned Tribunal.

At the very outset, it is pertinent to reiterate the concept of 'just' compensation under Section 168 of the ibid Act. It is settled proposition, now through the catena of decisions, including the one, rendered by the Constitution Bench in *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, that compensation must be fair, reasonable and equitable. Further, the determination of quantum is a fact dependent exercise, which must be liberal and not parsimonious. Furthermore, the Motor Vehicle Act of 1988 is a beneficial and welfare legislation and the approach of the Courts, dealing with the same, should essentially be forward looking. It must be emphasized that compensation is a more comprehensive form of pecuniary relief, which involves broad-based approach, keeping in view the purpose of providing stability and continuity in peoples' life, in future.

In view of the above-mentioned principle, now adverting to the case

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in hand. As already observed, no evidence of any kind has been led by the respondents to controvert the report Ex.PW3/A. Even, the respondents have not examined any witness. PW-3 Satyapal, Architect, had categorically stated in his report Ex.PW3/A, about the detail of the damage caused to the building of the appellants-claimants. In paragraph No.5, he had made assessment of loss/damage caused to the building, by giving the dimensions also. He had also categorically stated therein that to assess the loss/damage caused to the building, the cost of construction is taken, at the prevalent bazar rate, which in fact, in cross-examination, has not been disputed. Furthermore, keeping in view the rate of construction and area of damage, he had worked upon the economic loss/damage to the building, to the extent of Rs.3,86,300/-.

No doubt, as now pointed by learned counsel for respondent No.3-insurance company that the witness was so examined, at the behest of appellants-claimants and there is bound to be some exaggeration, in work out of the loss/damage to the property, but however, it should also be noted that even, respondents had counter opportunity to examine any Architect or make an assessment of the damage caused to the building, at their own level, by way of examination of an expert. Despite the said opportunity available, the respondents have not bothered to examine any counter expert for the assessment of the damage caused to the building.

In the given circumstances, report Ex.PW3/A, as such, cannot be discarded in toto. Moreover, learned Tribunal has not stated a word about the manner of granting compensation to the extent of Rs.6,000/- only. Definitely, in the report Ex.PW3/A, the age of the building, as such, has not

been specifically mentioned. Very true, it has come in the cross-examination of the said witness that building in dispute was 2-3 years old. Even though, as observed, by learned Tribunal, the fact of reconstruction, as such, does not stand established, as no witness or bill etc. has been proved, to so substantiate this plea of reconstruction, but anyhow, the fact remains that the damage had been caused to the building of the appellants-claimants and this damage is quite extensive, as evident from the report.

Considering the same, if the person is having the property and he was utilizing the same and it has so been damaged, it is quite obvious that at some point of time, if not immediately, after the accident, he could reconstruct the same or would carry out extensive repairs. In view of the same and while doing some moderation, as per conclusion drawn in the report Ex.PW3/A and while making some guess work, proximate to the reality, in the fitness of circumstances, the compensation to the extent of Rs.3 lakh, is just and reasonable.

In the light of the aforesaid observations, the appeal, as such, is hereby allowed and the compensation granted by learned Tribunal stands enhanced to Rs.3 lakh. On the enhanced amount of the compensation i.e. **Rs.2,94,000/-**, the appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

January 16, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No