

IN THE HIGH COURT OF HIMACHAL PRADESH

SHIMLA:

FAO.No.88/2004.

Date of Decision:30th September,2008

Jyoti Parkash.

...Appellant.

Versus:

Sarwan Kumar and others.

...Respondents

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for Reporting?¹ No.

For the appellant: Mr.Ramakant Sharma, Advocate.

For Respondent-3. Mr.J.R.Thakur,Advocate.

For respondent-4. Mr.G.D.Sharma,Advocate.

Sanjay Karol, J (Oral).

The present appeal arises out of the impugned award dated 12th December, 2003 passed by Motor Accident Claims Tribunal, Hamirpur, H.P. in M.A.C. Petition No. 28 of 2001 titled as Jyoti Parkash Vs. Sarwan Kumar and others awarding a sum of Rs. 61,700/- as compensation along with interest at the rate of 9% per annum.

The claimant has assailed the said award on the limited ground that the compensation award is much on the lower side. Importantly, the impugned award has not been assailed by any of the private respondents i.e. owner, driver and the Insurance Company. No appeal/cross objection has been filed by them. Therefore, the scope of the present appeal is limited.

¹ Whether reporters of Local Papers may be allowed to see the judgment?

The private respondents i.e. owner and the driver were served and have chosen not to cause appearance.

The claimant filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.7,00,000/- on the account of injury which he received in an accident which took place on 5th July, 2000, due to the negligence on the part of the driver Sh. Surinder Kumar, who was driving vehicle No. H.P.-22-8181 owned by Sh. Sarwan Kumar and Sh. Sucha Singh. Based on the pleadings of the parties, the Tribunal framed the following issues:

1. Whether the petitioner received the injuries on his person in the accident of bus No. HP-22-8181 allegedly occurred due to rash and negligent driving on the part of respondent No.3. ?....OPP.
2. If issue No.1 is held in the affirmative, to what amount of compensation the petitioner entitled and from whom?. ...OPP.
3. Whether the respondent No.3 was not having effective and valid driving license and the bus involved in the accident was being plied without fitness certificate and registration certificate as alleged?.OPR-4.

The Tribunal, after giving opportunity to the parties to adduce evidence, appreciated the material (documentary and oral) and held that the accident occurred due to the fault of the driver and the claimant received injuries as a result of the said accident. The vehicle was found

to have been insured and in the absence of any violation of any of the terms of the policy, the liability to pay the compensation was fastened upon the Insurance Company.

On issue No.2, the Tribunal held that the claimant had to undergo medical treatment at various places over a period of time and as per the certificate Ext.PW-1/A, the claimant sustained permanent disability to the extent of 40%.

It is a matter of record that before the Tribunal the claimant had moved an application seeking to place on record the bills towards the expenses incurred by him for the medical treatment. The same, however, was rejected by the Tribunal.

Today, the learned counsel appearing for the parties agree that the claimant be allowed to place the documents on record and lead additional evidence to prove the same and the expenditure incurred by the claimant. Therefore, for this limited purpose, the matter is remanded back to the Tribunal for consideration afresh.

The Tribunal shall issue notice to all the parties and after affording opportunity of adducing evidence, decide the matter as expeditiously as possible and not later than 30th June, 2009. The findings on issue No.1 and 3 are not disturbed and are up-held.

The appearing parties, through their learned counsel, are directed to appear before the Tribunal on 3rd

November, 2008. The record of the Tribunal along with a copy of this order be sent back immediately.

**(Sanjay Karol),
Judge.**

September 30, 2008(R)