

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO (MVA) No. 218 of 2006

Date of decision: 28.02.2014.

Dhani Ram

.....Appellant

Versus

Punjab Roadways through its General Manager and
anr.

...Respondents

Coram:

The Hon'ble Mr. Justice Mansoor Ahmad Mir, ACJ.

Whether approved for reporting ?¹ Yes.

For the appellant:

Mr.Vikas Bhardwaj, Advocate.

For the respondents:

Nemo.

Mansoor Ahmad Mir, ACJ (Oral)

Heard learned counsel for the appellant.

2. Challenge in this appeal is to the judgment and award dated 30th March, 2006, passed by the Motor Accident Claims Tribunal-II Kangra at Dharamshala in Claim petition No. 50 of 2003, titled Dhani Ram versus Punjab Roadways and another, for short 'the impugned award' on the grounds taken in the memo of appeal.

3. Brief facts giving rise to the present appeal are that claimant/appellant boarded the bus bearing registration No.PB-12C-9036 at Zamanabad Road on 20th April, 2003 and while de-boarding from the bus at Zamanabad Road, the driver of the vehicle rashly, negligently and suddenly drove the vehicle without taking precaution and ascertaining whether the

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

claimant had completely de-boarded the bus or otherwise, dragged the claimant, and sustained the multiple injuries. He was taken to R.P.G. M.C. hospital, Tanda and remained there for treatment and was thereafter referred to PGI Chandigarh. It is averred in the petition that the claimant spent money for his treatment and remained bed ridden, was earning ₹10,000/- per month. He filed claim petition seeking compensation to the tune of ₹ 10,00,000/- as per breakup given in the claim petition.

4. Respondents contested and resisted the claim petition and denied the negligence on the part of respondent No. 2. The learned Tribunal after examining the material on record, framed the following issues:

1. *Whether the petitioner sustained injuries in the motor vehicle accident which took place on 20.4.2003, when he was traveling in a bus bearing No. PB-12C-9036 and when the bus reached near Zamanabad road while the petitioner alighting the bus, driver respondent No.2 drove the bus due to which the petitioner sustained injuries by falling on the road? OPP.*
2. *If issue No.1 is proved in affirmative, whether the petitioner is entitled to compensation, if so to what amount and from whom? OPP.*
3. *Whether the petitioner sustained injuries due to his own negligence as alleged? OPR.*
4. *Relief.*

5. The claimant examined witnesses to prove his claim; however, respondents have not led any evidence in rebuttal.

6. Respondents have not questioned the impugned award, thus the findings returned on all issues, except on quantum of compensation, have attained finality.

7. The claimant has questioned the impugned award on adequacy of compensation. Thus, the moot question remains whether the compensation awarded is adequate or otherwise?

8. The doctor G.D. Gupta, (PW6) has deposed that claimant was admitted to hospital. There is medical disability certificate on the file (Ext. PW6/A) which do disclose that claimant has suffered 40% permanent disability and which he would be carrying throughout his life. It is apt to reproduce statement of PW6 herein.

"Stated I am posted as M.O. in C.H. Kangra since 1999. I have brought the disability certificate of Dhani Ram son of Saran Dass aged 65 years r/o village and Post office Kholi Kangra. On 16.10.2004, I along with other members of Board examined Dhani Ram and it is found permanent disable to the tune of 40% on a/o bilateral injury legs with knee contractures. The disability certificate is Ext. PW6/A which is original and bears my signature which is encircled in red. These injures are possible in M.V. accident.

Xxxxxx by the respondent xxxxxxxx

It is incorrect that disability can be cured in future"

9. Respondents have also not questioned the fact of permanent disability. In the given circumstances, the tribunal has fallen in error in not awarding the compensation under the heads "loss of earning capacity", "pain and sufferings", "loss of amenities of life".

10. The claimant was earning ₹2000-3000 per month while doing the **jagran**. However, I take his income as ₹2000/- per month. The disability has effected the source of his income to the tune of 40%.

11. The claimant has given his age in the claim petition as '50' but Ext. PW6/A, which is disability certificate, discloses his age as '65'. Keeping in view the given facts and circumstances read with the judgment of **Smt. Sarla Verma and Ors versus Delhi Transport Corporation and anr. AIR 2009 SC 3104**, multiplier of "5" is applicable in this case.

12. Admittedly, the claimant remained hospitalized for 1 ½ months and was also referred to Chandigarh and has to undergo pain and suffering throughout his life and lost his charm of life forever.

13. Thus, I deem it proper to award ₹20,000/- under the head "pain and sufferings" and ₹ 25,000/-

under the head "loss of amenities". The Tribunal has rightly awarded ₹ 3900/- under the head "transportation" and under the head "medical treatment" ₹17,700/-.

14. In the given circumstance, the claimant is entitled to ₹800x10x5 = 40,000/- plus ₹ 3900/-+ ₹17,700/- Total ₹ 61,600/-. The claimant is also entitled to interest @7.5% on the amount of ₹21,600/- from the date of filing the claim petition till its realization and on the rest of the amount, that is, ₹85,000/- from the date of the impugned award, that is from 30th March, 2006. Respondent No. 1 is directed to deposit the enhanced amount within three months' from today before the Registry of this Court.

15. As a consequence to the aforesaid discussion, the compensation is enhanced and the impugned award is accordingly modified, as indicated above.

16. The appeal stands disposed of accordingly.

February 28, 2014,
(cmt/vt)

(Mansoor Ahmad Mir)
Acting Chief Justice.