

(2010) 12 P&H CK 0316

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No"s. 2356 of 1994 and 181 of 1995

The New India Assurance
Company Limited, Ropar and
Others

APPELLANT

Vs

Hardish Kaur and Others

Hardish Kaur and Others Vs
Jagdish and Others

RESPONDENT

Date of Decision: Dec. 24, 2010

Acts Referred:

- Motor Vehicles Act, 1988 - Section 170

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

K. Kannan, J.

All the claim petitions arise out of the same accident. The appeals are at the instance of the claimants as well as by the insurance company. FAO Nos. 181 to 184 of 1995 are for enhancement of compensation for injuries or death resulting out of the accident. FAO No. 2356 of 1994 is in respect of a claim that awarded a compensation for death to a passenger in the vehicle and which is at the instance of the insurance company. It is contended by the insurance company that the amount of compensation determined by the Tribunal was excessive and it had applied legal parameters which was inappropriate.

2. The fact of the accident, the negligence of the driver of the insured's vehicle namely the truck and the liability of the insurance company are not in dispute. The cases will, therefore, be taken up in the manner they have been filed.

3. FAO No. 181 of 1995 is for enhancement of compensation for the claimant who had suffered injuries in the accident. The Tribunal had determined compensation of

Rs. 11,600/-for the injuries sustained. The Tribunal had an evidence before it to say that the injured was a teacher and she had an income of Rs. 3165/-. She had been hospitalized and taken treatment between the period from 27.04.1992 to 31.5.1992. The claimant was said to have suffered injuries on right fore-arm, right leg and the treatment was said to have lasted for two months. She remained on leave and she was still having pain. The difficulties, which she complained of were that she could not lift the heavy weight with arm and in support of her contention, Dr. Lalit Koshal was examined as PW-4. He had also deposed that she had suffered injuries on her right arm and there was a soft tissue injury. She had been discharged on 15.04.1992.

4. The Tribunal while determining compensation assessed Rs. 5,000/-towards pain and suffering, Rs. 1600/-for loss of salary and Rs. 5,000/-for medicines, treatment at PGI, diet, follow up and in all, awarded a sum of Rs. 11,600/-. I do not find any error in the manner of assessment of compensation. She had been duly provided with for loss of income for her period of treatment and when she had to avail of leave on half pay from 27.4.1992 to 31.5.1992, there was evidence to the effect that she was in hospital and therefore considering the fact that she was earning Rs. 3165/-, the Tribunal had provided for Rs. 1600/-for loss of income. I will retain the same. Towards all the expenses of medicines, hospital charges, attendant charges and special diet, the Tribunal had provided Rs. 5,000/-, which I will retain. She had no injury except some soft tissue injuries and the Tribunal had awarded Rs. 5,000/-towards pain and suffering. I will retain the same. I find no scope for any enhancement for compensation and therefore, I would dismiss the appeal seeking for enhancement.

5. FAO No. 182 of 1995 is for injuries suffered by a minor Rohitdeep Singh, aged 12 years. He had a fracture of the leg and the Tribunal while awarding a compensation took note of the fact that he had been hospitalized on 14.4.1992 to 22.5.1992 and that he had also undergone a surgery. He had also been an outpatient and taking treatment on various dates on 22.1.1994, 25.01.1994 and yet another date. The doctor had issued a certificate assessing his disability at 15%. There was a shortening of limb by half an inch. The doctor had given evidence to the effect that the movements of hip were even normal and bone grafts had also been done.

6. In the matter of assessment of compensation, the Tribunal had provided for Rs. 20,000/-towards medicines, hospital charges, attendant charges and special diet and Rs. 10,000/-towards pain and suffering. Towards 15% disability that was assessed, the Tribunal had provided for Rs. 1,00,000/-and in all, granted a compensation of Rs. 1,30,000/-.

7. If there is any assessment of compensation, perhaps only an area where the Tribunal could have awarded more was towards pain and suffering where the claimant had undergone a surgery and he was hospitalized for about a month. While I would provide for Rs. 7500/- for a fracture and I would also provide for about Rs. 5,000/-for the surgical pain, I still would not find any reason to increase the

overall compensation since the Tribunal had provided for Rs. 1,00,000/-towards 15% disability. The boy had half an inch shortening of the limb but before the Tribunal evidence of the doctor was that there had been no impairment at all of the hip or the knee and the movements are normal. I have no reason to subject the award of any modification and will, therefore, retain it for what was not awarded towards pain and suffering was more than compensated while assessing the compensation for 15% disability when the Tribunal had provided for Rs. 1,00,000/-. I, therefore, do not find any reason to make any increase. FAO No. 182 of 1995 would also stand dismissed.

8. As regards the claim for compensation for the death of the 1st claimant's husband, which is subject matter in FAO No. 183 of 1995, the insurance company has also preferred an appeal in respect of the same award in FAO No. 2356 of 1994. At the time when the insurance company has moved appeal and the contention urged was that the Tribunal had while assessing the income taken note of the gross salary and had not directed the expenses which the deceased was said to be incurring for running his office. In this case, I have noticed that there is no averment anywhere in the grounds of appeal that the insurance company had any benefit of defence u/s 170 of the Motor Vehicles Act and therefore, I will not bpermit the insurance company to assail the award on the question of quantum. The question of quantum, however, is the subject of consideration in FAO No. 183 of 1995 and therefore, what will be decided in FAO No. 183 of 1995 will also address the issue raised by the Appellant-insurance company. I have stated at the outset that the insurance comdpany will not be a person, who would join issue on the question of quantum.

9. The deceased was an advocate by profession and he was aged 40 years. The claimants were widow, two minor children and mother. Before the Tribunal, the evidence that had been let in was that he had a gross salary of Rs. 56,000/-and he was, however, assessed to net income of Rs. 24,000/-. The tax, which he was paying was Rs. 600/-per month. The Tribunal had provided for 1/3rd deductioon on the gross salary of Rs. 56,000/-, adopted a multiplier of 18 and determined the compensation at Rs. 5,94,000/-. In the matter of acceptance of compensation, the uniform formula that has to be adopted is, take gross salary and deduct the income tax. Here is the case where the deceased was an advocate who was aged around 40 years and the Tribunal had not provided for any scope for increase in salary. It is common knowledge that professionals peak during the career between 40 to 50 years or 50 years to 60 years and therefore, in the manner provided by the Hon"ble Supreme Court in [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#), I will provide for a 30% increase. I would also make a deduction for the gross salary towards tax and take the gross salary minus tax to result in Rs. 70,000/-per year. I would make a deduction of 1/4th instead of 1/3rd as taken by the Tribunal and adopt a multiplier of 15 related to the age of 40 years. I would also provide for Rs. 5,000/-towards loss of consortium to the wife and Rs. 2500/-for loss

of love and affection for each of the children. I would make an additional amount of Rs. 5,000/-towards loss to estate and add a further sum of Rs. 2500/-towards funeral expenses. In all, the amount that will become payable would be Rs. 8,05,000/-. The amount in excess over what has been awarded by the Tribunal shall bear interest @6% from the date of petition till the date of payment.

10. The manner of apportionment of compensation shall be in the same proportion as already found by the Tribunal amongst the claimants. The appeal filed by the claimants in FAO No. 183 of 1995 is allowed and the appeal filed by the insurance company in FAO No. 2356 of 1994 is dismissed.

11. FAO No. 184 of 1995 addresses the issue of claim for compensation for injuries suffered by the minor girl, who was aged 6 1/2 years. The evidence before the Tribunal was that she had a fracture on forehead and she was treated at PGI for 10 days. She had also undergone a surgery. There had been a disfigurement of the face and the doctor who was examined as AW-1, Dr. Krishana Rao had stated that he found 6 cms long deep L shaped laceration on the forehead. The injury was grievous in nature. He had also deposed that since the injured was an unmarried girl, the injury had caused disfigurement and there was a likelihood of loss of prospect of marriage.

12. The Tribunal while assessing the compensation assessed Rs. 5,000/-towards pain and suffering, Rs. 5,000/-for medicines, Rs. 5,000/-for service rendered, loss of education and Rs. 50,000/-for disfigurement. In all an amount of Rs. 65,000/-was awarded. I would retain all the provisions of claim made by the Tribunal and the only addition which I would make with reference to the claim for FAO No. 2356 of 1994 -8 compensation would be to provide for an additional amount of Rs. 12,500/-towards pain and suffering, for I would factor Rs. 5,000/-as compensation for surgical intervention and Rs. 7500/-for yet another fracture. The Tribunal had already provided towards disfigurement Rs. 50,000/-and I would add an additional sum of Rs. 25,000/-towards diminution of prospects of marriage. The total amount of compensation will, therefore, mean an additional amount of Rs. 32,500/-and for the additional amount, there shall be also an interest @6% from the date of petition till the date of payment.

13. FAO No.184 of 1995 is allowed to the above extent.