(2006) ACJ 516 : (2005) 2 CivCC 212 : (2005) 139 PLR 826 : (2005) 2 RCR(Civil) 464

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 166 of 1998

Daba Prashad Ghosh	APPELLANT
Vs	
Banwari Lal and Others	RESPONDENT

Date of Decision: Nov. 9, 2004

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110A

Citation: (2006) ACJ 516 : (2005) 2 CivCC 212 : (2005) 139 PLR 826 : (2005) 2 RCR(Civil) 464

Hon'ble Judges: G.S. Singhvi, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Maharaj Baksh Singh, for the Appellant; Jaswant Singh, D.A.G. for Respondent Nos. 2 and 3, for the Respondent

Judgement

Ajay Kumar Mittal, J.
In this appeal, the appellant has prayed for further enhancement of the compensation a warded by the learned S ingle Judge.

2. A perusal of the record shows that while he was working as Assistant Administrative Officer with National Insurance Company Limited in its New Delhi Office, the appellant boarded Haryana Roadways bus bearing registration No. HRC-6121 at I.S.B.T., New Delhi on 4.12.1979 for going to Rohtak. At about 10.00 A.M., the bus fell into a ditch on the road-side in the area of village Jakhoda and struck against a tree. As a result of the accident, the appellant suffered seven injuries which included two" lacerated wound on forehead, one lacerated wound on the tip of the nose and one lacerated wound on the bridge of the nose. In the claim petition filed u/s 110-A of the Motor Vehicles Act, 1939 (in short "the Act") the Motor Accidents Claims Tribunal (in short, "the Tribunal") awarded compensation of Rs. 20,000/- with interest at the rate of 12% per annum from the date of institution of the petition till realisation.

3. On appeal, the learned Single Judge, vide his judgment dated 12.5.1997, enhanced the compensation to Rs. 35,000/- by making the following observations:-

"It could not be disputed during the course of arguments that he had spent Rs. 10,000/- on his treatment. The actual expenditure incurred by the appellant on his treatment cannot be refused to him. I do not agree that he has spent Rs. 15,000/- for his treatment. However, I find that he is to be given Rs. 10,000/- for his treatment and Rs. 25,000/- for the injuries and damages suffered by him towards pain and suffering would be just and fair. In this manner, the appellant is entitled the tune of Rs. 35,000/-as compensation. Thus, the award given by the Motor Accident Claims Tribunal is modified as indicated above and the appellant is held entitled to Rs. 35,000/- as compensation."

4. Shri Maharaj Bakhsh Singh, learned counsel for the appellant, assailed the findings of the learned Single Judge that the appellant had neither suffered any permanent disability nor there was any medical evidence to show that he had suffered any disfigurement. Learned counsel submitted that the evidence of Dr. B.D. Kalra-AW1 and report of Dr. M.M. Mukherjee (Exhibit AW14/D), who had performed plastic surgery on the appellant, clearly show that he had suffered permanent disfigurement of the face, had breathing problem and he was required to undergo treatment for improvement of scars. Shri Singh relied on a judgment of the Apex Court in Nagappa v. Gurudayal Singh and Ors., (2003-1)133 P.L.R. 9 and submitted that the compensation awarded by the learned Single Judge may be further enhanced.

5. Controverting the claim of the appellant, learned State Counsel submitted that there has been no loss of income to the appellant and the injuries which were sustained by him were simple in nature and that the expenses for plastic surgery had already been awarded to the appellant. He further argued that the claim of the appellant cannot exceed Rs. 40,000/- which he had claimed in the claim petition filed u/s 110-A of the Act.

6. We have given serious thought to the arguments of the learned counsel. In his statement, Dr. B.D. Kalra-AW1 had described the nature and extent of all the seven injuries which had been received by the appellant. He found the following injuries on the persons of the appellant:-

1) Lacerated wound on the left side of the fore-head measuring 3-1/2" x 1/4" x bone deep. It was 1" above the left eye-brow. Injury was extending from the mid-line of the fore-head. The wound was bleeding.

2) Lacerated wound 3" x 1/4" x 1/4" on the left side of the fore-head, 1/2" below the first injury. Wound was oblique and fresh blood was coming out of the wound.

3) Lacerated wound 1 -1/4" x 1/2" X 1/4" extending from the tip of the nose, obliquely from the left side to the cheek.

4) Lacerated wound 1/4" x bone deep at the bridge of the nose. The air was coming from the nose, X-ray was advised.

5) Contusion 1/4" x 1/4" on the dorsum of the left hand at the base of the little finger.

6) Contusion 3/4" x 3/4" in the lateral Side of right thigh in the middle.

7) Contusion 1" x 1/2" on the lateral side of right knee."

7. Dr. M.M. Mukherjee, was had performed plastic surgery on the appellant, replied to interrogatories No. 11, 13 and 14 stating as under:-

"Q-11 What was the permanent disability, if any, caused by the injuries to the petitioner?

Ans. He had permanent disfigurement of face.

Q-13 Were the injuries such as to cause a permanent impairment of the petitioner''s ability to carry on his daily and/or professional work?

Ans. Yes, to some extent.

Q-14 Did you prescribe any treatment for the petitioner ? If so, state the nature of and results thereof.

Ans. I did two operations dated 16.4.1980 and 26.4.1980 (relates to Exhibit "6"), I advised a course of treatment for improving these scars and his breathing trouble. The results are fair."

8. From the statements of Dr. B.D. Kalra and Dr. M.M. Mukherjee, it is clearly established that the appellant had suffered permanent disfigurement of the face. This is amply supported by photographs Exhibits AW9/1 to AW9/3.

9. In view of the above, we hold that the appellant had suffered permanent disfigurement of face which shall be a disability throughout his life. Consequently, the finding of the learned Single Judge to the contrary is liable to be set aside.

10. In Nagappa''s case (supra), their Lordships of the Supreme Court interpreted the provisions of the Act and held that there is no bar for the Claim Tribunal to award compensation in excess of what is claimed, particularly, when the evidence which is brought out on the record, is sufficient to pass such award. The function of the Tribunal/Court is award "just" compensation, which is reasonable on the basis of evidence produced on record.

11. In the result, the appeal is partly allowed and compensation awarded to the appellant is further enhanced by a lump sum amount of Rs. 40,000/-. We may have awarded compensation of Rs. 15,000/- with interest at the rate of 9% per annum which would have

come to around Rs. 10,000/- but keeping in view the fact that neither of the parties is to be blamed for delay in the disposal of the appeals by this Court, we feel that ends of justice would be met by directing the respondents to pay additional sum of Rs. 40,000/-, to be paid within two months from the date of submission of certified copy of this judgment.