

(1997) 09 P&H CK 0044

High Court Of Punjab And Haryana At Chandigarh

Case No: Letter Patent Appeal No. 334 of 1989

Jodha Mal

APPELLANT

Vs

State of Himachal

RESPONDENT

Date of Decision: Sept. 10, 1997

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110A

Citation: (1998) 2 ACC 312 : (1998) 118 PLR 65 : (1998) 1 RCR(Civil) 746

Hon'ble Judges: M.L. Singhal, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: Munishwar Puri, for the Appellant; L.M. Suri and Deepak Suri, for the Respondent

Judgement

M.L. Singhal, J.

This is a Letters Patent Appeal directed against the judgment of the learned Single Judge whereby he awarded only Rs. 8,000/- as compensation to the appellant with interest @ 12% per annum from the date of claim application till realisation on reversal of the order of Motor Accidents Claims Tribunal (in short "MACT"), Rup Nagar dismissing his claim application. In this appeal, the prayer is for enhancement of the amount awarded to the amount claimed by him in the claim application.

2. Brief facts may be noticed :-

On 10.5.1982 at about 3.00 A.M. Jodha Mal, who was travelling by bus No. HPG-2237 from Delhi to Una suffered injuries attributable to the utter carelessness and negligence of its driver. Bus was owned by Himachal Pradesh Road Transport Corporation, Shimla. Bus over-turned near village Bharat Garh. Bus was being driven at a very fast speed. Appellant suffered multiple injuries. In a state of unconsciousness, he was taken to PGI, Chandigarh by his wife Smt. Satya Devi who was also travelling with him by the same bus. He was discharged on 26.5.82. He was advised to visit the hospital after every 15 days for check-up. On these allegations,

he instituted claim application u/s 110-A of the Motor Vehicles Act claiming compensation to the tune of Rs. 50,000/-.

3. Claim was resisted by respondents. It was denied that the accident took place because of the rash and negligent driving of the bus by its driver. In fact, bus was being driven at a normal speed. All of a sudden, the main spring leaf of the driver side broke down and pushed the bus on the right side. Accident is attributable to the will of Almighty.

4. On the pleadings of the parties, the following issues were framed: -

"1. Whether the accident in question in which claimant sustained injuries was caused by the rash and negligent driving of bus No. HPG-2237 by its driver respondent No. 4 as alleged in the claim petition? OPA.

2. Whether the claimant is entitled to compensation, if so, to what amount? OPA

3. Whether there is sufficient cause for condoning the delay in filing the application?"

5. MACT, Rup Nagar dismissed the claim application vide order dated 24.1.1984. In FAO No. 418 of 1984 directed against this order, learned Single Judge awarded Rs. 8,000/- as compensation with interest @ 12% per annum from the date of claim application till realisation. Not satisfied with the amount awarded to him as compensation, Jodha Mal-appellant has knocked the door of this court through this Letters Patent Appeal.

6. We have heard the learned counsel for the parties and have gone through the record.

7. Jodha Mal-appellant PW 2 stated that the bus had over-turned near Bharat Garh on the road on account of its being driven at fast speed by the driver. He was sitting on the back seat of the bus. When it over-turned as a result of the accident, he suffered injuries on his face including the nose. He lost six teeth. He was first taken to the Civil Hospital, Rup Nagar for treatment the same day. On being referred to PGI, he was taken to PGI where he remained admitted till 26.5.1982. He was operated upon twice for injuries on nose and teeth. After discharge, he visited PGI on 23.6.1982 for check up as Outdoor Patient. For this purpose, he came at his own expense from Delhi to Chandigarh. He had to incur expenditure to the tune of Rs. 5-6 thousand in connection with treatment of injuries. He had to have denture because of the loss of six teeth in the Lower Jaw. In August-September 1982 till he got denture, he experienced difficulty in taking food. His speech was also effected because of the loss of teeth. After getting denture, he is not normal in speech.

8. Dr. C.P. Sawhney, Professor and Head, Department of Plastic Surgery, PGI, Chandigarh found the following injuries on the person of Jodha Mal on 10.5.1982 when he was admitted :-

1. Lacerated wound on the left side of forehead above the eye brow size 1 cm x 0.5 cm.
2. A transverse full thickness lacerated wound over the nose at the junction of alar cartilage with nasal bone. Lower part of nose was hanging down exposing the nasal cavity.
3. Full thickness lacerated wound right side of upper lip 3 cm long.
4. Lacerated wound left side of lower lip 3 cm long.
5. Compound fracture nasal bones.
6. Fracture maxilla below II.
7. Palate split in the middle.
8. Lacerated wound soft palate 4 cm long.
9. An irregular lacerated wound buccal mucosa.
10. Lacerated wound inner aspect of lower lip.
11. There was loss of five teeth in the mandible."

9. Dr. C.P. Sawhney stated that the patient was discharged on 26.5.1982. At the time of discharge he was advised to come to the hospital for check up. He visited the hospital for check up on 23.6.1982. He was operated for these injuries.

10. Learned Single Judge awarded Rs. 5000/- to the appellants on account of expenses incurred in treatment etc. In addition he awarded him Rs. 3000/- on account of pain and suffering. In our opinion, the compensation awarded by the learned Single Judge to the appellant is on the lower side. Learned Single Judge does not seem to have taken into account the loss of 5 teeth. Loss of five teeth in the lower jaw effected his speech. Denture is no substitute for natural teeth. Learned Single Judge does not seem to have taken into account that he suffered loss of salary or loss of leave on account of hospitalisation for 17 days. He was in the pay scale of 710-1200 and was getting Rs. 1986/-. He thus lost Rs. 1000/- on account of loss of Earned Leave due to hospitalisation. On both these scores, we feel that Rs. 2000/- should be awarded to him over and above what has been awarded to him by the learned Single Judge.

11. Shri Munishwar Puri, learned counsel for the appellant submitted that loss of "teeth is a serious loss. After compound fracture of nasal bones, lacerated wound of lower limb 3 cm long and lacerated wound of upper limb must have left him with disfigurement of the face. Suffice it to say, doctor has nowhere stated to this effect. Appellant himself has nowhere stated that because of these injuries he has suffered disfigurement of the face. We are, therefore, unable to consider this submission made by the learned counsel for the appellant. Even otherwise in the notice

Annexure P.1 served upon the respondents by the appellant, he had asked for only Rs. 10,000/- as compensation on all the counts conceivable. In the result, we partly allow this appeal and enhance the amount of compensation to Rs. 10,000/- from Rs. 8000/-. Interest will be payable @ 12% per annum from the date of application till realisation on the enhanced amount of Rs. 2,000/-. We award Rs 1,000/- as costs to the appellant.