(1974) 07 P&H CK 0002

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.F.O. No. 253 of 1971

Jai Bhagwan Bhardwaj		APPELLANT
	Vs	
The Pepsu Road Transport Corporation and Another		RESPONDENT

Date of Decision: July 25, 1974

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110B

Citation: (1975) ACJ 128 : AIR 1975 P&H 254

Hon'ble Judges: M.L. Verma, J

Bench: Single Bench

Advocate: H.S. Sawhney and Priya Mal, for the Appellant; J.V. Gupta, for the Respondent

Final Decision: Partly Allowed

Judgement

M.L. Verma, J.
The circumstances, giving rise to this appeal, may be briefly stated as under:

2. On July 15, 1968, at about 7.30 A. M., the appellant boarded bus No. PNT-5969 from Chandigarh for Patiala. The said bus belonged to the Pepsu Roadways Transport Corporation (Respondent 1). Dharam Singh (Respondent 2) had driven the said bus. He drove it at a high speed and negligently. When the said bus reached opposite Police Station Sadar Patiala, it went on the right hand kutcha portion of the road, struck against a cyclist and a neem tree and then turned turtle. In the said accident, the appellant sustained a big wound on his right hand (hereinafter referred to as the injury) from a broken piece of glass of a window of the bus. He suffered profuse bleeding from the injury. He was removed to Rajindra Hospital where he remained as indoor patient for two days. Hence, he claimed Rs. 20,000/-as compensation for the injury, with the allegations that the aforesaid accident had taken place due to negligent driving of the bus by Dharam Singh and that his monthly income was Rs. 400/-. Dharam Singh did not enter appearance despite his

service. So, he was proceeded ex parte. The claim was contested by the Pepsu Road Transport Corporation. It pleaded, inter alia, that the accident had not taken place due to negligence or carelessness of Dharam Singh driver and that the appellant was not entitled to claim any compensation. Hence the Motor Accident Claims Tribunal Patiala (hereinafter referred to as the Tribunal) struck the following issues :--

1. Whether the vehicular accident in this case took place due to the negligence of Dharam Singh respondent No. 2? If so, with what effect?

2. Whether the claimant is entitled to get compensation? If so, up to what extent and from whom?

3. Relief.

The Tribunal decided issue No. 1 in the affirmative and held under issue No. 2 that the appellant was entitled to Rs. 2,000/- as compensation for the injury and awarded the same to him against the respondents. Dissatisfied with the quantum of compensation, the appellant has come to this Court in appeal for enhancement of the same.

3. The evidence present on the record proves beyond any manner of doubt that the bus had gone on the right hand side on the kutcha portion of the road and it turned turtle. Having regard to the maxim of res ipsa loquitur, the said circumstances were sufficient to show that the accident, wherein the appellant had sustained the injury, was due to negligent driving of the bus by Dharam Singh. Having considered the evidence present on record, the Tribunal has concluded so, and in my opinion rightly. So, the finding on issue No. 1, despite the argument of the learned counsel appearing for Respondent 1 that Dharam Singh was not negligent in driving the bus, is correct and the same is affirmed.

4. Mr. H. S. Sawhney, learned counsel for the appellant, has urged that compensation assessed by the Tribunal for the injury s too low and the same should be increased to Rs. 20,000/-. Compensation for an injury sustained in an accident resulting from negligence of another can be claimed under the following 3 heads:--

(a) Pecuniary compensation, i. e., the amount which has been spent by the injured on the medical aid for the injury.

(b) Compensation for the pain and agony which had been caused by the injury to the injured.

(c) Ordinary compensation, i. e., the damage to be suffered by the injured due to the effects, including the deformity, caused by the injury.

5. Compensation under (a) above can be determined by the proof of actual expenses incurred by the injured in obtaining medical aid for the injury. When definite evidence is led in proof of the said damages, the said amount should be allowed. If,

however, the evidence led by the injured in proof of such damages is not such which can be readily accepted, at least some amount, which of course should be reasonable, has to be allowed as compensation for the amount spent by the injured in obtaining medical aid for the injury on his proving that he did obtain such medical aid and he had suffered expenses for the same. In the case in hand, there can be no doubt that the appellant had obtained medical treatment for the injury from at least two doctors. Dr. Inderpal Singh Basur (A. W. 5) maintained that the appellant was admitted with an injury on his right hand in Rajindra Hospital, Patiala at 10.10 a. m. on July 15, 1968, and he was discharged from there at 12.45 p. m. on July 17, 1968. Dr. Hardas Singh (A. W. 1) testified that the appellant had obtained treatment from him as an outdoor patient from August 21, 1968 to February 18, 1970. He added that even after treatment, the appellant was not in a position to function his right hand in a normal manner and that it (the right hand) had been impaired on a permanent basis. The appellant could not close his fist properly. Dr. Pritampal Singh (A. W. 4) stated that the appellant had been getting treatment for the injury from him and had been paying Rs. 15/- or Rs. 20/- per month. No doubt, the evidence led by the appellant in proof of the amount spent by him on the medical treatment of the injury is not very much convincing, but it does point out that he did obtain medical aid for the injury and had also spent on it. I think that the amount spent by the appellant for medical aid for the injury during the period which extends to more than H years, could not be less than Rs. 300/-. The Tribunal did not allow any amount as compensation under head (a) and there is no reason to disallow the same. So, it was an error on the part of the Tribunal in not allowing any amount as pecuniary compensation to the appellant. It is important to note that grant of Rs. 300/- as compensation for obtaining medical aid for the injury is not changing the amount of compensation allowed for the purpose by the Tribunal. Had the Tribunal allowed any amount as pecuniary compensation under the head (a) above, I would have been slow to interfere with the said assessment of the compensation if the same could not be shown to be unreasonably low. I, therefore, feel constrained to allow Rs. 300/- as pecuniary compensation under head (a) above.

6. Since the pain and agony which I an injured suffers for an injury, and also the effect or loss to be sustained by him in future life due to the injury, cannot be determined accurately, the element of speculation in the matter of assessment of compensation payable under heads (b) and (c) cannot be excluded. u/s 110-B of the Motor Vehicles Act, the Tribunal is expected to fix, such compensation which may appear to it to be just. ''Just'' would mean reasonable compensation for the injury caused in an accident, resulting due to the negligence of a motorist, including the driver of the bus. The determination of compensation depends on several imponderables. Therefore, in the assessment of compensation there is likely to be some margin of error. The Tribunal allowed Rs. 2,000/- as compensation collectively under heads (b) and (c). The appellant had suffered a wound, may be big, on the palm of his right hand and it had bled profusely. There was no fracture of bone of

his right hand and he did not suffer any grievous injury. Therefore, the amount of Rs. 800/- or so as compensation for the pain and agony could have been awarded under head (b) above. Though the normal functioning of the right hand of the appellant had been impaired on permanent basis and he could not close his fist properly, yet in view of the facts that he was aged 60 years or so at the time of accident, that he had declared his monthly income as Rs. 150/- at the time of his admission in Rajindra Hospital, Patiala, and did not sustain any grievous injury which had caused deformity of serious nature, I think that the amount of Rs. 1,200/- as compensation under head (c) would have been allowed to him. Therefore, the amount of compensation assessed under heads (b) and (c) above cannot be said to be low, and, as such, there is no scope for enhancement of the same.

7. It, thus, follows from the discussion above that there is no force in the contention of the learned counsel for the appellant for enhancement of the amount of compensation, except that Rs. 300/- may be allowed to him as compensation under head (a) above.

Consequently, I partly allow this appeal and enhance the amount of compensation from Rs. 2,000/-, awarded by the Tribunal, to Rs. 2,300/-, and direct the respondents to pay the same less the amount, if any, already paid, to the appellant within two months from today. Since success of the appellant is very slight, I leave the parties to bear their own costs.