Balwinder Singh Vs Jaswinder Singh and others

FAO No. 4018 of 2011 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 8, 2012

Citation: (2012) 168 PLR 404

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Sham Lal Bhalla, for the Appellant; Gourav Goel for Respondents 1 and 2 and Ms. Vandana Malhotra, for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

The appeal is at the instance of the claimant seeking for enhancement of compensation for injuries suffered in a motor

accident on 22.06.2007. He had been admitted in the Civil Hospital, Samrala from where he was referred to DMC and Hospital, Ludhiana. He

remained admitted as an indoor patient from 22.06.2007 to 07.07.2007 and readmitted on 26.09.2001 for one day to be discharged and again

admitted on 06.11.2007 to 17.11.2007. The petitioner claimed that he had incurred medical expenses to the tune of Rs. 3 lakhs and produced

Ex.P1 to P47, all of which were photocopies of originals. It had been admitted during the time of trial that he had applied against mediclaim policy

as well as for reimbursement of medical expenses from the department and that he received Rs. 1,03,712/- from his employer. While addressing

the claim to medical expenses, the Tribunal reasoned that when medical expenses had been paid to the claimant by the employer, he could not be

allowed the benefit again before the Tribunal by applying the judgment in Bhakhra Beas Management Board v. Mahender Pal, 2001(2) RCR

(Civil) 486. The learned counsel contends in appeal that the employer had not reimbursed entire amount of what he had claimed and against the

total expenses incurred for Rs. 1,61,102/-, he had been reimbursed only an amount of Rs. 1,00,447/- and consequently, an amount of Rs.

60,655/-, which was not reimbursed, must have been awarded by the Tribunal. The learned counsel for the Insurance Company contests the

petitioner''s claim to say that the claimant had not produced before the Tribunal the proceedings of the employer for reimbursement of the amount.

The claimant''s own assertion that he received less than what he had claimed could not be a basis for awarding an excess amount. I would accede

to the contentions in defence by the insurer that without any proof of the fact that the appellant had been reimbursed only a portion and that he was

not fully reimbursed for the entire amount, I cannot accept the statement that he had received only Rs. 1,03,712/-. The rejection of the entire

amount as covered through the copies of the bills was, therefore, justified. If there was any portion of the amount which was not reimbursed by the

employer, it was only essential that the claimant had obtained the return of the originals to make a claim before the Tribunal. All the documents filed

before the Tribunal were only photocopies and it cannot be vouchsafed that the entire amount was not reimbursed to the claimant. The best of

evidence of what was possible had not been tendered before the Tribunal and this could have been filed at least at the time when the appeal was

filed. I will not find any error in the assessment of medical expenses.

2. For three episodes of treatment as indoor patient, the Tribunal had awarded Rs. 10,000/- towards special diet, which I will retain. The Tribunal

had also provided for Rs. 5,000/- towards attendant charges which is also appropriate and I would retain the same. Towards transportation from

the place of accident to the Civil Hospital at Samrala and later to the hospital, at Ludhiana, the Tribunal had awarded Rs. 5,000. Since the

petitioner had been admitted on three occasions and treated as indoor patient, I will make a modest increase from Rs. 5,000/- to Rs. 10,000/-

towards transportation. Discharge summary revealed that the claimant had suffered injury to his right arm and right leg. He was unable to bear

weight of his right lower limb. He had been operated upon for fracture of right arm bone and fracture right leg bone by open reduction and internal

fixation of fracture. The patient had pain at the right hip which was managed conservatively. The Tribunal had provided for Rs. 20,000/- towards

pain and suffering, which I believe would be appropriate and just and would make no modification.

3. The doctor, who had treated him, had certified the injuries to have resulted in 40% disability. The certificate reveals that he had restricted

movement of the hip and right shoulder and the doctor had certified it to be permanent. The claimant gave evidence to the effect that he was unable

to walk properly and he could not sit on the ground easily. Ideally, there must have been evidence through the doctor to indicate as to how it can

impact his normal day-to-day work and how it could reduce his earning skills. He is a government employee and it is in evidence that he continues

in employment. I cannot, therefore, make any provision for loss of earning capacity. Against the assessment of compensation made at Rs. 40,000/-

for disability, I will increase it to Rs. 75,000/-. The Tribunal had granted Rs. 10,000/- towards loss to income. The petitioner has stated in the

grounds of appeal that although he was employed as Assistant Engineer in the office of Canal Division, Sidwa, Ludhiana and due to the accident,

he had become incapable and unfit for discharging his duties and, therefore, he had opted for premature retirement w.e.f. 31.05.2011. I cannot

accept this because the appeal itself was filed on 28.03.2011 and the evidence had been tendered through the affidavit on 27.01.2011 that he

would apply for premature retirement. With no sure evidence of the fact that he had been forced to secure compulsorily retirement, it was not also

possible to make any provision for loss of income more than what has been awarded by the Tribunal.

4. Consequently, the claimant shall have an additional amount of Rs. 40,000/- towards the additional provisions made for the permanent disability

and attendant charges. This additional amount shall bear interest at 6% from the date of petition till date of payment. The appeal is allowed to the

above extent. The liability shall be in the same manner as determined by the Tribunal.