

(2011) 02 P&H CK 0470

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 187 and 221 of 1989

Gunner Driver M. Venkatappa
Reddy

APPELLANT

Vs

Sohan Singh and others

State of Haryana Vs Gunner
Driver M. Venkatappa Reddy

RESPONDENT

Date of Decision: Feb. 16, 2011

Citation: (2011) 3 RCR(Civil) 186

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

K. Kannan, J.

The appeal is for enhancement of claim of compensation for the amputation of a leg suffered by the driver in the Army. He was 21 years of age at the time of the accident and said to be earning Rs. 900/-. The accident had taken place on 30.1.1987 and he had fairly long spell of hospitalization. Since he was in the Army, his medical expenses were taken care of and the Tribunal while assessing the compensation provided for Rs. 1,10,000/- that included Rs. 20,000/- as loss of earning capacity.

2. The issue of negligence was held in favour of the claimant and found against the driver of the State Police on the basis of evidence adduced by the claimant himself and a person who was a pillion rider. According to them, the accident took place when the claimant was proceeding on the left side of the road and the Police jeep coming from the opposite direction was attempting to overtake a cycle and dashed against the motorcycle on the left side of the road and the right leg of the appellant was crushed and later amputated. The driver denied the accident itself in his written statement, but the State did not come as far as that in its reply and admitted that there was an accident but would state that both of them were responsible for the accident.

3. The appeal by the State is in FAO No. 187 of 1989 and the appeal by the claimant for enhancement is FAO No. 221 of 1989. Learned counsel appearing for the State would point out to the fact that the claimant had admitted before the Police subsequent to the accident that no fault could be attributed to the driver of the jeep and that there was no need to prosecute the criminal case. Accordingly, it appears that FIR had been cancelled. The claimant, however, resiled from his concession and had given evidence at the trial against the driver of the State Police vehicle. I will not find this alleged statement of the claimant before the Police that no one was responsible for the accident as impeding the Tribunal from making an assessment that it was only the Police vehicle that was responsible for the accident. The cancellation of FIR itself could be easily visualized as one that was secured by the Police by the fact that the accused was a member of the Police force and a cancellation to their own benefit ought not to be taken very serious note of, to the detriment of the claim. I will uphold the finding of the Tribunal that there was a negligence on part of the State. Indeed, the denial of accident by the driver was deplorable and the admission which the State was relying on for cancellation of the FIR itself proves that the driver's evidence and statement were false to his knowledge. I will not, therefore, accord to the State any width to hold that the driver was not responsible for the accident.

4. As regards the quantum, an assessment was made at Rs. 1,10,000/- which has provided for loss of amenities at Rs. 30,000/- and has also provided for Rs. 30,000/- towards disability. It cannot be duplicated in that manner. I will not make any separate provision for disability, but I will reassess the compensation for loss of earning capacity by taking his amputation above knee as having resulted in complete loss of earning capacity as a driver. He was said to be earning Rs. 900/- and since he was in Army service, I would also provide for prospect of future increase at 50% and take the average income at Rs. 1350/-. I will adopt a multiplier of 18 and hold the loss of earning capacity at Rs. 2,91,600/-. The various heads of compensation which would merit acceptance are tabulated below :-

Injury Cases

Age:	21		
Period of Hospitalization			
25.9.87			
Occupation &	900		
Income - Driver			
Heads of Claim	Tribunal	High Court	
Sr. No	Amount	Amount	
	Rs.	Rs.	

1.	Loss of income from to		
2.	Medical Expenses:		
(i)	Medicines		
(ii)	Hospital Charges		
(iii)	Attendant Charges		
(iv)	Special Diet		
3.	Transport		
4.	Pain & Suffering - per fracture/per surgery	30,000	30,000
5.	Disability 60%	30,000	60%
6.	Loss of earning capacity Income x % of loss of earning power x multiplier	20,000	2,91,600
7.	Reduction in life expectancy/Loss of amenities	30,000	50,000
8.	Loss of prospect of marriage		25,000
	Total	1,10,000/-	3,96,600/-

5. There shall be an enhancement of compensation in the manner referred to above and the additional amount of compensation will attract interest @ 6% from the date of petition till the date of payment.

6. The State appeal in FAO No. 187 of 1989 is dismissed and the appeal filed by the claimant in FAO No. 221 of 1989 is allowed to the above extent.