

FAO- 3407-2012 (O&M)

655-2

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-3407-2012 (O&M)
Reserved on : 01.02.2024
Date of decision : 26.02.2024

Prince Khurana ... Appellant(s)

Versus

Anil Kumar and Others ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Talwar, Advocate for the appellant.

Mr. R.C. Gupta, Advocate for respondent No.3.

ALKA SARIN, J.

1. The present appeal has been preferred by the claimant-appellant challenging the award dated 24.02.2012 passed by the Motor Accident Claims Tribunal, Ambala (hereinafter referred to as ‘the Tribunal’) on two accounts - firstly on the count of holding it to be a case of composite negligence and awarding only 50% of the compensation as the driver, owner and the insurer of the Maruti car were not impleaded and hence only 50% of the amount awarded was directed to be paid to the claimant-appellant; and secondly on the ground of quantum of compensation.
2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for

the sake of brevity.

3. Learned counsel for the claimant-appellant has contended that the claimant-appellant in the present case was admittedly a passenger in the Maruti car and was in no manner responsible for the accident. The learned counsel has further contended that in case of composite negligence a person who has suffered and has not contributed to the accident is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of the joint tortfeasors is joint and several. It is further the contention of the learned counsel that the owner, driver and insurer of one of the vehicle can be sued and it was not necessary to sue the owner, driver and insurer of both the vehicles. In support of his contentions the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Khenyei Vs. New India Assurance Company Limited & Ors. [(2015) 9 SCC 273]**. Qua the quantum of compensation the learned counsel for the claimant-appellant has contended that the claimant-appellant in the present case has suffered bilateral mandibular body fracture and he was admitted in the emergency in the M.M. College and Hospital, Mullana on 02.02.2011 and the operation was conducted on 07.02.2011. The fractures were reduced and fixed with 2.5 MM four hole with gap mini plate using 25 to 28 MM screws on both sides. The claimant-appellant was kept on inter maxillary fixation for one month. This all finds support from the deposition of Dr. Aayush, MDS who stepped into the witness box as PW4. The claimant-appellant remained under regular follow ups for a period of three months. It is further the contention of the learned counsel that PW5 Dr. Manu Gupta deposed that the claimant-appellant again reported in the

department of oral and maxillofacio surgery on 26.05.2011 and he was admitted on 30.05.2011 and was discharged on 02.06.2011. The learned counsel has further contended that the amount of compensation awarded by the Tribunal is on the lower side.

4. *Per contra*, the learned counsel for respondent No.3-Insurance Company has vehemently argued that the amount of compensation has rightly been reduced to 50% as the driver, owner and the insurer of the Maruti car were not impleaded as party. It is further the contention of the learned counsel that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

5. I have heard the learned counsel for the parties.

6. The Tribunal in the present case has awarded 50% of the compensation determined on account of the fact that the driver, owner and the insurer of the Maruti car involved in the accident were not impleaded as a party. Hon'ble Supreme Court in the case **Khenyei** (supra) has held as under :

“22. What emerges from the aforesaid discussion is as follows :

22.1. In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasons and to recover the entire compensation as liability of joint tort feasons is joint and several.

22.2. In the case of composite negligence, apportionment of compensation between two tort feasons vis a vis the

plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

22.3. In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

22.4. It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.”

7. It has clearly been held by the Hon’ble Supreme Court that the claimant is entitled to sue both or any one of the joint tortfeasors and to

recover the entire compensation as liability of the joint tortfeasors is joint and several. In the present case the Tribunal has held that it was a case of composite negligence and since one of the tortfeasors was impleaded as a party alongwith the insurer, that the claimant-appellant would be entitled to claim only 50% of the compensation awarded. The said finding cannot be sustained in view of the law laid down by the Hon’ble Supreme Court. The same is accordingly set aside, the claimants would be entitled to the entire compensation as assessed.

8. Qua the quantum of compensation, in the present case the Tribunal has awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
	Pecuniary damages (special damages)	
1	Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure	Rs.22,197/-
2	Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising: (a) Loss of earning during the period of treatment	Rs.17,379/-
	Non-Pecuniary damages (general damages)	
4	Damages for pain, suffering and trauma as a consequences of the injuries	Rs.15,000/-
5	Total compensation	Rs.54,576/- (rounded off to Rs.55,000/-

9. The claimant-appellant in the present case has suffered a bilateral mandibular body fracture and remained under treatment for a period of three months and was operated upon twice. The said fact is supported by the statements of Dr. Aayush, MDS who stepped into the witness box as

PW4 and Dr. Manu Gupta who stepped into the witness box as PW-5. In the present case the monthly salary of the claimant-appellant was assessed as Rs.17,379/- per month and hence keeping in view the fact that the claimant-appellant remained under treatment for a period of three months, this Court deems it appropriate to award an amount of Rs.52,137/- (Rs.17,379 x 3) to the claimant-appellant towards loss of income for a period of three months. The amount of Rs.22,197/- already awarded by the Tribunal towards expenses relating to treatment, hospitalization, medicines etc. needs no interference and the same is maintained. Further, since the claimant-appellant had suffered a bilateral mandibular body fracture, he would have definitely required a special diet and hence this Court deems it appropriate to award Rs.50,000/- towards special diet. The amount awarded towards pain and suffering also appears to be on the lower side and hence keeping in view the fact that the claimant-appellant remained under treatment for a period of three months and was operated upon twice, this Court deems it appropriate to enhance the amount from Rs.15,000/- to Rs.1,00,000/- under the head ‘pain and suffering’. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Loss of income (3 months)	Rs.52,137/-
2	Expenses relating to treatment, hospitalization, medicines etc.	Rs.22,197/-
3	Transportation and special diet	Rs.50,000/-
4	Pain and suffering	Rs.1,00,000/-
5	Total Compensation	Rs.2,24,334/-

10. The amount in excess of and over and above the amount

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awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount.

11. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

26.02.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO