

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.1105 of 1997 (O&M)

Date of Decision: 26.08.2015

Rakesh Kumar Walia

....Appellant

Versus

Kuldeep and others

....Respondents

CORAM: HON'BLE MR. JUSTICE K.C. PURI

Present: Mr. B.S. Walia, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate
for respondent No.3.

K.C. PURI J. (Oral)

This appeal has been directed by the injured-claimant against the award dated 05.03.1997, passed by Sh. B.L. Singla, Motor Accident Claims Tribunal, Hisar, vide which the claim petition was partly accepted and a sum of Rs.1,25,000/- was allowed along with interest @ 12% per annum.

Briefly stated, Raj Kumar Walia filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.15,00,000/- on account of the injuries sustained by him in a motor vehicular accident on 15.05.1995.

The learned Tribunal after adjudication partly accepted the claim petition and allowed a sum of Rs.1,25,000/-, the details of which is given as under:-

<i>1. Compensation on account of mental shock pain and suffering</i>	<i>Rs.10,000/-</i>
<i>2. Compensation on account of medical expenses</i>	<i>Rs.65,000/-</i>
<i>3. Compensation on account of special diets</i>	<i>Rs.2,000/-</i>
<i>4. Compensation on account of permanent disability, loss of future enjoyment and impairment of future comforts</i>	<i>Rs.48,000/-</i>
<i>TOTAL</i>	<i>Rs.1,25,000/-</i>

Learned counsel for the appellant has submitted that the appellant remained admitted in hospital from 10.05.1995 to 31.05.1995 and from 06.10.1995 to 11.10.1995 and his permanent disability was to the extent of 70%. Out of Rs.1,25,000/-, Rs.65,000/- was the amount actually spent on the medicines. So, the amount of compensation awarded by the Tribunal is on lower side. The amount granted in respect of special diet, future earnings are also on lower side.

On the other hand, learned counsel for the insurance company has supported the award and has submitted that insurance company has filed an appeal against the driver and owner of the offending vehicle challenging the validity of driving licence and the matter has been remanded back to the Tribunal and in case any enhancement is made then the same shall be subject to the outcome of appeal preferred by the insurance company.

I have considered the submissions made by learned counsel for both the parties and have gone through the record of the case.

In order to decide the real controversy, the evidence

produced by the claimant required re-appraisal. The claimant has examined PW-1 Dr. H.C. Popli, CMC Hospital, Hisar, who has stated that the claimant was admitted in the hospital from 06.10.1995 to 21.10.1995. The claimant was admitted for treatment of bone infection and he was given anti-biotics, dressing and anti-inflammatory drugs. The other evidence produced by the claimant was PW-4, Dr. B.B. Banga, Surgeon, CMC Hospital, Hisar, who has stated that he has treated the claimant with multiple injuries along with Orthopedic Surgeon-Dr. Rajeev Aggarwal and Dental Surgeon-Dr. S.K. Aggarwal. The claimant was operated upon multiple injuries on 10.05.1995 and has incurred expenses of Rs.25,765/-. PW-5-Dr. S.K. Aggarwal, Dental Clinic, Hisar, has stated that on 17.07.1995, he was called by CMC Hospital to operate upon fractured jaw and charged Rs.3,000/- from the patient-claimant. The claimant has also examined PW-6-Dr. J.S. Bhatia, Orthopedic Surgeon, General Hospital, Hisar, who has stated that on 02.02.1996, he was a member of the Board along with other doctors and he gave the Medical Certificate Ex.P-14 and according to that Certificate, the claimant suffered 30% disability because of the orthopedic cause due to mal united fracture of the right leg bones with stiff knee and ankle along with shaft issue loss and 40% disability was assessed because of fractured mandible and the auditory loss. However, in cross-examination he has stated that the percentage is of a particular part and not of whole body. The

other witness examined by the claimant was PW-7-Dr. Daya Nand, M.O., G.H., Hisar, who has found as many as nine injuries on the person of the claimant. The details of the same reads as under:-

- 1. Lacerated wound right side of frontal region of scalp 2 cm x 0.5 cm x 0.3 cm.***
- 2. Reddish contusion over left temporal region 6 cm x 4 cm incised. Bleeding from left ear present.***
- 3. Lacerated wound over lower lip 2.5 cm x 0.5 cm x 1 cm in size.***
- 4. Diffused swelling over left mendibular region of face.***
- 5. Diffused swelling over right hip joint. Movement are joint painful and restricted.***
- 6. Lacerated wound over right knee joint 1½ cm x 4 cm x bone deep.***
- 7. Lacerated wound over antero-lateral aspect of right leg lying 15 cm above ankle joint. The underline fractured and bone coming out of the wound.***
- 8. Multiple abrasions over left lower lip.***
- 9. Lacerated wound over middle of neck. Size 2 cm x 1 cm. Depth not measured.***

He has further stated that he advised X-ray of skull, left ratial bone, right knee joint and right leg and has also sought ortho-surgeon opinion, general surgeon opinion and ENT opinion. As per X-ray report placed on the file, X ray of right leg shows that there was a fracture of tibia and fibula, X-ray of knee joint shows the fracture of patella, and X-ray of skull and mandible shows the fracture of mandible.

The claimant has been allowed a sum of Rs.1,25,000/-, but according to the injuries sustained by the claimant that amount is on lower side. The amount granted in respect of special diet, disability, loss of future enjoyment, etc. are also on lower side. The ends of justice would be met in case another sum of Rs.1,50,000/-

be allowed in addition to the amount already awarded by the Tribunal in respect of the heads discussed above.

The appeal stands partly accepted and the claimant is held entitled to claim Rs.1,50,000/- more in addition to the amount already awarded by the Tribunal along with interest @ 7.5% per annum from the date of application till payment. The liability to pay the enhanced amount shall be same as ordered by the Tribunal. The payment shall be made by the insurance company at the initial stage, however in case, the insurance company is able to prove that driver was not holding a valid driving licence at the time of accident in that case, the insurance company shall have the right to recover the amount from owner and driver.

Appeal stands disposed of, accordingly.

26.08.2015

yakub

(K.C. PURI)
JUDGE