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

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**FAO No. 2448 of 1996
Date of decision : 7.10.2015**

Sukhwant Singh ....**Appellant**

v.

Maha Singh Punjab Wala and others ......**Respondents**

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

Present : Mr. J.S. Virk, Advocate, for the appellant

Mr. Abhinav Sood, Advocate, for the private respondents

Mr. Neeraj Khanna, Advocate, for respondent No.3-Insurance Co.

<u>Ramendra Jain, J.</u>

Being dissatisfied, claimant Sukhwant Singh has preferred the present appeal to enahcnace the compensation granted to him by the learned Motor Accidents Claims Tribunal, Karnal (in short 'the learned Tribunal') by modifying the impugned award dated 11.3.1996.

Brief facts, relevant for decision of this appeal are that around 6.00 P.M. on 28.6.1993, the claimant along with others was travelling in a bullock cart and when reached near Village Danoli within the jurisdiction of Police Station Asandh, a Tata four wheeler bearing Registration No. HR 33 1767 while coming from the opposite side in a rash and negligent manner, struck against their bullock cart. As a result thereof, the claimant along with its other occupants received multiple grievous injuries. One of the occupants of bullock cart namely Mukhtiar Singh even died at the spot. His father Tirlok Singh and one Lakhmi Chand had also died later on. The appellant-claimant had suffered fracture in his left leg and left arm, besides various other grievous injuries. Seven claim petitions were filed under Section 166 of the Motor Vehicles Act (in short "the Act") by the injured and respective legal heirs of three deceased persons. The appellant-claimant claimed compensation of ₹ 2 lakhs against his permanent disablement and receipt of multiple grievous injuries in the impugned accident.

Upon notice, respondent No.1 while denying all the allegations against him, pleaded that the story put forth by the claimant was false and concocted. Respondent No.2 did not appear despite his service, hence was proceeded ex parte. Respondent No.3 too, while denying the allegations of the claim petition in toto, pleaded that it was not liable to pay any compensation, because of violation of terms & conditions of the Insurance policy by respondent No.1 as he was not holding any effective and valid driving licence at the time of accident.

The learned Tribunal after consolidation all the seven claim petitions, framed necessary issues and recorded evidence of both the sides to their satisfaction. Thereafter, after hearing learned counsel for both the sides, the learned Tribunal held entitled the appellant-claimant for compensation of ₹ 3,24,000/- but restricted his claim to the tune of ₹ 2 lakhs only along with interest @ 12% per annum from the date of filing of the petition till realisation as he had claimed only that much amount in his claim petition as compensation.

Only the present appeal before me is of claimant Sukhwant Singh.

During the pendency of this appeal, the appellant-claimant filed an application under Order 6 Rule 17 CPC for amendment of paras 5 and 19 of his claim petition, whereby he intended to increase his monthly salary from ₹ 1500/-

to ₹ 3500/- at the time of accident and compensation amount from ₹ 2 lakhs to ₹ 5 lakhs. The Insurance company-respondent No.3 contested the same by filing reply.

Learned counsel for the appellant argued that the learned Tribunal has erred in restricting the compensation of the appellant-claimant to ₹ 2 lakhs against its assessment of ₹ 3,24,000/-, against the injuries and permanent disablement suffered by him. The learned Tribunal though assessed the compensation of ₹ 42,700/- towards medical treatment, special diet and pain and sufferings, but erred in not awarding the same. In support of his arguments, he placed reliance upon "**Rajesh and others v. Rajbir Singh and others, 2013 (9) SCC 54 ; Ningamma and another v. United India Insurance Company Limited, 2009 (13) SCC 710**".

On the other hand, learned counsel for the respondents opposed the above arguments .

As far as application for amendment of the claim petition filed by the appellant-claimant is concerned, the same has no merit, because even if, for the sake of arguments, he is permitted to increase his monthly income from ₹ 1500/-to ₹ 3500/- by way of amendment, in that event, he has no evidence to support the same. Hence, the amendment sought is meaningless. Learned counsel for the appellant-claimant has also fairly conceded this fact. The enhancement of compensation from ₹ 2 lakhs to ₹ 5 lakhs by amending the claim petition is also immaterial, because the compensation under the Act has to be calculated on the basis of the income of a victim. As discussed above, the appellant-claimant has no proof in support of his alleged monthly income of ₹ 3500/-, therefore, the prayer for enhancement of compensation is also meaningless. Hence, the application for amendment of the claim petition filed by the appellant-claimant is hereby rejected, being devoid of any merit.

Perusal of the impugned award shows that the learned Tribunal has assessed a total sum of ₹ 3,24,000/- towards future loss of income of the appellant-claimant, but restricted it to ₹ 2 lakhs as the appellant-claimant has laid his claim only to that extent.

However, this controversy has been set at rest by the Hon'ble Apex Court in **Rajesh's case** (supra) wherein relying upon **"Nagappa v. Gurudayal Singh and others, 2003(1) RCR (Civil) 258",** it has been observed that there is no restriction upon the learned Tribunal to award compensation amount exceeding the claimed amount, rather it is the duty of the Tribunal to award just compensation. The only requirement is that the compensation must be just.

In the instant case, the appellant-claimant had suffered multiple and grievous injuries. He did not suffer any permanent disability, as he did not any lead any such evidence. Thus, the method and multiplication, adopted by the learned Tribunal in calculating his future loss, is erroneous, but since Insurance company has not challenged the same by way of any appeal or otherwise, therefore, I am not inclined to touch this aspect of the case.

However, in view of the above settled preposition laid down by the Hon'ble Apex Court, the learned Tribunal has erred in restricting the claim of the appellant-claimant to ₹ 2 lakhs against assessment of ₹ 3,24,000/-. Accordingly, the claimant is held entitled to a sum of ₹ 3,24,000/-.

That apart, paras No. 24 and 25 of the impugned award shows that the learned Tribunal also assessed an amount of ₹ 34,700/- towards medical treatment and hospitalization of the appellant-claimant, besides ₹ 3,000/-

towards special diet and ₹ 5,000/- on account of pain and suffering, totalling to ₹ 42,700/-. However, the learned Tribunal has inadvertently forgot to award the same to the appellant-claimant in the relief clause. Hence, the aforesaid amount has also to be awarded to the appellant-claimant and accordingly, the total entitlement of the appellant-claimant vide impugned awards becomes ₹ 3,24,000/- + ₹ 34,700/-(medical expenses) + ₹ 3000/-(special diet) + ₹ 5000/-(pain and suffering) = ₹ 3,66,700/- for which he is held entitled along with interest @ 9% per annum from the date of filing of the petition till realization less already paid. The award of 9% interest per annum is justified, as at present the rate of interest in the nationalized banks is less than 8.5% per annum.

The appeal is disposed of accordingly with the above modifications.

(RAMENDRA JAIN)
JUDGE

7.10.2015
Ashwani