

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

FAO No.100 of 1998 (O&M)

Date of decision: 14.10.2015

Sharda Rani

.....Appellant

Versus

Hoshiar Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sanjiv Ghai, Advocate,
for the appellant.

None for respondent Nos. 1 and 2.

Mr. R.C. Gupta, Advocate,
for respondent No.3-Insurance Company.

Ritu Bahri, J.

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal') vide award dated 06.05.1997 on account of injuries suffered by her in a vehicular accident, which had taken place on 27.09.1994.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 27.09.1994, the appellant was coming from Delhi to Gurgaon on a scooter being driven by her brother-in-law Mahabir Singh. At about 2.00 P.M., when they reached near IFFCO Chowk on National Highway No.8, Gurgaon, a Contessa car bearing registration No.DNJ-0858, being driven by respondent No.1-Hoshiar Singh in a rash and negligent manner, came from behind and struck against their

scooter, as a result of which, both the occupants of scooter fell down and received multiple injuries. The said accident had occurred due to rash and negligent driving of aforesaid car by respondent No.1. With regard to the accident, the claimant-appellant got recorded her statement (Ex.P1) to the police. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal has returned a finding on issue No.1 that the accident had taken place on account of rash and negligent driving of contessa car bearing registration No.DNG-0858 by Hoshiar Singh-respondent No.1. This finding is rightly based on the deposition of Sharda Rani-claimant (PW-1). On the same day, she got lodged an FIR with utmost promptness at 3.20 P.M.

The Insurance Company had taken a stand that it was not liable to make payment of compensation as car No.DNG-858 was insured with it, but the witness in the FIR had stated that the offending vehicle was bearing registration No.DNG-0858. In this regard, the Tribunal has returned a finding that classification of the offending vehicle, as per Insurance Policy (Ex.R1) was Contessa. Therefore, this objection was rejected by observing that it could not lie in the mouth of Insurance Company that DNG-858 was a different vehicle than DNG-0858. Hoshiar Singh-respondent No.1 did not appear in the witness box, therefore, an adverse inference was drawn against him and the conclusion was that the accident had taken place with Contessa car bearing registration No.DNG-0858, which was driven by Hoshiar Singh-respondent No.1.

After the accident, the claimant was treated in Government

Hospital. As per MLR (Ex.P6), she had received two injuries. Injury No.1 was simple, whereas injury No.2 was kept under observation. Dr. B.B. Aggarwal (PW-2) had proved the x-ray report as Ex.P2 and stated that there was fracture of both rami left side of palvis. As per discharge slip (Ex.P5), the claimant remained in hospital from 27.09.1994 to 01.10.1994 i.e. five days. Further, she was medically examined by Board, which had assessed the percentage of her disability. Dr. Akhlaw Ahmed (PW-4) had proved the disability certificate as Ex.P4 and stated that the disability was 15%. The same was on account of moderate restriction of movement at the “left hip.” The Tribunal has returned a finding that this much of disability could not affect the earning capacity of a person. In this background, Rs.40,000/- were granted towards injuries, pain & suffering and mental shock under the general damages.

Since the claimant-appellant was treated in Government Hospital, Rs.5000/- were awarded on account of expenses incurred on her medical treatment, special diet etc., under special damages. Hence, compensation was awarded to the claimant as under:-

General damages	:	Rs.40,000/-
Special damages	:	Rs.5,000/-
Total	:	Rs.45,000/-

Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the claimant-appellant has received injuries as a result of the accident.

As per disability certificate (Ex.P4), which had been proved by Dr. Akhlaw Ahmed (PW-4), the claimant had suffered 15% disability. The same was on account of moderate restriction of movement at the left hip Even though, the disability of 15% would not affect the earning capacity of a person, but at the same time, it would reasonable restrict the normal course of life. There would be some difficulty in day to day life of the injured-claimant with restricted movement of hip. Accordingly, in view of the judgment passed by a Division Bench of this Court in **Ram Kiran Goyal Vs. Sub Divisional Engineer, Mechanical and others**, 2008 (2) RCR (Civil) 103, it would be appropriate to grant compensation of Rs.2000/- for every 1% disability to the claimant towards future enjoyment of life, which comes to Rs.30,000/- (Rs.2000 x 15). Accordingly, the compensation is re-assessed as under:-

SR. No.	HEADS	CALCULATION
(i)	Compensation on account of injuries, pain & sufferings and mental shock (General damages)	Rs.40,000/-
(ii)	Compensation on account of 15% disability	Rs.30,000/- (Rs.2000 x 15)
(iii)	Medical treatment, special diet, transportation etc.	Rs.10,000/-
(iv)	TOTAL COMPENSATION AWARDED	Rs.80,000/-
	Enhanced amount of compensation	Rs.80,000 – 45,000/- = Rs.35,000/-

The enhanced amount of compensation of **Rs.35,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry

realization, in view of the judgment of Hon'ble the Supreme Court in the case of **Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others**, 2015(1) SCC 539. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

14.10.2015
ajp

(RITU BAHRI)
JUDGE