IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

FAO No.2115 of 1998 (O&M)
Date of Decision: October 13, 2015.

Amar Chand

..........APPELLANT(s).

VERSUS

Harpal and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Surinder Gandhi, Advocate
for the appellant (s).

Mr. N.K. Manchanda, Advocate for
Mr. N.K. Kapoor, Advocate
for respondent No.3.

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SURINDER GUPTA, J.

This is an appeal against the award dated 31.07.1998 passed by Motor Accident Claims Tribunal, Bhiwani (later referred to as the Tribunal), whereby a lump sum compensation of ₹10,000/- was allowed to appellant-claimant Amar Chand, who received injuries in the motor accident, which took place on 23.04.1996 with bus bearing registration No.HR-16-5199 (later referred to as the offending vehicle). The Tribunal held respondents No.1 and 2 i.e. driver and owner of the bus liable to pay the aforesaid amount. The insurance company was exempted from its liability to pay compensation on the ground that driving licence of driver of the offending vehicle was fake.

The detailed facts of the case are not being discussed as the only question involved in this appeal is as to whether the claimant is entitled to enhancement of compensation.

Learned counsel for the appellant-claimant has argued that the claimant had suffered fracture right humerus and 12½% permanent disability due to restriction of movement of left shoulder. He had remained admitted in the hospital for about 12 days. In the accident, he had also received injuries on his head, eye, nose right shoulder and left hand. The Tribunal has not allowed any compensation towards the disability, loss of income, pain and suffering, special diet, attendant services, transportation etc. There is nothing in the award that how the award amount of ₹10,000/- has been calculated by the Tribunal towards compensation.

Learned counsel for respondent No.3-insurance company has argued that the Tribunal has allowed compensation of ₹10,000/- keeping in view the age of the claimant as 62 years. There was no loss of income and no document was produced to prove the medical expenses, as such, the amount of compensation awarded by the Tribunal call for no upward revision.

The claimant examined Dr. N.C. Gauba PW1, who stated that the x-ray examination of the skull and right shoulder of claimant was done and fracture of right humerus was found. The claimant while appearing as PW2 has stated that he received injuries on the right shoulder, left hand, nose, forehead, right hip etc. and remained admitted in the hospital for about 12 days. He was having pain in his right knee and could not walk properly. He remained bed ridden for eight months and then started going to Sabji

Mandi and got employed as servant. The claimant also examined Dr. P.K. Charaya, Medical Officer as PW3 (wrongly mentioned as PW2), who proved the disability certificate Ex.P29 and had stated that there was permanent disability of 12½% because of restriction of movement of left shoulder. This disability was left due to fracture of humerus bone.

The Tribunal has taken note of the above facts but instead of awarding compensation against all the conventional heads, it awarded lump sum compensation of ₹10,000/- only. The claimant had suffered injuries including the fracture. Though he has not been able to produce any documentary evidence regarding the medical expenses, still the amount for medical expenses and other heads like pain and suffering, loss of income, disability, special diet, attendant, transportation etc. could be assessed by the Tribunal.

Taking into account the injuries suffered by the claimant and all the facts and circumstances, amount of compensation to which the claimant is entitled is tabulated as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Loss of income during treatment	₹5000
(ii)	Pain and sufferings	₹3000
(iii)	Attendant services	₹2000
(iv)	Medical expenses	₹3000
(v)	Future medical expenses	₹2000
(vi)	Special diet and transportation	₹2000
(vii)	Permanent disability	₹10000
(viii)	Loss of amenities of life	₹2000
Total		₹29000

The Tribunal has exonerated the insurance company on the ground that the driving licence of the driver of the offending vehicle was not valid. As per the observations in case ***New India Assurance company Vs. Kamla and others (2001) 1 The Punjab Law Reporter 830***, the insurer is under liability to pay the amount of compensation at the first instance, however, it will have the recovery rights against the owner of the offending vehicle.

In view of the above discussion, the appeal is allowed. The amount of compensation awarded by the Tribunal as ₹10,000/- is enhanced to ₹29,000/-. The claimant shall also be entitled to interest @ 7.5% per annum on the enhanced amount of compensation from the date of filing of the claim petition till the payment is made. Respondent No.3-insurance company shall pay the compensation amount at the first instance and shall have the recovery rights against respondent No.2, owner of the offending vehicle.

(SURINDER GUPTA)
JUDGE

October 13, 2015.
Sachin M.