

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

FAO No.439 of 1999

Date of Decision: January 16, 2015

State of Punjab

...Appellant

Versus

Sunil Kumar Jain and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. B.S. Sra, Additional Advocate General,
Punjab for the appellant-State.

Mr. Sanjay Jain, Advocate
for the respondents No.1 and 2.

FATEH DEEP SINGH, J.

This is an appeal of the respondent-State challenging the consolidated award dated 24.9.1998 passed in a bunch of claim petitions concerning the same very accident. The present appeal pertains to MACT case No.106 of 1995 titled as Sunil Kumar Jain and another vs. State of Punjab and another pertaining to grant of compensation to the injured-claimants regarding injuries sustained by them, while the family was going in a car bearing registration No.HR01-A-0253 being driven by their driver Karamjit and on 17.2.1995 around 5 p.m. met with an accident in the area of Pipli near Kurukshetra.

The brief averments are that a truck was going and which was overtaken by the car and while the car was parallel to another truck going ahead of the first truck, a Gypsy vehicle bearing No.PB-08F-2270 being driven by respondent Jaswant Kumar came in a rash and negligent manner and hit the car of the

claimants, resulting in injuries to the occupants. The learned counsel for the appellant at the very onset has contended that it was the driver of the car which was at fault and the findings pertaining to the accident returned by the Tribunal were palpably incorrect and which has been controverted on behalf of the respondents by Mr. Sanjay Jain. Appreciating the same, it was on the statement of the occupant of the car Mr. A.K. Jain that an FIR was registered against the driver of the gypsy vehicle pertaining to this accident. The driver who is contesting the litigation has stepped into the witness box to testify that it was due to the fault of the car driver the accident has taken place. Though, on account of destruction of original records not much evidence is available on the file, however, from the remnants whatever are available to this Court, this testimony of RW1 Jawant Kumar depicts that he admits that an accident has taken place but his claim as has sought to be put forth on behalf of the appellant is not substantiated to show that he has been falsely implicated. There is no corroboration to this stand by any independent means. Rather the testimony of this driver shows that his stand in the written reply and before the Court as RW1 are at much variance and are self contradictory which led to the Tribunal holding him to be at fault. Together with the fact that there is proven evidence that the driver of the jeep was facing criminal charges and trial before the Court and in view of the law laid down in '**Keshub Mahindra v. State of Madhya Pradesh' II (1996) ACC 292 (SC)**' is prima facie culpable for causing this accident and, therefore, findings recorded by the Tribunal on issue No.1 needs to be upheld.

The case of the injured Sunil Kumar Jain is that he is aged around 30 years, Electronic Engineer, running his own business of electronics holding the portfolio of Managing Director. and that on account of injuries on his head and due to hospitalisation he has suffered enormously in business and health and that his son Amit Jain too has suffered because of serious injuries which were life threatening. The testimony of Dr. D.S. Goel, PW4 shows that due to head injury the victim has bouts of vomiting and fits of epilepsy. The learned Tribunal as per the details spelled by the claimant Sunil Jain by way of Ex.P12 has reached conclusion of a sum of ₹13,93,420/-. It needs to be kept in mind that compensation is neither a booty nor a pittance and is a legal right of a party. Since the onus of proving the likely compensation to which the claimant is entitled is upon the claimant and testimony of claimant-Sunil Kumar Jain reproduced by the Tribunal shows that due to some sort of head injury which has not been detailed out, he was taken to Shanti Devi Hospital and, thereafter, to PGIMER, Chandigarh and though, claims that his treatment is still undergoing and claims that he has spent ₹41,000/- on his medical treatment, however, the same is without any documents. Merely, because he has detailed the expenses incurred, in Ex.P12 does not suffices the purpose and cannot be granted this entire amount merely on his own estimation. Though, he claims that he has suffered permanent disability but to the very specific query of the Court, learned counsel for the respondents could not establish any proof of such a permanent disability. Though, the stand that he was getting salary of ₹50,000/- per month and that he has undertaken a contract of ₹24 lacs with a

company to supply computer designs which was subsequently cancelled because of his injuries but the same is only an oral testimony not documentarily supported. Though, he has sought to establish his credentials as an Electronic Engineer on the basis of Ex.P18 to Ex.P28 and expenses through Ex.P29 but the same does not come to his aid including the deposition of PW4 Dr.D.S. Goel and documents Ex.P13 to Ex.P46 and purely on the premise that though the compensation comes to ₹13,93,420/- but since the claimants have prayed only for a lower amount of ₹7,00,000/- so the learned Tribunal granted this amount, which is contrary to the settled position of law as there is no bar for a Court to grant higher compensation than prayed in the relief by the claimant but the same needs to be supported by cogent and reliable evidence and which is not forthcoming in the light of the arguments of the appellant.

This Court vide orders dated 04.5.1999 at the preliminary stage has disposed off all the appeals except pertaining to the relief being sought by the claimant Sunil Kumar Jain. How or in what manner the learned Tribunal has assessed this compensation is anybody's guess. Even the deposition of PW5 Ajay Katyal, C.A. only evaluates the avocation and the annual turnover which is only an oral one and based on the report of this C.A. Neither any income tax returns nor any supporting documents of this earning have been proved on the records by the claimants. Medical documents of the Apna Hospital Ex.P4, Ex.P2, the list of expenses detailed in Ex.P12 and Ex.P29 are in no manner supporting the case for determination of just and fair compensation in the absence of any permanent disability. Seeking

support from **R.D. Hattangadi vs. Pest Control (India) Private Limited 1995 (2) PLR 298 SC** the claimant is certainly entitled to the expenses which are enumerated below which are commensurate with the injuries/damages/loss suffered by him:-

(a) Pecuniary compensation:-

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| (i) Expenses assessed on account of medical expenses and hospitalisation. | ₹20,000/- |
| (ii) Expenses assessed for loss of earnings during the period of injury. | ₹30,000/- |

(b) Non Pecuniary compensation:-

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| (i) Compensation assessed for pain, sufferings and sense of wrong. | ₹10,000/- |
| (ii) Compensation assessed for loss of beauty. | ₹5,000/- |
| Total | ₹65,000/- |

In the case of Amit Jain son of claimant Sunil Jain he has suffered five simple injuries detailed in Ex.P5 as well as testimony of Sunil Kumar Jain as PW3 merely because the child has developed infection and had to undergo complications which led to his admission in Datta Hospital, where he remained admitted for five days as an indoor patient and there is own stand of the father, who has testified for the grandchild that they have spent ₹5,000/- on his treatment and for which the learned Tribunal has awarded ₹5000/- for medical expenses and another sum of ₹5000/- for physical pain and sufferings, in all totalling ₹10,000/-. Thus, this claim is just and fair and, therefore, the appeal in respect of this claimant needs to be outrightly rejected.

In view of the foregoing discussions, the learned

Tribunal has acted in a most perverse manner and without taking into consideration the meagreness of the evidence to support the case of the claimants and has heavily relied upon the oral testimony and, thus, has fallen into an error in computation of the compensation. Therefore, being a perverse award in its findings needs to be modified, whereby, the amount granted is reduced to a sum of ₹65,000/-. However, rest of the stipulations need not be disturbed.

In the light of these discussions, the appeal is partly allowed to that extent and award is modified accordingly.

No costs.

(FATEH DEEP SINGH)
JUDGE

January 16, 2015
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