

In the High Court for the States of Punjab and Haryana, at
Chandigarh

...

FAO-796-1999

Date of decision: 02.02.2015

Vikas Sharma

..Appellant

Versus

Rakesh Jhang and others

..Respondents

Coram: **Hon'ble Mr. Justice Mahavir S. Chauhan**

Present: Mr. S.S.Verma, Advocate
for the appellant.
Mr. V.Ramswaroop, Advocate
for respondent No.3-Insurance Company.

Mahavir S.Chauhan, J.(Oral)

A 19 years old boy, named Vikas Sharma was knocked down by a speeding car bearing registration No. CHI-236 on 28.1.1997. The car was owned by Shalini Jhang respondent No.2, was driven by Rakesh Jhang (respondent No.1) at the relevant time and was insured with the New India India Assurance Company Ltd. (respondent No.3). The applicant received multiple injuries including fracture of right femur and right knee joint. He was taken to General Hospital, Sector 6, Panchkula where he remained admitted from 28.1.1997 to 23.2.1997 and was thereafter referred to Post Graduate Institute of Medical Education and Research, Chandigarh (for short,"PGIMER"), where he remained admitted in Intensive Care Unit

from 1.8.1997 to 6.8.1997.

Claim application No.181 of 1997 was brought by him to claim compensation on account of the injuries/disability suffered by him. It was alleged in the application that he had spent an amount of Rs. 80,000/- on treatment, special diet and transportation etc. and a huge amount was required for future treatment also. It was also the case set up on behalf of the appellant that he was a brilliant student but on account of the accident could not attend the school nor could take his 10+2 examinations held in April, 1997. His career was thus spoiled and matrimonial prospects were adversely affected. He experienced pain and suffering as also loss of enjoyment of life.

Application was contested by the respondents by filing written statements wherein all the allegations of the application were denied and a few preliminary objections were also taken.

From the pleadings of the parties, learned Motor Accident Claims Tribunal, Ambala (for short, "the Tribunal") framed following issues:-

1. Whether the accident took place due to rash and negligent driving of car No. CHI 236 by respondent No.1? OPP

2. What amount of compensation, the petitioner is entitled to claim and from whom? OPP

3. Whether respondent No.1 was not holding a valid driving licence at the time of accident, if not its effect?

OPR

4. Relief.

Both the sides adduced evidence and were heard by the learned Tribunal.

While returning findings on issue No.1 pertaining to factum and manner of the accident in favour of the applicant-appellant and on issue No.3 pertaining to driving licence of respondent No.1 against the respondents, on issue No.2 pertaining to computation of compensation, learned Tribunal vide award dated 07.11.1988 allowed compensation in favour of the applicant-appellant amounting to Rs.1,70,000/- as per details given below:-

i) Expenditure on medicines:	Rs. 50,000-00
ii) For pain and suffering	Rs. 20,000-00
iii) For disability	Rs.1,00,000-00

Applicant-appellant is in appeal to seek modification of impugned award and enhancement of compensation.

I have heard learned counsel for the parties.

It is argued by learned counsel for the applicant-appellant that the compensation awarded for disability, pain and suffering is on the lower side. Further, no compensation has been allowed for loss of enjoyment of life for the period the applicant-appellant remained under treatment, for special attendant and special diet as also diminished matrimonial prospects and for loss of one academic session.

It is, however, argued on behalf of the respondent-insurer that the compensation awarded by the learned Tribunal cannot be

said to be on the lower side because every aspect of the matter has been taken into consideration by the learned Tribunal while assessing the compensation.

Factum and manner of occurrence, as also age of the applicant-appellant are not in dispute.

A perusal of the record would reveal that the applicant-appellant was admitted in the General Hospital, Panchkula on 28.1.1997 and it was found that he had suffered fracture of shaft of femur and fracture of patella. He remained admitted in that hospital from 28.1.1997 to 23.2.1997. He was operated upon on 4.2.1997 and on 20.2.1997. He was again admitted in the hospital on 30.7.1997 for removal of K nailing and tension band wire. During the surgical procedure, he developed some complications of respiratory distress syndrome and as such was referred to PGIMER for treatment where he remained admitted from 1.8.1997 to 6.8.1997. In proof of these circumstances, applicant-appellant has proved on record documents like the OPD Tickets Exhibits P2 to P10, discharge and follow up cards of PGIMER, Exhibits, P13 and P14, treatment cards of PGIMER Exhibits P16 and P17, treatment slip of General Hospital, Panchkula, Exhibits P18 to P31 and the discharge slip Exhibit P32. It has also come in the evidence of Dr. Rajiv Dosanjh, PW1, that applicant-appellant had suffered multiple injuries including fracture of shaft of femur and fracture of patella. He remained admitted in the hospital as herein before stated where he was operated upon. The doctor has also proved that the applicant-

appellant was referred to PGIMER, Chandigarh.

It is a matter of common knowledge that during the period applicant-appellant remained admitted in General Hospital and PGIMER, Chandigarh, he must have spent some amount on special attendant and special diet. During this period he undoubtedly suffered loss of enjoyment of life, disability, which as per Exhibit P15, is to the extent of 60% and is permanent in nature and has indisputably adversely affected matrimonial prospects of applicant-appellant. It has remained undisputed that on account of the injuries suffered by him in the occurrence, applicant-appellant has lost one academic session. Even the compensation allowed by the learned Tribunal for pain and suffering and on account of disability is found to be on the lower side.

In the consequence, I allow this appeal and award compensation to the applicant-appellant as under:-

i) Expenditure on medicines:	Rs. 50,000-00
ii) For pain and suffering :	Rs. 50,000-00
iii) For disability:	Rs. 5,00,000-00
iv) Loss of enjoyment of life :	Rs. 50,000-00
v) Special Attendant :	Rs. 5,000-00
vi) Special diet :	Rs. 5,000-00
vii) Loss of one academic Session :	Rs. 50,000-00
viii) Diminished matrimonial prospects:	Rs. 50,000-00

Amount of compensation awarded by the learned Tribunal shall be set off against the compensation hereby awarded.

At this stage, Mr. V. Ramswaroop, Advocate, learned counsel appearing for respondent-Insurance Company takes shelter under Order XLI Rule 22(3) of the Code of Civil Procedure and submits that even without filing cross-objections/cross-appeal insurer is entitled to impugn correctness of the rate of interest chosen by the learned Tribunal which is on the higher side. Though it is resisted by the learned counsel for the applicant-appellant but it is a matter of common knowledge that rate of interest is being reduced by the banks continuously and these days banks are allowing interest at a rate less than 6 % per annum.

In view of this, applicant-appellant is held entitled to receive interest on the amount of enhanced compensation @ 6% per annum from the date of this order till the date of payment/realization. The applicant-appellant is also held entitled to costs of this appeal which are assessed at Rs. 1100/-.

February 2,2015
nk

(MAHAVIR S.CHAUHAN)
JUDGE