

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1549 of 2004
Date of Decision : 29.09.2015

BohtiAppellant

Versus

Raj Kumar and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Saurabh Bhardwaj, Advocate
for Mr. P.S. Rana, Advocate
for the appellant-claimant.

Respondent no. 1 *ex parte*.

Mr. D.K. Singal, Advocate
for respondent no. 2.

Mr. R.K. Bashamboo, Advocate
for respondent no. 3.

SURINDER GUPTA, J.

This is an appeal by Ms. Bohti (later referred to as “the victim”) minor daughter of Om Parkash against award dated 04.12.2003 passed by Motor Accident Claims Tribunal, Kurukshetra (later referred to as “the Tribunal”) whereby she was allowed compensation of ₹ 30,700/- for the injuries suffered by her in a motor accident with car bearing No. DL-8CB-7618 (later referred to as “the offending vehicle”).

2. The brief description of accident as given in the claim petition reads as follows:-

“That on this unfortunate day i.e. on 02.04.2001 at about 04.00 p.m. Smt. Jamantri Devi w/o Om Parkash alongwith her daughter Bohati since claimant-injured returning to their village Ajarana Kalan after visiting the temple Durga at Shahabad and when they reached at Ladwa Chowk on G.T. Road, Shahabad, in the meantime

offending car bearing registration number DL-8CB-7618 came from Pipli side and it was driven by respondent no. 1 in a rash and negligent manner at a very high speed and hit the claimant, who was standing in her correct left side of the road, as a result of which the claimant suffered injuries and her leg (left) (sic got) crushed in this accident. After the accident the injured/claimant was shifted to CHC Shahabad where she remained admitted for 7-8 days. After the accident the respondent no. 1 was apprehended by the police at spot, but he was influential person and approach the police and get away from the spot. The claimant and her parents were in the hospital for the treatment of the claimant and after her discharge when they went to the Police Station for inquiry about the arrest of the respondent no. 1, police after obtaining the thumb impression on some blank papers and recorded the opposite version which favour the respondent in DDR but till 20.08.2001 the parents of the claimant remained silent on assurance of the police of P.S. Shahabad, but when they finally refused to register the case, the injured and her parents approached the S.P. Kurukshetra for registration of the case. After the thorough inquiry the case FIR No. 343 dated 12.09.2001 u/s 279/336/337 IPC was got registered against the respondent no. 1. But the accused-driver is so influential person till then he is not arrested by the police. The accident in question took place due to sole rash and negligent driving of the respondent, thus the respondent no. 1 is sole author of this accident.”

3. Respondent no. 1-driver of the offending vehicle in his written statement denied the accident and alleged that whole story propounded by the claimant is false and concocted. He had been falsely implicated in the criminal case by the police in collusion with the claimant. It was, however, alleged that respondent no. 1

had valid driving licence and the vehicle in question was fully insured with respondent no. 3-Oriental Insurance Co. Ltd. Respondent no. 2 denied the ownership of the offending vehicle and alleged that it was merely a financier of the vehicle under the Hire Purchase Agreement and denied its liability towards any illegal act committed by respondent no. 1 while using the vehicle. The vehicle was, however, registered in the name of respondent no. 2 as respondent no. 1 got the offending vehicle financed under Hire Purchase Agreement from respondent no. 2.

4. In the separate written statement, respondent no. 3-Insurance Company also denied the accident and alleged that a false claim petition had been filed by the claimant in collusion with respondent no. 1. The offending vehicle was not involved in any accident and an alternate plea was taken that even if the accident is proved, the same was due to negligence of the victim who came in front of the car and hit herself with the car, as such, there was no negligence on the part of respondent no. 1. The liability of Insurance Company to pay any compensation is not attracted.

5. Pleadings of parties led to the framing of issues, as follows:-

1. Whether the accident in question resulting into injuries to Bohati was caused due to rash and negligent driving of vehicle No. DL-8CB-7618 on the part of its driver, respondent no. 1, as alleged? OPP
2. If issue no. 1 is proved to what amount of compensation the petitioner is entitled to and from whom? OPP

3. Whether respondent no. 1 was not holding a valid and effective driving licence at the time of accident? OPR

4. Relief.

6. The Tribunal while recording findings on issue no. 1 relied on the DDR Ex. P-4 got recorded by Jaiwanti mother of the victim, wherein she had stated that the accident had taken place when her daughter came running on *chowk* to cross the road. The driver of the offending vehicle applied brake but the victim hit the car and got injured. The Tribunal held that in view of evidence on record and the version in DDR, it was a case of contributory negligence to the tune of 50:50.

7. The victim had suffered 20% physical disability due to shortening of left lower limb, limitation of movement of left hip and wastage of left thigh muscles. Dr. R.K. Arya, who medico-legally examined the victim on 02.04.2001, had testified that on radiological examination he found short fracture of pubic ramus. The patient was kept in the hospital on traction and was discharged after applying POP. She came to the hospital 2-3 times for follow up and was advised rest for 40 days.

8. The Tribunal keeping in view the admission of claimant in the hospital for 7/8 days and rest advised for 40 days, computed the compensation amount as follows:-

i)	For pain and sufferings and accidental trauma	₹ 20,000/-
ii)	Medical expenses	₹ 1400/-
lii)	On account of 20% disability out of which 8% could improve with passage of time, physiotherapy and medication	₹ 40,000/-
	Total	₹ 61,400/-

9. Learned counsel for the appellant has argued that the Tribunal has committed grave error while holding it to be a case of contributory negligence. The mother of victim while appearing as PW-1 had deposed that after the accident the victim was taken to hospital. Then she went to the police which enquired about the accident and obtained her thumb impression on the assurance that the accused will be arrested as early as possible. Thereafter, she enquired about the case from the police but it refused to register the FIR. She then met Superintendent of Police, Kurukshetra who ordered registration of the case against respondent no. 1.

10. The statement of Jaiwanti mother of the victim is unrebutted. She has stated that number of offending vehicle was not noted by her. However, in the DDR registered in the evening at 09.00 p.m. on the day of accident, the car number is mentioned. DDR was recorded in the manner so as to excuse driver of the offending vehicle. FIR in this case was registered on 12.09.2001 i.e. more than five months after the incident. The father of victim had moved application before Superintendent of Police, Kurukshetra, which was enquired by Inspector of Police (Detective) and he in his report found the version of the mother of victim that accident had taken place due to rashness and negligence of driver of offending vehicle as correct and thereafter, the challan was presented against respondent no. 1 on 29.05.2002.

11. Respondent no. 1 had not appeared to rebut the testimony of PW-1 Jaiwanti, mother of the victim. Even in his

written statement he had nowhere alleged that accident had taken place due to contributory negligence of the victim. The recording of DDR has been explained by the mother of the victim and the police during enquiry and investigation had not found the version about contributory negligence of claimant as correct. In these circumstances, the findings recorded by the Tribunal about the contributory negligence of claimant are not only perverse but has resulted in grave injustice to the victim, as such, are reversed.

12. The victim was 11 years of age. In her medical examination, PW-4 Dr. R.K. Arya observed following fractures:-

“X-ray of the left hip – AP. Short fracture of the neck femur and fracture of the pubic ramus.”

13. PW-3 Dr. G.D. Mittal, Orthopaedic Surgeon, LNJP Hospital, Kurukshetra was the member of board which assessed the disability of the claimant. As per disability certificate Ex. P-1, the victim had suffered 20% physical disability, which was attributed to;

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|-------|-------------------------------------|-------|
| (i) | Shortening of left lower limb by 2” | = 12% |
| (ii) | Limitation of movement of left hip | = 05% |
| (iii) | Wastage of left thigh muscles | = 03% |

It was opined that 8% disability regarding limitation of movement of left hip and wasting of left thigh muscles may decrease with passage of time with physiotherapy and medicines.

14. The Apex Court in case of **Master Mallikarjun vs. Divisional Manager, The National Insurance Co. Ltd. and another, 2015 (1) SCC (Civil) 335** while assessing the compensation for disability has observed in paragraph 12 of the

judgment which reads as under:-

“12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick.....”

15. The victim in this case is a girl child for whom the shortening of left lower limb by 2” is a major disability for her entire life which has not only spoiled her future prospects, made her ineligible for many professions/jobs but will also created a hurdle for her matrimonial alliance. No doubt Dr. G.D. Mittal was optimistic that 8% disability regarding limitation of movement of left hip and wasting of thigh muscles may decrease with the passage of time but there is nothing on record to show that this has so happened and, if so, to what extent. Taking the above facts into consideration, the compensation for the physical disability suffered by the claimant is enhanced to ₹ 3 lacs. The Tribunal has allowed the medical expenditure to the tune of ₹ 1400/- but while relying on the statement of PW-3 Dr. G.D. Mittal has not allowed any future expenses for physiotherapy and medication etc. The

same is allowed to the tune of ₹ 25000/- The victim had remained admitted in the hospital for about 8 days. Towards attendant charges a compensation of ₹ 10,000/- is allowed and similar compensation is allowed for special diet and transportation. For loss of prospects of marriage, the claimant is allowed further compensation of ₹ 2 lacs. The amount of compensation, as per the above parameters to which the complainant is entitled, works out as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Compensation towards physical disability	₹ 3,00,000/-
(ii)	Future expenses for physiotherapy and medication	₹ 25,000/-
(iii)	Compensation towards Attendant charges	₹ 10,000/-
(iv)	Compensation towards special diet and transportation	₹ 10,000/-
(v)	Compensation towards loss of marriage prospects	₹ 2,00,000/-
(vi)	Loss of amenities	₹ 50,000/-
(vii)	Pain and suffering	₹ 20,000/-
(viii)	Medical expenses	₹ 1,400/-
<i>Total</i>		₹ 6,16,400/-

16. In view of my above discussion, the instant appeal has merit and is accepted. The amount of compensation allowed by the Tribunal is enhanced from ₹ 30,700/- to ₹ 6,16,400/-. Respondent no. 3-Insurance Company, being insurer of the offending vehicle, shall be liable to pay the entire amount of compensation. The claimant shall be entitled to interest @ 7.5% per annum on the amount of compensation from the date of filing of the claim petition till the date of actual payment. As a special measure to safeguard future of the claimant, 75% of

compensation amount is ordered to be invested in the shape of fix deposit or in monthly income scheme of some nationalized bank or post office for a period of 3 years and thereafter, the claimant shall be at liberty to use/invest the same in the manner she opt for.

September 29, 2015
jk

(SURINDER GUPTA)
JUDGE