

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

FAO No.4087 OF 2002 (O&M)
DATE OF DECISION : 1st SEPTEMBER, 2015

Bhim Singh

.... Appellant

Versus

Ramzan Khan & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

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Present : Ms. Anu Singh, Advocate for
 Mr. B.S. Rana, Advocate for the appellant.
 Mr. R. C. Kapoor, Advocate for respondents No.3.

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SURINDER GUPTA, J. (ORAL)

1. This appeal has been filed by Bhim Singh-claimant against the award dated 05.04.2002 passed by Motor Accident Claims Tribunal, Sonapat (later referred to as tribunal).

2. The case of the claimants in brief is that he is owner-cum-driver of auto rickshaw bearing registration No.HR-10-PA-0260. On 06.09.2000 he was going to village Fatehpur carrying passenger Bijender and his wife in auto rikshaw. Near turning of Rohat drain a tanker bearing No.09/KA/4226, which was being driven by Ramzan Khan-respondent No.1 in a rash and negligent manner, hit the auto rikshaw by coming on wrong side of the road, as a result of which claimant suffered multiple injuries all over his body, including fracture of his right leg. Even the auto rikshaw was badly damaged.

3. The claimant-appellant was hospitalised in Civil Hospital, where he was operated upon. Even at the time of filing of the claim petition on 15.11.2000 he was under treatment because of the injuries suffered by him in the accident.

4. The claim petition was contested by respondent No.3-United India Insurance Company Limited, alleging that neither respondent No.1 and nor respondent No.2 disclosed the factum of accident to the Insurance Company and if any accident had taken place that was due to the rash and negligent driving of the auto rikshaw by the claimant.

5. The tribunal concluded that the accident had taken place due to the rash and negligent driving of the offending vehicle by respondent No.1 and allowed the compensation of ₹1,61,000/- for the injuries received by the claimant. The amount of compensation was calculated as follow:

Sr. No.	Heads	Amounts (₹)
1.	Medical expenses	41,000/-
2.	Loss of income (calculated @ ₹2500/- per month)	10,000/-
3.	Compensation for the attendant transportation and special diet	10,000/-
4.	Compensation for 20% disability	50,000/-
5.	Pain and suffering and loss of amenities of life	50,000/-
	Total	1,61,000/-

6. Learned counsel for the appellant has argued that the claimant remained admitted in hospital for 3 months 17 days during the period from 06.09.2000 to 14.06.2001. During this period he was not in a fit condition to do any work as he had suffered a fracture of right leg and dislocation of left acromio-clavicular joint, left elbow, left upper arm and left knee. The

Tribunal has committed grave error while allowing the loss of income for the period the claimant remained admitted in hospital. The admission of the claimant in hospital up to 14.06.2001 shows that he was not in a position to do his job even 9 months after the accident. The claimant was a driver and the Tribunal has observed that the treatment of claimant was going on even after filing of the claim petition and this fact was proved by Dr. S. S. Bhogal who appeared as PW-1. No compensation was allowed towards the future medical treatment. The compensation allowed towards 20% disability is also on the lower side. The claimant is also entitled to compensation for loss of amenities of life.

7. Learned counsel for the respondent has argued that the Tribunal has taken into account the pain and suffering, transportation, diet, handicap, loss of income and medical expenses of the claimant while allowing the compensation of ₹1,61,000. The income of the claimant was assessed as ₹2,500/- per month and the compensation towards his 20% disability has been allowed as ₹50,000/-, which could not be termed as lower side. The compensation allowed by the Tribunal is adequate and require no enhancement.

8. The Tribunal, while discussing the injuries and treatment for the injuries received by the claimant, has referred to the testimony of Dr. S. S. Bhogal PW-1 in para 11 of the award which read as follows:

“11. Dr. S. S. Bhogal in his testimony as PW1 has specifically deposed that on 6.9.2002 (sic 2000), claimant Bhim Singh was admitted in the casualty with the history of roadside accident wherein he was

medico-legally examined by Dr. Rajiv Sethi as per M.L.R. Ex.P1 and thereafter he was referred to Surgical wards for further treatment. **The claimant was having injuries on his right leg left elbow, left upper arm and left knee. Compound fracture of both bones, right leg and dislocation of left acrimio-clavicular joint was found. The patient was applied external fixator for right leg and on the dislocation part of reduced, where the arms, chest bandage were given, which was kept for one month. He was discharged from the hospital on 15.11.2000 after the fixator was removed and it was found that the patient was having non-union of the right leg. He was again admitted in the ward on 8.5.2001 when the external fixator with bone grafting was done on 28.5.2001. He was kept in the ward for wound care and was discharged on 11.6.2001. Later on, the patient was followed up in the OPD when the fixator was removed and POP cast was applied and was allowed for partial weight bearing. At the time of deposition of this witness on 5.12.2001, the patient was still under treatment for the complete maturation of the callus formation at the fracture side. This witness has also proved the x-ray report Ex.P2 and the disability certificate Ex.P3 vide which the claimant had suffered his permanent disability to the extent of 20 %. The aforesaid statement of the doctor has been also corroborated by the claimant PW2 Bhim Singh in his statement.”**

9. The above testimony of Dr. S. S. Bhogal proves on record that the claimant had received injuries on the right leg, left leg, left upper arm

and left knee. There was compound fracture of both bones, right leg and dislocation of left acromio-clavicular joint. The external fixator were provided for the fracture of the right leg and when the fixators were removed after more than two months of the accident, non-union of the right leg was observed. Again he was admitted in hospital on 08.05.2001 and provided bone grafting and external fixators. Doctor has stated that even on the day he had appeared to make the statement i.e. 05.12.2001, the claimant was under his treatment for complete maturation of callus formation at the fracture site. This shows that the claimant had not fully cured when he was discharged after his second admission in the hospital on 11.06.2001.

10. In view of the above facts, I am of the considered opinion that the claimant is entitled to compensation towards the loss of income for at least ten months after the accident which took place on 06.09.2000. This compensation as per the income assessed by the Tribunal works out to ₹25,000/-. The Tribunal has not provided any compensation towards the future treatment despite evidence on file, which is quantified as ₹10,000/- and the compensation for loss of amenities of life due to the disability suffered by the claimant is allowed to the tune of ₹10,000/-. The claimant was a driver by profession and had suffered 20% of disability due to compound fracture on right leg thereby affecting his profession as driver. Though this disability is not on whole body but still keeping in view the vocation of the claimant and the nature and disability he suffered, this amount of compensation is enhanced from ₹50,000/- to ₹1,50,000/-. The

compensation awarded by the Tribunal on other conventional heads are quite reasonable and require no interference.

11. In view of the discussion above the compensation to which the claimant is entitled is tabulated as follows:

Sr. No.	Heads	Amounts (₹)
1.	Medical expenses	41,000/-
2.	Future/anticipatory medical expenses	10,000/-
3.	Loss of income	25,000/-
4.	Compensation for 20% disability	1,50,000/-
5.	Compensation for pain and suffering and loss of amenities of life (as allowed by the Tribunal)	50,000/-
6.	Compensation for attendant, transport & special diet	10,000/-
	Total	2,86,000/-

12. This appeal is allowed and amount of compensation payable to claimant-appellant is enhanced to **₹2,86,000/-**.

13. Claimants shall be entitled to interest @ 7.5 % per annum on the enhanced amount of compensation. If the amount is deposited within three months of the date of this order the interest will be paid @ 7% per annum from the date of filing of the claim petition till the date of payment.

1st September, 2015
'raj'

(SURINDER GUPTA)
JUDGE