

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2537 of 2012 (O&M)
Date of Decision : 12.10.2015

Prithvi Raj

....Appellant

Versus

Ramesh Pal and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Surinder Deswal, Advocate
for the appellant.

Respondents no. 1 and 2 *ex parte*.

Mr. Chandandeep Singh, Advocate
for respondent no. 3-Insurance Company.

SURINDER GUPTA, J.

This appeal has been filed by Prithvi Raj-claimant, who was awarded compensation of ₹57,200/- by the Motor Accident Claims Tribunal, Karnal (later referred to as 'the Tribunal'), for the injuries suffered by him in a motor accident with motorcycle bearing registration No. HR-05H-4707 (later referred to as 'the offending vehicle').

As per the case of claimant, on 24.06.2009 at about 07/07.30 p.m., he was talking with one Jai Pal near water pond of village Bajida Roran, when respondent no. 1 came on offending vehicle in a rash and negligent manner and hit the claimant and Jai Pal. The claimant sustained multiple grievous and serious injuries and was taken to Virk Hospital, Karnal, where he was medically examined. He remained hospitalized and operated twice. The matter was reported to the police vide FIR No. 218 dated 25.06.2009 for offences punishable under Sections 279, 337 and 338 of Indian Penal Code (IPC).

Respondent no. 1-driver and respondent no. 2-owner of the offending vehicle filed joint written statement wherein they denied the accident. The vehicle was insured with respondent no. 3-Universal Sompo General Insurance Co. Ltd. The Insurance Company in its separate written statement also denied the accident and its liability to pay any compensation *inter alia* pleading that driver of the offending vehicle was not holding a valid driving licence.

The Tribunal allowed the compensation to the claimant, as follows:-

Medical Bills	₹28,000/-
Disability	₹25,200/-
Pain and suffering	₹2000/-
Special Diet	₹2000/-
Total	₹57,200/-

Learned counsel for the claimant-appellant has argued that the claimant had suffered 21% disability. The Tribunal while awarding the amount of compensation has not awarded any compensation towards transportation, loss of future income, loss of amenities, attendant charges, loss of income during the period claimant remained incapacitated due to fracture/injury received by him and future medical expenses. The amount of ₹2000/- each allowed under the heads special diet and pain and suffering is also on the lower side.

Learned counsel for the respondent (Insurance Company) has argued that the claimant had suffered 21% disability which as per doctor was about 10.5% physical disability. There is no evidence that because of injuries suffered by him the

claimant has suffered any loss of income, as such, compensation awarded by the Tribunal calls for no enhancement.

On perusal of paper-book and lower Court record, it transpires that the claimant had suffered fractures in the accident and had remained under treatment of Dr. Balbir Singh Virk of Virk Hospital, Karnal for a period of more than a year. In his statement PW-2 Balbir Singh Virk has stated as under:-

“On 24.06.2009, patient Prithvi Raj son of Shoran Singh 60 years male r/o Bajida Roran, Karnal admitted in our hospital with the history of road side accident. Patient was brought to my hospital by Jasmer Singh. Patient was having fracture compound femer right with fracture patella, and fibula right operation was done and patient was discharged on 27.06.2009. I have received ₹ 8000/- hospitalization and operation charges. Receipt is Ex. P1 and discharge card is Ex. P2. Patient was again admitted on 10.09.2010 with stiffness right knee joint. Operation was done. Patient was discharged on 11.09.2010. Discharge card is Ex. P3. The above charges excludes cost of medicines and implants etc.”

Though, the doctor has not specified the period in which a fracture gets cured. Still it is a matter of common knowledge that it takes 6 to 10 weeks for a fracture to cure. The claimant has stated that he was doing agriculture work and running a milk dairy before the accident and due to fractures he had to remain on bed for a period of 2 to 3 months. The Tribunal has not awarded compensation under loss of income for this

period. The Tribunal has assessed the income of the claimant as ₹3000/- per month which keeping in view the year of accident is also on lower side. Dr. Vinod Kamal, who was member of the board which assessed disability of the claimant has denied that disability of the claimant would reduce with the passage of time or physiotherapy. This reflect that the claimant-appellant has to live with disability suffered by him throughout his life. The Tribunal while awarding compensation has not allowed any amount of compensation towards future medical expenses, loss of amenities, transportation expenses for the claimant for going to hospital time and again for his treatment, expenses for the attendant etc. The amount of ₹2000/- each allowed under the heads pain and suffering and special diet is also quite meagre and requires revision.

The Tribunal while awarding compensation is required to take care that the compensation allowed is just and reasonable amount of compensation. Where a person has suffered permanent disability, the money cannot restore his physical condition to same state as it was before the accident but the amount of compensation should be just and reasonable to the claimant that it makes his life comfortable to some extent and enable him to face trauma and agony suffered by him.

Keeping in view the nature of injuries suffered by the claimant as stated by PW-2 Dr. Balbir Singh Virk, permanent disability and the other facts and circumstances of the case, compensation to which the claimant is entitled, is tabulated as follows:-

Sr. No.	Head	Amount
1	Medical bills	₹28000/-
2	Disability 21%	₹50000/-
3	Transportation expenses	₹5000
4	Loss of income during the period of treatment and future income	₹40000/-
5	Attendant charges	₹5000/-
6	Loss of amenities of life	₹25000/-
7	Future medical expenses	₹20000/-
8	Special Diet	₹5000/-
9	Pain and suffering	₹10000/-
	Total	₹1,88,000/-

The instant appeal has merit and the same is accepted. Award of the Tribunal is modified and the appellant-claimant is allowed compensation of ₹1,88,000/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petition till actual realization.

October 12, 2015
jk

(SURINDER GUPTA)
JUDGE