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

**FAO No.6742 of 2011 (O&M)
Date of Decision: September 10, 2015.**

Parveen Kumar

..........APPELLANT(s).

VERSUS

Kuldeep Singh and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rishav Jain, Advocate for
Mr. Arun Jindal, Advocate
for the appellant (s).

Mr. D.K. Dogra, Advocate
for respondent No.2.

Mr. Madan Gupta, Advocate
for respondent No.3.

****

SURINDER GUPTA, J.

This is appeal against the award dated 17.08.2011 passed by Motor Accident Claims Tribunal, Sangrur (later referred to as the Tribunal) whereby a compensation of ₹1,60,000/- was allowed to the appellant-claimant for the injuries received by him in a motor accident.

As per the appellant-claimant, on 13.12.2005, he was going to Ludhiana in his Maruti car bearing No.CH-01V-3222 due to some personal work. Surjit Singh son of Puran Singh resident of Sunam was following him in his car. When the claimants reached near Kaner Hotel on Moga-Ludhiana

GT Road, a truck bearing No.HR37-2268 (later referred to as the offending vehicle) came from Ajitwal side. It was being driven by Kuldeep Singh, respondent No.1 in a rash and negligent manner. The truck hit Maruti car of the claimant towards driver side, as a result of which he received multiple injuries and became unconscious. With the help of police, Surjit Singh took the claimant to Civil Hospital, Moga from where he was referred to DMC, Ludhiana. The claimant remained admitted in Dayanand Medical College and Hospital, Ludhiana w.e.f. 13.11.2005 to 05.12.2005. FIR No.145 dated 20.11.2005 for offence punishable under Sections 279, 337 and 427 IPC was registered against respondent No.1 at Police Station Mehna. Due to fracture, right leg of the claimant was operated and the plates were inserted. He has become disabled and spent ₹2,50,000/- on his treatment. A sum of ₹10 lacs was claimed as compensation in addition to ₹25,000/- as no fault liability from the respondents.

Respondent No.1 Kuldeep Singh in his written statement termed the FIR registered against him as false and denied the accident. Respondent No.2-insurance company also denied the accident with the offending vehicle and took the objections that respondent No.1 was driving the offending vehicle without having a valid driving licence and the truck was also not having valid registration certificate or permit.

The Tribunal, on the basis of evidence produced before it, recorded the finding that the accident had taken place due to rash and negligent driving of offending vehicle by respondent No.1. The evidence led by the claimant was unrebutted as respondent No.1 did not examine any witness while respondent No.2 examined a witness from the office of DTO, Ferozepur to prove that the driving licence of respondent No.1 was fake. The compensation payable to the claimant-appellant was calculated by the Tribunal in para 27 of the award which reads as follows:-

> "27. Now, the question remains that how much compensation the claimant is entitled to get. A perusal of evidence of Dr. Prince Ajay Pal Singh (PW-1), Narinder Kumar Senior Clerk, (PW-2), Claimant Parveen Kumar (PW-3), Jaswant Singh Clerk (PW-4), Surjit Singh eye witness (PW5) and Manoj Kumar Record Keeper, (PW-6) coupled with the documentary evidence i.e. Bill of Rs.1,09,826/- (Ex. P.2 to Ex. P.7) shows that after the said accident, the claimant has almost spent a sum of Rs.1,25,000/- approximately for getting himself medically treated. As such, he is entitled to a sum of Rs.1,25,000/- reimbursed from the respondents No.1 and 3 by way of compensation. Apart from that, Disability Certificate (Ex. P.8) clearly shows that after the said accident, claimant has suffered 10% permanent disability in regard to his knee. As such, he is entitled to get a sum of Rs.20,000/- on account of said disability. Moreover, it has further come on record that the claimant remained admitted in Hospital w.e.f. 13.11.2005 to 05.12.2005 and during this period he was unable to earn his livelihood. Thus, on account of hospitalisation, claimant is entitled to receive a sum of Rs.5,000/- for loss of his earning. Apart from that during hospitalisation, he must have been prescribed special diet by the doctor and on account of which he is held entitled to receive a sum of Rs.5,000/-. During this period of hospitalisation, the claimant must have arranged attendant, as such, he is also entitled to receive Rs.5,000/-. In nut-shell, the total compensation to be paid to the claimant comes out to Rs.1,60,000/-. This amount shall be paid by

> the respondents No.1 and 3 under their joint and several liability. Accordingly, issues No.1 and 2 are partly decided in favour of the claimant and against the respondents No.1 and 3, whereas issue No.4 is decided in favour of the respondent No.2(Insurance Company)."

The Tribunal absolved the insurance company of its liability to pay the amount of compensation on the ground that the licence of the driver of the offending vehicle was fake.

Firstly, I take the point of liability of insurance company to pay the compensation at the first instance to the claimant. Admittedly, the offending vehicle was insured with respondent No.2 i.e. New India Assurance Company Limited. It is also not disputed that driving licence of respondent No.1-Kuldeep Singh was found fake. It is no more res integra that in the event of any breach of term of the policy, the claimant is entitled to receive the compensation amount from the insurance company and the insurance company can be allowed recovery rights to recover the amount of compensation paid by it from the owner of the offending vehicle i.e. the insured. The Tribunal has committed grave error of law while absolving the insurance company for its liability to pay compensation.

It is proved on the file that the claimant was a jeweller and he had received grievous injuries i.e. fracture of his leg. Usually,a fracture takes 6 to 12 weeks to heal. The claimant has alleged his monthly income as ₹50,000/- but could not produce any evidence in support of his contention. Even by assessing his income as ₹5,000/- per month, the claimant is entitled to a compensation towards loss of income for a period of three months which works out to ₹15,000/- towards loss of income. The Tribunal has not allowed any compensation towards pain and sufferings. It is not disputed that the claimant had remained admitted in the hospital from 13.11.2005 to 05.12.2005. For the pain and sufferings and transportation expenses, he is allowed compensation of ₹20,000/-. The claimant required services of an attendant during the period he remained admitted in the hospital and till he got cured and on this count, the compensation allowed by the Tribunal is revised to ₹15,000/-. Compensation of ₹5,000/- allowed to the claimant towards special diet requires no intervention.

Towards medical expenses, the claimant placed on record the bills Ex.P2 to Ex.P7 worth ₹1,16,706/-. PW1 Dr. Prince Ajay Pal Singh has stated that the bill of ₹1,09,826/- issued by the hospital did not contain the expenses incurred by the claimant towards purchase of medicines. Though PW2 Narinder Kumar Senior Clerk of DMC Hospital, Ludhiana has stated that bills Ex.P2 to Ex.P7 include the expenses of medicines consumed by the patient during his admission in the hospital but this appears to be a mis-statement. Perusal of the above bills shows that these are towards the hospital expenses and investigations etc. and are not towards the expenses of medicines. Narinder Kumar PW2 has clarified that the medicines of the patient are purchased by attendant of the patient from outside the hospital. It is evident from the above bills produced on record that these are not of expenses of medicines of the claimant. No documentary evidence has been produced regarding the medicines purchased by the claimant. Admittedly, claimant remained admitted in Dayanand Medical College and Hospital, Ludhiana from 13.11.2005 to 05.12.2005. He had received segmental fracture of right femur and blunt trauma chest bilateral side. Doctor, who treated him, has stated that he was operated for the fracture of right femur and distal femoral nailing was done on 23.11.2005. It is not only during the treatment in the hospital but at later stage also, medicines were required. Keeping in view this fact, expenses incurred on the medicines by the claimant are notionally calculated as ₹50,000/- in addition to the medical expenses proved vide bills placed on record. The Tribunal has not allowed any compensation towards future medical expenses which are allowed as ₹10,000/- Consequently, a sum of ₹1,75,000/- is allowed towards medical expenses.

Though learned counsel for the appellant has sought enhancement of compensation towards permanent disability but the perusal of the disability certificate shows that there was mild restriction of movement of right knee, which has not resulted in physical disability effecting earning capacity of the claimant, who is a jeweller by profession. The Tribunal has already allowed ₹20,000/- towards compensation for 10% disability suffered by the claimant which call for no intervention.

In view of the discussion above, the total amount of compensation allowed to the claimant is tabulated as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Loss of income	₹15000
(ii)	Pain and sufferings and transportation expenses	₹20000
(iii)	Attendant services	₹15000
(iv)	Medical expenses including expenses on future treatment	₹175000
(v)	Permanent disability	₹20000
(vi)	Special diet	₹5000
Total		₹250000

The compensation amount shall be paid to the claimant by respondent No.2-insurance company. However, the insurance company shall have the recovery right against the owner of the offending vehicle i.e. insured for the amount to be paid to the claimant. The appeal is accordingly allowed. Compensation amount of the claimant is enhanced from ₹1,60,000/- to ₹2,50,000/-. The claimant shall also be entitled to the interest on the compensation amount as allowed by the Tribunal.

(SURINDER GUPTA)
September 10, 2015. **JUDGE**
Sachin M.