

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

FAO-2299 of 2013

Date of decision: August 18, 2015

BHOLU @ BHALU

.....Appellant

Versus

KRISHAN KUMAR AND ORS

....Respondent

CORAM: HON'BLE MRS JUSTICE LISA GILL

Present: Mr. Kulwant Singh Dhanora, Advocate
for the appellant.

Mr. Subhash Goyal, Advocate
for respondent No.3.

LISA GILL, J. (ORAL)

Instant appeal has been filed by Bholu @ Bhalu son of Keshu Ram claiming enhancement of the compensation awarded to him by learned Motor Accident Claims Tribunal, Hisar (hereinafter referred to as the 'Tribunal'), on account of injury suffered by him in a vehicular accident which took place on 24th January, 2008. Appellant was the second driver of Truck No.HR-56/3962. The said Truck was being driven by respondent No.1-Krishan Kumar in a rash and negligent manner. This truck struck the back of another truck bearing Registration No.RJ-23/GA/0020, which was parked on the road side, as a result of which, appellant suffered injuries.

PW-3 Dr. Virender Bishnoi, Senior Resident, Orthopaedic Department, Maharaja Aggarwsain, Hospital Agroha has deposed that claimant was brought to their hospital with history of road side accident. He had suffered a fracture of femur with multiple soft tissue injuries. He was operated upon and nailing was done on 25th February, 2008. He remained admitted in the hospital from 24th January, 2008 till 7th February, 2008.

PW-2 Dr. Rajiv Aggarwal has deposed that appellant was yet again operated upon 31st December, 2009 due to non union of fracture of femur bone of left leg. Refixation was done with a new metal rod and he was discharged on 04.01.2010.

PW-5 Dr. Reena Jain, Medical Officer, Government Hospital, Hisar has testified that she along with other members of the Board examined the appellant on 6th May, 2009 and found him to be suffering from a permanent disability of 9 per cent in relation to his left lower limb. Ex.P21 disability certificate was proved by her. Tribunal while holding that accident was caused due to rash and negligent driving of the offending vehicle by respondent No.1 awarded compensation as under to the claimant:-

For disability to the extent of 9%	₹18,000/-
Mental pain and sufferings	₹10,000/-
Treatment expenses i.e. Bills/receipts etc.	₹45,480/-
Special diet	₹5,000/-
Transportation	₹10,000/-
Total	₹ 88,480/-

Learned counsel for the appellant prays for enhancement on account of loss of income for a period of about six months for which the appellant was unable to carry on his vacation as a driver. As per affidavit of the claimant, he was earning ₹5,000/- per month as a second driver on the Truck. He prays for enhancement on account of pain and suffering as well as special diet. No other claim is set forth.

Learned counsel for the Insurance-Company on the other hand submits that adequate compensation has already been granted and there is no scope for any further enhancement. Liability of the Insurance Company is not in dispute.

After hearing learned counsel for the parties and going through the record, it is apparent that the claimant-appellant had to undergo an operation twice in respect of the fracture in his left leg caused in the accident which took place on 24.01.2008. Disability qua limb has been proved to be 9 per cent. Contention of the learned counsel that there is no evidence on record to prove the claimant to have remained out of work for this period is not tenable in the facts and circumstances of the case. There is no dispute that the claimant was employed as a driver. Keeping in view the nature of injuries suffered by him it can be safely concluded that he would not have been able to return to his vocation for at least five months. In fact the second operation was performed nearly a year after the accident. Monthly income of the claimant as ₹5,000/- per month is not seriously disputed coupled with the fact that there is no evidence to rebut the same.

Claimant is thus, held entitled to a sum of ₹25,000/- (5x5) on account of loss of income for six months. It is also considered just and expedient to award a sum of ₹25,000/- instead of ₹10,000/- on account of pain and suffering and a sum of ₹10,000/- instead of ₹5,000/- for special diet. Claimant is thus entitled to compensation as under:

For disability to the extent of 9%	₹18,000/-
Loss of income for 5 months	₹25,000/-
Pain and suffering	₹25,000/-
Treatment expenses i.e. Bills/receipts etc.	₹45,480/-
Special diet	₹5,000/-
Transportation	₹10,000/-
Total	₹ 1,28,480/-

The amount already awarded to the appellant shall stand deducted from the amount of compensation as above. Appellant-claimant shall be entitled to interest at the rate of 7.5 per cent per annum on the

enhanced amount from the date of filing of the petition till realization.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

August 18, 2015
m. sharma

(LISA GILL)
JUDGE