

In the High Court of Punjab and Haryana at Chandigarh

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F.A.O. No.3679 of 2013

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Date of decision:6.4.2015

Gaurav

.....Appellant

v.

Puran Singh and another

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Kartar Singh Malik-1, Advocate for the appellant.

Mr. Amrinder Singh Sidhu, Advocate-standing counsel for
ICICI Lombard General Insurance Co.-respondent No.2.

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Inderjit Singh, J.

Gaurav-appellant has filed this appeal against Puran Singh and ICICI Lombard General Insurance Company Limited (hereinafter referred to as 'the Insurance Company') for enhancement of the compensation as awarded by the Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal') vide award dated 21.5.2013.

The brief facts of the case are that on 20.6.2011 at about 2.30 p.m., the petitioner (appellant herein) was going to his house on his motorcycle being driven by him at moderate speed and by observing all the traffic rules and when he reached near IMT Chowk, Rohtak, a car bearing registration No.HR-26AA-1761 being driven by respondent No.1 came at a

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high speed, in a rash and negligent manner and struck against the motorcycle of the appellant, as a result of which accident took place and the motorcycle of the appellant fell down and he suffered multiple and grievous injuries. Soon after the accident, the appellant was shifted to PGIMS, Rohtak, where he remained admitted on 20.6.2011 and 21.6.2011. Thereafter, he remained under the treatment of S.K.M. Hospital, Rohtak, where he was also operated upon and a plate was inserted on 5.7.2011. On his statement, a criminal case was registered against respondent No.1 vide FIR No.274 dated 13.7.2011. The appellant had spent a sum of ₹3 Lacs on his treatment, special diet, attendant and conveyance charges etc. Prior to this accident, the appellant was serving in ZTE Telecom India (Private) Limited and was drawing a salary of ₹12,000/- per month.

The case of respondent No.1 before the Tribunal was that the accident was the outcome of rash and negligent driving of the appellant as he struck his motorcycle against the stationary car of respondent No.1 from its back side, when he stopped his car on the side of the road to know path from a driver of another vehicle. The expenses of treatment and income of the appellant had been denied. Respondent No.2 in its separate written statement had denied the factum of accident of the appellant with the offending vehicle.

From the pleadings of the parties following issues were framed:-

“1. Whether the present accident resulting into the injuries to the petitioner had taken place due to rash and negligent driving

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of Maruti Zen bearing registration No.HR-26AA-1761 by respondent No.1, as alleged? OPP.

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to compensation, if so to what amount and from whom? OPP.

3. Whether the petition is bad for misjoinder of parties and non-joinder of necessary parties? OPR-1.

4. Whether the petitioner has no cause of action and locus standi to file the present petition? OPR-1.

5. Whether the present petition is not maintainable in the present form? OPR-1.

6. Whether respondent No.1 was not holding a valid and effective driving licence on the date of alleged accident, if so, its effect? OPR-2.

7. Relief.”

The petitioner-appellant examined himself as PW-1 and also examined Subhash Sapra as PW-2, Rakesh Kumar Sharma as PW-3 and Sahil Jain, Criminal Ahlmad as PW-4. He has also relied upon the documents i.e. discharge card Ex.P.1, X-ray films Ex.P.2 to Ex.P.6, medical bills Ex.P.7 to Ex.P.12, admission-cum-discharge card Ex.P.13, prescription slip Ex.P.14, FIR Ex.P.15, X-ray reports Ex.P.16 to Ex.P.18, OPD card Ex.P.19, investigation reports Ex.P.20 and Ex.P.21, identity card Ex.P.22, copy of driving licence Ex.P.23 and disability certificate Ex.P.24.

On the other hand, respondent No.1 tendered into evidence his

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driving licence Ex.R.1 and closed the evidence, whereas respondent No.2 failed to examine any witness despite granting sufficient opportunities and ultimately evidence of respondent No.2 was closed by the order of the Tribunal.

The Tribunal after deciding the issues in favour of the appellant-claimant awarded ₹2,500/- for pain and suffering, ₹14,000/- on account of loss of income there being 7% permanent disability. ₹2,000/- has been awarded for the diet and ₹1,000/- as transportation charges. Further, the Tribunal has awarded medical expenses to the extent of ₹20,000/- but the bill of about ₹30,000/- Ex.P.7 has been ignored by stating that it has not been proved by bringing the doctor.

I have heard learned counsel for the appellant as well as learned counsel appearing for respondent No.2.

At the time of arguments, learned counsel for the appellant argued that a meagre amount has been given for the injuries suffered by the appellant-claimant and the amount of compensation should be enhanced.

On the other hand, learned counsel for respondent-No.2-Insurance Company argued that the amount has been rightly awarded by the Tribunal.

From the record, I find that it is clear that there is permanent disability of 7% and the appellant's leg fractured and plate was inserted in it. The claimant proved the medical bills Ex.P.8 to P.12 amounting to ₹15,751/-, whereas the bill Ex.P.7 of ₹30,300/- has been ignored by the Tribunal.

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Keeping in view the evidence on record, the fracture of the leg, the admission of the claimant in the hospital, the other documents of admission and discharge slips and X-ray films and reports etc., in no way, it can be held that the claimant has not spent as per bill Ex.P.7. Therefore, the amount awarded by the Tribunal on the basis of medical expenses is liable to be increased by ₹30,000/-.

As regards the pain and suffering only ₹2,500/- has been awarded, which is on the lower side. In the facts and circumstances of the present case and in view of the evidence produced by the claimant, this amount for pain and suffering is also liable to be increased to ₹10,000/-. Similarly, on the ground of special diet only ₹2,000/- has been awarded, which is on the lower side and is liable to be increased to ₹5,000/- and for the transportation charges only ₹1,000/- has been granted, which are increased to ₹2,500/-. As regards loss of income, the claimant was serving and there is no evidence that on the basis of this permanent disability he has suffered loss in the employment or in his salary, therefore, ₹14,000/- has been correctly awarded by the Tribunal.

Keeping in view the above discussion, the amount of award is increased to ₹81,500/- from ₹39,500/-.

The appeal is accordingly allowed partly.

April 6, 2015.

(Inderjit Singh)
Judge

hsp