

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

**FAO No. 4375 of 2013 (O&M)**

Date of decision : December 08, 2015

Naresh Kumar Dhiman

.....Appellant

Versus

Shiv Kumar and others

....Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Rajinder Singh Rana, Advocate  
for the appellant.

Mr. D.S. Adlakha, Advocate  
for respondent No. 3.

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**LISA GILL, J**

Appellant - Naresh Kumar Dhiman has preferred this appeal praying for enhancement of compensation awarded to him vide award dated 26.04.2013 passed by learned Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as the 'Tribunal') on account of injuries suffered by him in a motor vehicle accident on 26.05.2012.

Facts as narrated in the claim petition are that appellant was proceeding to his residence from the side of Main Bazar,

Thanesar on motor cycle Bajaj Platina bearing registration No. HR-08J-4743 on 26.05.2012 at about 1300 hours. When he was in front of a chemist shop near Janta School, car bearing registration No. HR-41-D-8692 driven by respondent No. 1 – Shiv Kumar at a high speed in a rash and negligent manner, in violation of traffic rules came from behind and struck against the appellant. Appellant fell on the ground and received grievous injuries. Appellant's brother Suresh Kumar Dhiman arrived at the spot and other persons also gathered there. Respondent No. 1 fled from the spot alongwith offending vehicle as people gathered there. Appellant was shifted to Bhola Hospital, Kurukshetra by his brother. Appellant suffered multiple injuries on forehead, right shoulder and left wrist, fracture of humerus and right scaphoid. FIR dated 26.05.2012 (Ex. P6) was registered against driver of the offending vehicle. Report under Section 173 Cr.P.C. (Ex.P7) was presented after completion of investigation and charge sheet (Ex. P8) was presented against respondent No. 1.

Claim petition was preferred by the appellant under Sections 166 and 140 of the Motor Vehicles Act, 1988 for grant of compensation to the tune of ₹5 lakhs.

Claim was contested by the respondents. Respondents No. 1 and 2 pleaded that no accident with the offending vehicle had taken place and appellant never received any injuries therein. A false case has been registered in collusion with the police. Furthermore, respondent-driver was holding a valid and effective driving licence and offending vehicle was insured with respondent No. 3.

Respondent No. 3-insurance company pleaded violation of terms and

conditions of insurance policy as well as registration of false FIR in collusion with the police.

Following issues were framed by the learned Tribunal:-

- 1. Whether the accident in question which took place on 26.05.2012 at about 1.00 p.m. in the area of Janta School, Jhansa Road, Kurukshetra under Police Station, City Thanesar due to rash and negligent driving of the car bearing registration No. HR41-D-8692 by respondent No. 1 and it resulted in injuries to claimant? OPP
- 2. If issue No. 1 is proved in affirmative, what extent of compensation the petitioner would be entitled to and from whom? OPP
- 3. Whether the terms and conditions of insurance policy were violated by respondent No. 1 and insurance company is not liable to indemnify the compensation as alleged? OPR-3
- 4. Relief.

After considering the evidence on record, learned Tribunal concluded that accident in which the appellant received injuries was caused due to rash and negligent driving of offending vehicle by respondent No. 1. Said finding is informed to have attained finality. Total compensation of ₹1,27,013/- was awarded to the appellant as detailed hereunder:-

|                    |             |
|--------------------|-------------|
| Pain and suffering | ₹ 25,000/-  |
| Medical expenses   | ₹ 16,201/-  |
| Hospitalisation    | ₹ 4,500/-   |
| Disability         | ₹ 81,312/-  |
| Total              | ₹1,27,013/- |

Income of the appellant was assessed as ₹6,050/-, considering him to be an unskilled labourer in the absence of any positive evidence to prove his vocation. Multiplier of 14 was applied, keeping in view of the age of appellant to be 42 years. Loss of income was assessed as ₹10,16,400/- as the appellant was found suffering from disability to the extent of 8%. He was granted 8% of the amount i.e. ₹81,312/-.

Learned counsel for the appellant vehemently argues that appellant was running business of TV cable network. Reference is made to statement of the appellant by way of his affidavit, Ex. PW2/A to submit that he was earning ₹15,000/- per month. Therefore, loss of income should be assessed, accordingly. Furthermore, compensation on account of pain and suffering should be increased.

Per contra learned counsel for the respondent while refuting above said plea prays for upholding the impugned award by submitting that there is no scope whatsoever for any further enhancement in the amount of compensation awarded to the appellant.

Having heard learned counsel for the parties and going through available record, it is apparent that there is no evidence on record except statement of the appellant to prove that he was running business of TV cable network and earning ₹15,000/- therefrom. No documents whatsoever have been placed on record. Similarly, there is no documentary evidence to show income of ₹15,000/- being earned by him at the time of accident. In the said circumstances, there is no illegality in assessment of appellant's

income as that of an unskilled labourer as has been done by the learned Tribunal.

Perusal of the record reveals that appellant sustained multiple injuries including injury on forehead, right shoulder and left wrist, fracture of humerus and right scaphoid. PW1 Dr. Suresh Kumar Bhola has proved the said fact. He remained admitted in the hospital from 26.05.2012 to 28.05.2012. PW1 Dr. Suresh Kumar has opined that patient cannot go back to his original job for a period of 2/3 months.

PW3 Dr. Bimla Gouri, Senior Medical Officer, Orthopaedic Surgeon, LNJP, Hospital, Kurukshetra has proved that total disability suffered by the appellant was 8% which was due to moderate restrictive movement at right shoulder. PW3 had examined the appellant on 19.12.2012 alongwith Dr. Mukesh Kumar, Senior Medical Officer, LNJP Hospital, Kurukshetra. She has, however, clarified that disability of 8% is with reference to particular limb and not qua whole body.

Even if it is accepted that appellant was running business of TV cable network there is no evidence to show that he suffered any loss due to disability incurred due to the accident or that he is unable to carry on said vocation due to this disability which pertains to restrictive movement of shoulder. Thus, it cannot be said that appellant suffered a functional disability higher than 8%. There is no ground for enhancement of compensation awarded by learned Tribunal on account of disability suffered by the appellant.

Learned counsel for the appellant is unable to point out

any evidence to justify enhancement of compensation on account of medical expenses, hospitalisation etc.

However, appellant is entitled to enhancement of compensation awarded towards pain and suffering from ₹25,000/- to ₹50,000/-. He is also entitled to loss of income for a period of three months i.e. ₹18,150 (₹6050x3) in view of the specific deposition of PW1 Dr. Suresh Kumar.

Appellant is, thus, entitled to compensation of ₹1,70,163/- instead of ₹1,27,013/- as detailed hereunder:-

|                    |             |
|--------------------|-------------|
| Loss of income     | ₹18,150/-   |
| Pain and suffering | ₹50,000/-   |
| Medical expenses   | ₹ 16,201/-  |
| Hospitalisation    | ₹ 4,500/-   |
| Disability         | ₹ 81,312/-  |
| Total              | ₹1,70,163/- |

Amount of compensation already awarded to the appellant shall stand deducted from the amount calculated as above. Appellant shall be entitled to interest at the rate of 7.5% 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.

December 08, 2015  
rts

(Lisa Gill)  
Judge