

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

**FAO No. 5121 of 2013(O&M)**

**Date of Decision: September 8 , 2015.**

Sanjay Kumar

..... APPELLANT (s)

**Versus**

Gharsi Ram and others

..... RESPONDENT (s)

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

Present: Mr. Amit Singla, Advocate  
for the appellant.

Mr. Dheeraj Narula, Advocate  
for respondents No.1 and 2.

Mr. Radhey Shyam Sharma, Advocate  
for respondent No.4 .

\*\*\*\*\*

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

\*\*\*\*\*

**LISA GILL, J.**

This appeal has been preferred by the injured-claimant praying for enhancement of the compensation awarded to him by the Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as, the 'Tribunal') vide award dated 04.08.2012 on account of the injuries sustained by him in a motor vehicular accident which took place on 15.05.2010.

Facts as revealed in the claim petition are that, claimant – Sanjay Kumar alongwith his friend Manoj Kumar was proceeding from New Housing

Board Colony towards Friends Colony, Sirsa on his motorcycle No. HR-24K-8299 on 15.05.2010 at 7.30 p.m. Motorcycle was being driven by the claimant. When they reached near GTM Chowk in front of a Tractor Agency, a Maruti car No. DL-8CC-7643 driven in a rash and negligent manner at a very high speed by its driver, respondent No.1 – Gharsi Ram came from GTM Chowk side and struck against the motorcycle of the claimant. Resultantly, claimant fell down and received injuries. Driver of the car alighted from the car and disclosed his name to be Gharsi Ram. He seemed to be under the influence of liquor. Observing the injuries on the claimant, he fled from the spot. Claimant was admitted to Civil Hospital, Sirsa from where he was taken to Ganga Ji Hospital. He remained admitted there from 15.05.2010 till 19.05.2010. He was operated upon for tendon repair of the right foot. FIR No.332 (Ex.PD) dated 17.05.2010 under Sections 279/337/427 IPC was registered against respondent No.1 – Gharsi Ram.

Claim petition under Section 166 of the Motor Vehicles Act, 1988 was preferred by the claimant praying for compensation of ₹10 lacs on account of the injuries suffered by him. Claim was contested by the respondents.

Following issues were framed by the learned Tribunal:-

- “1. Whether the claimant sustained injuries in a motor-vehicular accident which took place on 15.5.2010 in the area of City Sirsa, on account of rash and negligent driving of respondent no.1 while driving Maruti Car No.DL-8CC-7643? OPP
2. If issue No.1 is proved, to what amount of compensation, the claimant is entitled to and from whom? OPP
3. Whether there is any violation of the terms and conditions of the insurance policy in question? If so, its effect? OPR-4
4. Relief.”

Learned Tribunal concluded that the claimant sustained injuries in

the accident caused by rash and negligent driving of the offending vehicle by respondent No.1 – Gharsi Ram. Compensation to the tune of ₹95,100/- was awarded to the claimant on account of the injuries and disability suffered by the claimant, break-up of which is as under:-

| <i>Sr.No.</i> | <i>Heads of claim</i>  | <i>Amount</i> |
|---------------|------------------------|---------------|
| 1.            | Permanent Disability   | ₹24,000/-     |
| 2.            | Medical expenses       | ₹49,058/-     |
| 3.            | Pain and suffering     | ₹10,000/-     |
| 4.            | Special Diet           | ₹4,000/-      |
| 5.            | Attendant charges      | ₹4,000/-      |
| 6.            | Transportation charges | ₹4,000/-      |

Aggrieved from the quantum of compensation awarded by the Tribunal, present appeal has been preferred by the claimant.

Learned counsel for the appellant submits that appellant suffered disability to the extent of 12% on account of loss of sensation over right foot and toes, restricted movement of the toes and limp while walking. He was working as a Retailer Relationship Officer (RRO) with a mobile manufacturing company, namely, MTS India. As this was a field job, his performance was necessarily affected. Claimant lost his job on account of the said injuries. Therefore, functional disability suffered by the claimant is much more than 12%. He is entitled to loss of income on this count as has been held by the Hon'ble Supreme Court in Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765. Furthermore, learned Tribunal has not awarded any compensation on account of loss of income for the period of his hospitalization or for loss of amenities. A pittance of a compensation has been awarded by the Tribunal which is liable to be enhanced.

Learned counsel for the respondents however refutes the said claims and pray for upholding the impugned award while submitting that there is no scope whatsoever for any enhancement in the compensation awarded.

I have heard learned counsel for the parties and gone through the record.

As per the evidence on record, Orthopedic disability of the claimant was assessed at 12% on account of loss of sensation over right foot and toes, restricted movement of the toes and limp while walking. Disability certificate, Ex.PW1/A was proved by PW1 Dr. Pawan Kumar, Medical Officer, General Hospital, Sirsa. PW1 Dr. Pawan Kumar in his cross-examination submits that the disability is only qua the limb and not the whole body. PW2 Dr. Swapnil Garg, Plastic Surgery Expert in the Ganga Ji Hospital, Sirsa testified that claimant was admitted in the hospital with the history of RTA as a case of post traumatic injury of right foot (tendon injury). Exploration and dorsal tendon of foot repaired under spinal anesthesia. He further explained that there was no fracture but only tendon injury was present. After follow-up, the patient was stated to be fit.

There is indeed no evidence on record to show that the claimant suffered any functional disability due to the said injury on his right foot. Though it is stated that he was dismissed from his job on account of the said injuries, there is no such evidence on record. It is relevant to note at this stage that PW3 Sorabh Chabra, Assistant Manager with the firm, MTS has proved the letter of appointment dated 06.01.2010 of the claimant i.e., Ex.PW3/A, which reads as under:-

“XX

XX

XX

XX

We are pleased to offer you employment in our organization Adecco Flexione Workforce Solutions Limited, situated, at 39A, 1<sup>st</sup> Floor, Pusa Road New Delhi-110005 ("MTSINDIA") as 'RRO' for a fixed period of employment ("Twelve"), on the following terms and conditions:

1. **The term of your employment shall be valid for a period of Twelve Month.** The likely date of your joining us should not be later than 07.01.10.
2. You shall report to work latest by 07.01.10 at 9.00 a.m. at Sistema Shyam Tele Services Ltd. Delhi.
3. Details of your salary break up with components are as per the enclosure attached herewith.
4. This contract shall be terminable by either party giving 15 (fifteen) day's notice in writing or salary in lieu of notice, to the other party.
5. You will be deputed by the Company to work at such place as you may be deputed.
6. You will be governed by the company policies with respect to leave and holidays.

In addition, to the terms of appointment mentioned above, you are also governed by the standard employment rules of the company, which are attached alongwith this letter. The combined rules and procedures as contained in this letter and the annexure will constitute the standard employment rules and you are required to read both of them in conjunction.

Here's wishing you the very best in your assignment with us and as a token of your understanding and accepting of the standard terms of employment, you are requested to sign the duplicate copy of this letter and return to us within a day.

With ward regards,  
Yours truly,  
For Adecco Flexione Workforce Solutions Limited

Sd/-  
Authorized Signatory”

It is apparent that this employment was for a fixed period of twelve months. There is no evidence to indicate that the services of claimant were terminated, if at all, on account of the said injury. It is for the claimant to lead evidence to prove his case while claiming compensation on account of a specific aspect. Claimant has failed to prove any functional disability which would hinder his prospects of earnings in any manner.

Likewise, there is no evidence on record to show that he did not get any salary for the period he was hospitalized or was unable to attend to his

duties.

He is however entitled to compensation to the tune of ₹50,000/- instead of ₹10,000/- on account of pain and suffering. He is also entitled to a sum of ₹50,000/- on account of loss of amenities keeping in view the evidence of PW1 Dr. Pawan Kumar that he would be afflicted with a permanent limp.

It is neither pleaded nor argued that the claimant is unmarried thus, there is no loss of prospect of marriage. Compensation of ₹24,000/- on account of disability and ₹49,058/- on account of medical expenses has been rightly afforded. Appellant is, therefore, entitled to enhanced compensation as under:-

| <i><b>Sr.No.</b></i> | <i><b>Heads of claim</b></i> | <i><b>Amount</b></i> |
|----------------------|------------------------------|----------------------|
| 1.                   | Permanent Disability         | ₹24,000/-            |
| 2.                   | Medical expenses             | ₹49,058/-            |
| 3.                   | Pain and suffering           | ₹50,000/-            |
| 4.                   | Loss of amenities            | ₹50,000/-            |
| 5.                   | Special Diet                 | ₹5,000/-             |
| 6.                   | Attendant charges            | ₹5,000/-             |
| 7.                   | Transportation charges       | ₹5,000/-             |
|                      | <b>Grand Total =</b>         | <b>₹1,88,058/-</b>   |

Amount already awarded by the Tribunal to the claimant under various heads shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petition till realization.

With the abovesaid modification in the award dated 04.08.2012 passed by the Motor Accident Claims Tribunal, Sirsa, this appeal is disposed of.

( LISA GILL )  
JUDGE

September 08 , 2015.  
'om'