

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

FAO No. 5489 of 2013(O&M)

Date of Decision: November 6, 2015.

Vishav Vema

..... APPELLANT (s)

Versus

Kuppili Kiran and another

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rajesh Sethi, Advocate,
Mr. Arun Biriwal, Advocate and
Ms. P.J.Sandhu, Advocate
for the appellant.

Mr. D.K.Prajapati, Advocate for
Mr. R.S.Madan, Advocate
for respondent No.2.

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.

Instant appeal has been preferred by appellant – Vishav Vema for enhancing the compensation of ₹1,00,000/- awarded to him by the Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as, the 'Tribunal') vide award dated 17.04.2013 on account of the injuries and disability suffered by him in a motor vehicular accident on 30.11.2009.

Brief facts of the case are that, appellant – Vishav Vema was proceeding on his bike from Namac Block – 104 area towards dockyard at Vishakhapatnam at about 8.00 a.m. While he was on the bridge between Ghosthani Gate and Krishana Gate and on correct side of the road, a Skoda car bearing registration No. MH-12FF-8014 being driven in a rash and negligent manner by respondent No.1 – Kuppili Kiran at a very high speed came from the opposite side and struck against the petitioner's bike. Claimant was shifted to INHT Kalyani Hospital, Vishakhapatnam. Respondent No.1 allegedly an influential officer of the Navy trying to hush up the matter. Nevertheless, FIR No.273/2009 dated 03.12.2009, Ex.P2 was registered under Section 338 IPC against the said respondent. Charge-sheet Ex.P6 was submitted against him.

Claim petition under Section 166 of the Motor Vehicles Act, 1988 was preferred by the appellant for grant of compensation to the tune of ₹40,00,000/-. It is averred that the appellant sustained grievous injuries including amputation of second, third, fourth and fifth toes of the right foot due to which he became a totally handicapped and physically impaired person. He was rendered unfit for active sea duty. Claim was resisted by the respondents and following issues were framed by the Tribunal:-

1. Whether the accident in question took place due to rash and negligent driving of Skoda Car bearing No.MH-12-FF- 8014 by respondent no.1 as alleged in the petition?OPP
2. If issue no.1 is proved, whether the petitioner is entitled for compensation if so to what amount and from whom ? OPP
3. Whether the present petition is not maintainable in the present form? OPR
4. Whether the petitioner has no locus-standi and cause of action to file the present petition?OPR
5. Whether the respondent no.1 was not holding valid driving licence at the time of accident in question?OPR

6. Relief.

Learned Tribunal while taking into consideration the facts and circumstances of the case as well as the evidence on record held that the accident in which the appellant suffered injuries and incurred disability occurred on account of rash and negligent driving of the offending vehicle by respondent No.1 – Kuppili Kiran. Said finding is informed to have attained finality as no appeal has been preferred by the respondents.

Total compensation of ₹1,00,000/- was awarded i.e., a sum of ₹50,000/- on account of pain and suffering and ₹50,000/- for disability on account of amputation of toes and fracture of proximal phalanx and distal phalanx right great toe. No amount was awarded on account of loss of income and medical expenses as the same was borne by the department and he continued to receive his salary.

Learned counsel for the appellant vehemently argues that appellant is entitled to loss of future prospects for the reason that he has been rendered unfit for active sea duty and is confined to 'shore duty'. Fact that he is retained in service, is not sufficient to deprive him of compensation on that count. It is contended that the appellant who has cleared his High Education Test (HET) for officer rank, would have been promoted to the post of Chief ERA but for this disability. He has a diploma in Marine Engineering and his future prospects are definitely affected by the said disability. Therefore, he is entitled to loss of future prospects. In similar circumstances this Court in **Budh Singh v. Pritam Singh and others, 2011-2 PLR 125** has held the injured to be entitled to

compensation on account of loss of future prospects. Furthermore, learned Tribunal has not awarded any amount on account of loss of amenities and loss of marriage prospects. Meagre compensation has been awarded on account of pain and suffering and disability incurred by the appellant. Appellant is thus entitled to enhanced compensation.

Learned counsel for respondent No.2 vehemently opposed the contention of the appellant and pleads that compensation awarded by the learned Tribunal is just and fair. There is no scope for any further enhancement. Appellant continues to be retained in service and has suffered no loss in income on account of the disability incurred.

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

Injuries suffered by the appellant are proved by PW2 Surgeon Lt. CDR Ankur Shah, INS Shivaji Lonavala, Pune. It is proved that appellant suffered amputation of 2nd to 5th toes of right foot and fracture of proximal phalanx and distal phalanx right great toe for which he remained admitted upto 29.01.2010. He underwent surgical operations. Disability certificate Ex.PW2/C i.e., the report by the Board of Doctors is proved on record. PW2 Surgeon Lt. CDR Ankur Shah has opined that on account of this disability normal duty at sea is restricted. Petitioner would not be considered for promotion in the present category but consideration can be made with the approval of the Head Quarter. As per Ex.PW2/C, appellant is recommended to be placed in Low Medical Category (LMC) S₃A₂ i.e., unfit for Sea Service but fit for Shore Service with restrictions. Promotion of Sailors placed in LMC is reflected in

Ex.PW2/G. Perusal of Ex.PW2/C does not reflect the medical category in which the appellant was ultimately placed on account of his disability. Learned counsel for the appellant is unable to point out any evidence to show loss of future prospects, especially in view of the specific stand of PW2 Surgeon Lt. CDR Ankur Shah that consideration for promotion can be made with approval of the Head Quarter. Appellant is thus not entitled to compensation on this court.

However, in view of various pronouncements of Hon'ble Supreme Court appellant is entitled to ₹1,00,000/- on account of loss of amenities and enjoyment of live.

It is not disputed that appellant was unmarried at the time of accident. He is, thus, entitled to ₹ 1,00,000/- on account of loss of marriage prospects. On account of pain and suffering compensation is enhanced to ₹1,00,000/- instead of ₹50,000/-. Appellant however is not entitled to any compensation on account medical expenses as undoubtedly no expense was incurred, treatment having been afforded by the Navy itself.

Appellant is, thus, entitled to total compensation of ₹3,50,000/- detail of which is as under:-

<i>Sr.No.</i>	<i>Heads of claim</i>	<i>Amount</i>
1.	Loss of amenities and enjoyment of life	₹1,00,000/-
2.	Loss of marriage prospects	₹1,00,000/
3.	Pain and suffering	₹1,00,000/-
4.	Disability on account of amputation of toes	₹50,000/-
	Grand Total =	₹3,50,000/

Amount already awarded by the Tribunal to the claimant 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 impugned award dated 17.04.2013 passed by the Motor Accident Claims Tribunal, Sirsa, this appeal is disposed of.

November 6 , 2015.
'om'

(LISA GILL)
JUDGE