

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

**FAO No. 5928 of 2013
DECIDED ON: DECEMBER 21, 2015**

VIJAY KUMAR

.....APPELLANT

VERSUS

RAM KUMAR AND OTHERS

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether the Reporters of the Local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or?**
- 3. Whether the judgment should be reported in the digest?**

Present:- Ms. Richa Mittal, Advocate for
Mr. Inderjeet Sharma, Advocate
for the appellant.

None for respondent No.1.

Mr. R.K. Bashamboo, Advocate
for respondent No.3-Insurance Company.

JASPAL SINGH, J

Aggrieved against award dated August 16, 2013 passed by learned Motor Accident Claims Tribunal, Rohtak whereby, appellant has only been awarded compensation to the tune of ₹61,500/- on account having sustained injuries in a vehicular accident alleged to have occurred on November 20, 2011 in the area of 20 mile stone due to rash and negligent driving of oil tanker bearing registration No. HR-46-B-5878 by Ram Kumar-

respondent No.1; appellant has preferred the instant appeal seeking enhancement.

2. Briefly stated the case of appellant is that on November 21, 2011 when he employed as Fitter Mechanic in K. International Company, HSIDC, Rai, District Sonapat was going from 20 mile stone, the offending vehicle being driven rashly and negligently by respondent No.1 struck against him. As a result of impact he suffered multiple serious injuries. He was rushed to Government Hospital, Sonapat but his condition being precarious he was referred to PGIMS, Rohtak. FIR No. 297 dated December 13, 2011 under Sections 279, 337 IPC was registered at Police Station Rai, District Sonapat against respondent No.1. The appellant while describing his age, occupation, income, nature of injuries as well as expenses incurred by him on his medical treatment claimed compensation to the tune of ₹10,00,000/- .

3. In response to notice of claim petition, respondents No.1 and 2 (owner and driver) filed joint written statement raising preliminary objection *inter-alia* on the ground that appellant has neither any cause of action to file the present petition nor he has approached the Court with clean hands. It was further averred by them that petition is non-joinder of necessary parties and mis-joinder of parties. It has further been averred that no accident was ever caused by respondent No.1 while driving the vehicle in question on the alleged date and time. Rather, respondent No.1 has been falsely involved by appellant in connivance with local police.

4. Respondent No.3-insurance company resisted the claim petition

on the ground that petition is bad for non joinder and mis joinder of necessary parties as well as that respondent No.1 was not holding valid and effective driving licence at the time of accident and was driving the tanker in question in contravention of terms and conditions of Insurance Policy. He further pleaded that FIR has been wrongly registered after a delay of more than 21 days. The factum of accident has also been denied.

5. Parties to the claim petition were afforded ample opportunity by learned Tribunal to lead evidence in respect of their respective pleadings.

6. After hearing learned counsel for the parties and appraisal of evidence brought on record by the parties, award dated August 16, 2013 was passed, as fully reflected in para I of this judgment.

7. Dissatisfied with the award, instant appeal has been preferred, notice of appeal was given to respondents.

8. While assailing the impugned award, it has been contended by learned counsel for the appellant that amount awarded by learned Tribunal is highly unjust and inadequate. Only a sum of ₹61,500/- has been awarded by learned Tribunal. A sum of ₹30,000/- has been awarded on account of permanent disability suffered by appellant to the extent of 15% whereas, only a sum of ₹1322/- has been awarded on account of medical expenses. Similarly, learned Tribunal has grossly erred in awarding only a sum of ₹10,000/- towards pecuniary loss during the period of treatment. Identically only a paltry amount of ₹20,000/- has been awarded towards special diet, transportation and mental agony. The amount deserves to be enhanced by taking into consideration all the factors for determining the just and adequate

compensation.

9. On the other hand, learned counsel for contesting respondents have supported the award and submitted that just and adequate compensation has already been awarded by learned Tribunal by taking into consideration all the factors as well as evidence. As such there is no infirmity or illegality in the impugned award and it calls for no interference of this Court.

10. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and have scanned the impugned award as well as evidence available on file and this Court finds that amount of compensation so awarded in the case in hand cannot be termed to be just and adequate. It is pretty settled that just compensation is adequate compensation which is fair and equitable on the facts and circumstances of the case to make good the loss suffered. As far as money can do so by applying a well settled principles relating to the award of compensation. The compensation awarded by learned Tribunal does not become just compensation merely because the learned Tribunal considered it to be just.

11. Adverting to the facts of the case in hand as well as award, appellant has suffered 15% permanent disability on account of Vascular Necrosis right Femoral head with restriction of movements of right hip with pain on walking and doing any moving at right hip. On account of permanent disability only a sum of ₹30,000/- has been awarded by learned Tribunal which in no case can be termed to be a just and adequate

compensation. The amount on this account deserves to be enhanced and this Court is of the considered view that it would be just and proper to award more compensation to the tune of ₹30,000/- making a total compensation to the tune of ₹60,000/- on account of permanent disability. Similarly, only a sum of ₹10,000/- has been awarded towards pecuniary loss during the period of treatment. Appellant on sustaining injuries was firstly rushed to General Hospital, Sonapat and his condition being precarious he was shifted/referred to PGIMS, Rohtak. In such a situation, by no stretch of imagination a young person having suffered 15% permanent disability and restricted hip movement could be in a position to get out of bed in 10-15 days. Rather, it would take sufficient long time to revert to normal life. So, this Court is of the considered view that atleast a sum of ₹20,000/- should have been awarded by learned Tribunal. Thus, an amount of ₹10,000/- is enhanced, making it ₹20,000/- towards pecuniary loss during the period of treatment.

12. Here it would also be pertinent to mention that only a sum of ₹1322/- has been awarded on account medical expenses. Learned Tribunal appears to have fell in error in not appreciating the actual fact that when a person suffers grave injuries at the prime of his age, he was not in a position to obtain and retain all the medical bills and to keep the record of expenses. Thus, amount awarded on account of medical expenses also deserves to be enhanced atleast to the extent of ₹10,000/-.

13. However, as far as the amount of compensation on account of special diet, transportation and mental agony is concerned, this Court is of the considered view that a sum of ₹20,000/- already awarded by learned

Tribunal is fully justified and adequate. Thus, in toto, appellant is entitled to enhancement of a sum of ₹50,000/- in addition to the amount already awarded by learned Tribunal.

14. In the light of what has been discussed above, instant appeal is partly allowed and amount of compensation stands enhanced to ₹50,000/- in addition to the amount already awarded by learned Tribunal. The amount so enhanced by this Court shall be payable by the respondent-Insurance Company within a period of two months from the date of receipt of certified copy of this judgment and in case of its failure to do so, the enhanced amount shall carry interest @ 7.5 % per annum from the date of filing of claim petition.

(JASPAL SINGH)
JUDGE

DECEMBER 21, 2015
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