

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

FAO No.5197 of 2002 (O&M)
Date of Decision: January 12, 2016.

Gulab Singh
.....APPELLANT(s).

VERSUS

Charan Singh and another
.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. B.S. Walia, Advocate
for the appellant (s).

Mr. V. Ramswaroop, Advocate
for respondent No.2.

SURINDER GUPTA, J.

This is appeal against the award dated 10.08.2002 passed by Motor Accident Claims Tribunal, Karnal (later referred to as the Tribunal) allowing the compensation of ₹72,354/- for the injuries suffered by the appellant-claimant in a motor accident with truck bearing No.JK-02F/2297. The compensation was allowed by the Tribunal on the following counts:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	For medical expenses	₹40354
(ii)	For 30% disability	₹30000
(iii)	For pain and suffering and loss of income	₹2000
<i>Total</i>		₹72,354

2. The case of the appellant-claimant, in brief, is that on 13.08.2000 at about 10.00 A.M., he was going on his motorcycle make Hero

Honda bearing registration No.CHM-191 from village Kurak to Kurukshetra. Sunder Lal son of Hari Chand was pillion rider on his motorcycle. One Gurvinder Singh son of Surjit Singh alongwith Kanwarjit Singh was also going to Kurukshetra on another motorcycle. When the claimant reached near bridge of Sarsa Canal branch, within the area of Police Station Butana, the offending vehicle came from behind, which was being driven by Charan Singh-respondent No.1 at a very high speed and in a rash and negligent manner. It hit against the motorcycle of petitioner, as a result of which he fell down and received serious multiple injuries on his person. The pillion rider also suffered injuries and died at the spot. The matter was reported to the police vide FIR No.242 dated 13.08.2000 registered at Police Station Butana. The claimants remained confined to bed for a long time and is still undergoing treatment. He has become permanently disabled.

3. Respondent No.1-driver and owner of the offending vehicle appeared but did not file any written statement and were later on proceeded against ex parte.

4. Respondent No.2-New India Assurance Company filed written statement, contesting and controverting the averments of the claimant and denied that any accident took place as alleged. It was alleged that the present petition is the result of collusion between the present claimant and respondent no.1.

5. The Tribunal on appraisal of evidence on record, concluded that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent No.1 and awarded the compensation as

described in para 1 of this judgment.

6. Learned counsel for the appellant-claimant has argued that the claimant remained admitted in the hospital for a considerable long time. He had also suffered 30% permanent disability. The Tribunal has not awarded any compensation under the conventional heads like attendant charges, loss of income, nutritious diet, future medical expenses etc. A compensation of ₹2,000/- allowed towards pain and suffering and loss of income, is on lower side. The disability suffered by the claimant has resulted in shortening of his leg and the compensation of ₹30,000/- allowed on this score is on lower side.

7. Learned counsel for respondent No.2-insurance company has argued that the Tribunal has allowed the entire medical expenses besides awarding ₹32,000/- for disability and pain and suffering. The compensation allowed is just and fair and call for no upward revision.

8. The claimant while appearing as PW1 has stated that after the accident, he was taken to the hospital of Dr. P.K. Bhatia at Karnal, where he remained admitted for about one month. He was operated upon and he had been going to Dr. P.K. Bhatia Hospital for follow up treatment which was continuing even on the date when he appeared before the Tribunal to make statement in the year 2001. He requires compensation of ₹1 lac for his future operations/medical treatment. His both knees are not in working condition. He has become disabled from standing, squatting, to walk without support and without help of attendant. After the accident, he has sold his buffalos, thereby affecting his dairy business and his crop also got damaged.

9. Dr. P.K. Bhatia, who treated the claimant, appeared as PW2 and stated that the claimant was admitted in his Nursing Home on 13.08.2000

- (i) Fracture shaft femur left side;
- (ii) Intrarticular fracture upper and tibia right side with right lower tibia exposed.

10. He provided the treatment followed by internal fixation of fracture with K-nail. PoP was cast on the right lower limb and patient was discharged on 14.09.2000. Thereafter the claimant had been coming for his follow up treatment. The statement of this witness was recorded on 11.09.2001. He has stated that claimant last came for his check up on 09.09.2001 and complained of limp and restrictions of movement of right knee. He had opined that such like patients require high protein diet. The disability certificate of the claimant Ex.P6 shows that he had suffered 30% disability.

11. Perusal of the above evidence shows that claimant had remained admitted in hospital for about one month and was discharged with PoP cast on the right lower limb. It is a matter of common knowledge that fracture injuries takes 8 to 12 weeks to heal. Such patients not only require treatment, medicines but also physiotherapy for their rehabilitation and also spend a lot on this service. In the case of claimant, who was regularly under the follow up treatment, even after one year of the accident, the Tribunal while assessing the compensation, has not allowed any compensation towards future medical expenses, services of attendant, loss of income, nutritious diet etc. The compensation of ₹30,000/- allowed to the claimant towards his 30% disability is also on lower side. K-nailing was done for the fractures and follow up procedure is also required when that K-nailing is to be removed.

12. Keeping in view the above facts and circumstances, the

compensation as awarded to the claimant, besides medical expenses, is re-assessed as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	For 30% disability (It is not 30% functional disability)	₹100000
(ii)	Pain and sufferings	₹10000
(iii)	Attendant services	₹10000
(iv)	Loss of income for four months @ ₹3000 p.m.	₹12000
(v)	Nutritious diet	₹10000
(vi)	Future medical expenses	₹20,000
(vii)	Medical expenses	₹40,354
(viii)	For loss of amenities of life	₹25,000
<i>Total</i>		₹227354

13. The appeal is allowed. The amount of compensation awarded to the appellant-claimant is enhanced from ₹72,354/- to ₹2,27,354/-. The compensation amount shall be paid to the claimant by respondent No.2- insurance company. The enhanced amount of compensation shall carry interest @ 7.5% p.a. from the date of filing of the claim petition till actual payment is made.

January 12, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE