

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

FAO No. 2244 of 1994 (O&M)

Date of decision: 11.07.2016

Master Prince

...Appellant

Vs.

Leela Krishan and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Arun Kumar Singal, Advocate
for the appellant.

Mr. P.K. Mutneja, Advocate
for respondents No. 1 and 2.

Mr. D.P. Gupta, Advocate
for respondent No. 3.

AMOL RATTAN SINGH, J. (Oral)

1. This appeal has been filed by the claimant before the learned Motor Accident Claims Tribunal, Panipat, seeking enhancement of the compensation of Rs. 1,18,174.75 paise awarded by the Tribunal, in respect of injuries sustained by him in a motor vehicle accident that took place on 18.11.1991, when the appellant, who was a minor aged 3½ years at that time, was travelling in a rickshaw from his school to home. When the rickshaw reached a particular 'chowk', the 'offending truck' bearing registration No. HYK 6454, driven by respondent No. 1 herein, allegedly in a rash and negligent manner, took a turn due

to which the front wheel struck against the rickshaw and the wooden plank on which the appellant was sitting fell down and the appellant "got stuck to the wheel of the truck and received serious injuries". He is stated to have been admitted first to Madan Hospital, Panipat and thereafter, shifted to Delhi for treatment.

2. It was claimed that Rs. 56,000/- had been spent on his treatment, which unfortunately still led to him losing his right eye, with the vision permanently and completely damaged. Consequently, compensation of Rs. 10 lacs was claimed.

3. Respondents No. 1 and 2 having filed a joint written statement and the third respondent, i.e. the insurance company with which the truck was insured having filed a separate written statement, it was alleged that the accident actually took place due to negligent plying of the rickshaw and the driver of the truck was not at fault. However, after the issues were framed, on negligence and the entitlement of compensation, if any, and the liability to pay such compensation, the learned Tribunal, on the basis of evidence led, concluded that the accident took place due to the negligent driving of respondent No. 1.

4. Upon a neurosurgeon, Dr. V.K. Rajoria from the Sehgal Neurological Research Institute, New Delhi, having been examined, and he having deposed that the appellant remained admitted to the said institute from 18.11.1991 to 05.12.1991, for treatment of brain and optic nerve injuries, and further having

opined that his right eye was damaged to the extent of 100%, and that opinion having been endorsed by one Prof. S.R.K. Malik, in respect of which documentary evidence was also led, the learned Tribunal awarded compensation in the form of reimbursement of medical bills to the extent of Rs. 38,174.75 paise and further awarded Rs. 10,000/- on account of the special diet and other necessary expenses that would have been incurred on account of the appellants' treatment. Thus, compensation of Rs. 48,174.75 paise was awarded for actual expenses incurred.

5. For the pain and suffering, permanent loss of vision of the eye and injury to the brain, a sum of Rs. 70,000/- was awarded by way of compensation. Hence, in all, a sum of Rs. 1,18,174.75 paise was awarded as the total compensation, with interest @ 18% per annum thereupon, running from the date of the filing of the claim petition till the date of realization of the amount awarded.

6. Learned counsel for the appellant, Mr. Arun Singal, submits that the appellant seeks enhancement of the aforesaid compensation, on the ground that as a 3½ year old child, having suffered a permanent impairment of vision to the extent of 100% in one eye, also having undergone the trauma of hospitalization for a long period of time, treatment in various hospitals including Madan Hospital, Panipat and thereafter Sehgal Neurological Research Institute, New Delhi and also having to visit as an OPD patient even after discharge, as noticed by the Tribunal, the

compensation of Rs. 70,000/-is highly inadequate.

7. Mr. D.P. Gupta, learned counsel for respondent No.3-M/s United India Insurance Company Limited, which was fastened with the eventual liability of paying the compensation by the Tribunal, submits that in 1991, compensation of Rs. 70,000/-, even for the aforesaid injuries, was sufficient and as such calls for no further enhancement.

8. Having heard learned counsel for the parties, I am in agreement with learned counsel for the appellant, that the aforesaid compensation of Rs. 70,000/-, given as lump sum payment for pain and suffering, permanent disablement of one eye and the trauma of a small child having to go through the accident itself and thereafter to have been admitted to different hospitals for treatment, is highly insufficient. Even accepting that possibly Rs. 50,000/- in 1991 may have been somewhat adequate compensation for pain and suffering, most definitely, in the opinion of this Court, a sum of only Rs. 20,000/- for the loss of an eye of a 3½ year old child, for the rest of his life, is less than even paltry compensation. Obviously, his chances of choice of marriage, a career of his choice and his ability to enjoy the normal day-to-day amenities of life, by reason of losing one eye, have been curtailed for the rest of his life. Accordingly, a sum of Rs.3,00,000/- is awarded by way of damages towards such permanent disability, to a 3½ year old child.

Hence, for pain and suffering at that stage, he is

awarded a sum of Rs. 50,000/-, and for the permanent loss of an eye, he is awarded Rs.3,00,000/-.

9. As regards the actual expenditure incurred, since bills of only Rs. 38,174.75 paise were produced, nothing more than that can be awarded, and Rs. 10,000/- is considered at least somewhat sufficient compensation for miscellaneous expenditure in the year 1991-92.

10. Therefore, the compensation now awarded to the appellant, is as follows:-

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|--------|--|-----------------------|
| i) | For pain and suffering: | Rs.50,000/- |
| ii) | For permanent loss of an eye: | Rs.3,00,000/- |
| iii) | For medical treatment
(as awarded by the Tribunal): | Rs.38,174.75 p. |
| iv) | For miscellaneous expenses:
(as awarded by the Tribunal): | <u>Rs.10,000/-</u> |
| Total: | | <u>3,98,174.75 p.</u> |

Thus, the amount of compensation enhanced now, over and above the amount of Rs.1,18,174.75 paise awarded by the Tribunal is Rs.2,80,000/-.

11. However, I agree with the learned counsel for the respondents, that interest @ 18% per annum was definitely extremely high even in the year 1991-92, and as such, the insurance company also being in appeal against the impugned award, (by way of the connected appeal bearing FAO No.2337 of 1994), the interest awarded by the Tribunal is reduced to 9%, on the compensation awarded by the Tribunal, i.e. on Rs.

1,18,174.75 p., running from the date of the filing of the claim petition, to the date of realization of that amount.

Thus, if the compensation amount awarded by the Tribunal has already been disbursed by the insurance company to the claimant, along with 18% interest thereupon, the interest component to the extent of 9% shall be adjusted against the enhanced compensation to be paid, as awarded by this Court today.

12. However, as regards interest on the enhanced compensation of Rs.2,80,000/- awarded by this Court now, interest @ 7% is awarded, running from the date of the filing of the claim petition, till the date of realization of the enhanced amount.

In the present case the accident is of the year 1991, i.e. almost 25 years back, with the claim petition having been instituted before the Motor Accident Claims Tribunal, on 11.02.1992, therefore, awarding of 9% interest in the year 2016, running from the date of filing of the claim petition, would, in the opinion of this Court, be burdening the respondent-insurance company with a higher amount to be paid, simply by way of interest, only because of the pendency of the appeal in this Court, for the past 22 years, the appeal having been filed in the year 1994. Therefore, the rate of interest awarded on the enhanced amount has been kept down to 7%. In fact, normally in such old appeals, it is kept down to 6% per annum, however,

since the injured victim (appellant) in this case was a 3 ½ year old child, at that time, interest @ 7% per annum has been awarded.

13. The issue with regard to negligence has been dealt with in the order of even date, passed in the insurance companys' appeal (FAO No.2337 of 1994), upholding the finding of the Tribunal against the truck driver (respondent No.1 herein), for the reasons given in that order. The issue with regard to liability to pay the enhanced compensation, has also been dealt with in that order, with no finality as yet, thereto, again in view of what is stated in that order.

14. The appeal stands partly allowed accordingly, with no order as to costs.

July 11, 2016
waseem/vcgarg

(AMOL RATTAN SINGH)
JUDGE