

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

FAO No. 1493 of 2002 (O&M)

Date of decision : April 12, 2016

Amarjit Singh

.....Appellant

Versus

Rajinder Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. S.K. Jain, Advocate
for the appellant.

Mr. Munish Dev Sharma, AAG, Haryana.

Lisa Gill, J.

This appeal has been preferred by injured - Amarjit Singh praying for enhancement of compensation awarded to him by the learned Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as the 'Tribunal') on account of injuries suffered by him in a motor vehicle accident, which took place on 01.06.1999.

As per the claim petition, appellant aged 25 years and recently married was plying a truck owned by his father earning ₹4000-5000/- per month. It is pleaded that the appellant was proceeding to Sirsa from Karnal on 01.06.1999 while driving truck No. HR-20/6933 after loading sand. He was accompanied by Kulwant Singh son of Jagdish Singh working as a Cleaner. The appellant was

driving his truck on the correct left side of the road at a moderate speed while observing all traffic rules. When they reached near village Surewala at about 6.00 a.m., a bus of the Haryana Roadways bearing registration No. HR-39/4951 approached from the opposite direction. It was driven by its driver, respondent – Rajinder Singh, who attempted to overtake another private bus in a rash, negligent and reckless manner. As a result thereof, the bus directly struck against the truck driven by the appellant. The appellant suffered grievous injuries and had to take treatment at various hospitals. He received injuries on the head, left leg, right thigh, developed fat-embolism on account of injuries on the left thigh resulting in a breathing problem. He was initially taken to Civil Hospital, Uklana, thereafter to General Hospital, Hisar and then to Civil Hospital, Sirsa. He was admitted at CMC Ludhiana for 35/36 days. A rod was inserted in his right thigh which was ultimately removed on 16.08.2000. He remained admitted at CMC, Ludhiana from 03.06.1999 to 11.06.1999 as a patient in the Intensive Care Unit and thereafter was admitted to the ward till 05.07.1999 when he was discharged. A sum of ₹8 lakhs alongwith interest at the rate of 18% per annum was claimed as compensation by the appellant.

The claim was resisted by the respondents while pleading that the bus was not driven in a rash and negligent manner and the accident in question was caused due to fault on the part of the appellant himself. A separate written statement was not filed by the respondent-driver, who adopted the written statement filed by the other respondents.

Learned Tribunal on the basis of pleadings of the parties, framed the following issues:-

- 1. Whether the accident in question has taken place due to rash and negligent driving of Rajinder Singh – respondent No. 1, while driving Haryana Roadways bus bearing registration No. HR-39/4951, owned by and during the course of employment of respondents No. 2 and 3, in which Amarjeet Singh petitioner received injuries and truck bearing registration No. HR-20/6933 of Achhar Singh petitioner was damaged? OPP
- 2. If issue No. 1 is proved to what amount of compensation the petitioners are entitled to and from whom? OPP
- 3. Whether claim petitions are not maintainable? OPP
- 4. Relief.

Learned Tribunal on assessing the evidence on record and considering the entire facts and circumstances of the case, awarded a sum of ₹1,70,000/- as compensation to the appellant on account of the injuries suffered by him, details of which are as under:-

Compensation for pain and suffering and expenses on treatment including medicines, hospitalisation charges, conveyance, special diet as well as loss of earnings	₹1,20,000/-
Compensation for disability	₹ 50,000/-
Total	₹1,70,000/-

Aggrieved therefrom, this appeal has been preferred by the appellant claiming higher compensation.

Learned counsel for the appellant vehemently argues that

there is sufficient evidence on record to show that the appellant having suffered a permanent disability of 10% is entitled to a much higher compensation especially on account of loss of earning for the period of hospitalisation and recovery. He is also entitled to compensation on account of loss of future income. The Tribunal has grossly erred in awarding a consolidated sum of ₹1,20,000/- on account of compensation for pain and suffering, expenses on treatment including medicines, hospitalisation, conveyance charges and loss of earning etc. It is submitted that the appellant was only 25 years of age at the time of the accident. He had recently got married and due to his disability faced definite loss of amenities as well. No compensation has been awarded on that account, thus, learned counsel prays for enhancement of compensation awarded on this count as well.

Learned counsel for the respondents, however, refutes the said claim and submits that the amount awarded by the Tribunal is just, fair and reasonable in the present facts and circumstances of the case and no case is made out for enhancement of the compensation already awarded.

It is relevant to note at this stage that this appeal had been placed before the Lok Adalat and vide order dated 23.08.2004 of the Lok Adalat a total sum of ₹2,44,000/- was calculated as just and fair compensation towards the appellant i.e. a sum of ₹75,000/- over and above the amount awarded by the Tribunal alongwith interest at the rate of 9% per annum from the date of filing of the claim petition till its release. A period of one month was permitted to

the respondents to give their concurrence to release of the said amount with liberty to move this Court for disposal of the appeal on merits in case they did not agree. The respondents did not agree to pay this amount and Civil Revision No. 6017 of 2004 was moved by the respondents and this appeal was listed for hearing on merits.

I have heard learned counsel for the parties and gone through the record. It is not in dispute that the appellant was injured in the accident which occurred on 01.06.1999 on account of the negligence of the driver-respondent No. 1. FIR No. 86 dated 01.06.1999 was registered against the driver of the bus in this respect. The finding of the Tribunal that the accident in question has occurred due to rash and negligent driving of the bus driver has admittedly attained finality. No appeal has been preferred by the respondents against this finding. Thus, the contention of learned counsel for the respondent-Haryana Roadways, that the driver in question has since been acquitted of the charges against him by the Judicial Magistrate First Class, Hisar on 04.03.2006, therefore, this finding should be set aside in the present appeal filed by the claimant is rejected being misconceived. Further a perusal of judgment dated 04.03.2006 produced in Court today reveals that benefit of doubt has been afforded to the bus driver while acquitting him of the charges against him. Therefore, the driver's acquittal can have no bearing whatsoever on the finding returned by the learned Tribunal in the peculiar facts and circumstances of this case.

It is proved on record by the evidence of PW 7, Dr. M.K.

Soni, Orthopaedic Surgeon, Soni Orthopaedic Hospital, Sirsa that the

appellant suffered the injuries as stated by him in the claim petition and in his testimony. He suffered fracture of the right thigh for which a rod was inserted. The appellant also developed fat-embolism and he could not walk and sit properly. It is difficult for him to stand continuously for long intervals. The period of admission in the hospital on various occasions is not disputed and stands proved from the evidence on record. As per medical certificate, Ex. P71, the appellant suffered a permanent disability of 10%.

As per PW3 Dr. Y.K. Chaudhary, Orthopaedic Surgeon, General Hospital, Sirsa, who has proved the said certificate, Ex. P71, the appellant's examination revealed restricted movement of the right hip with wasting of the right thigh. Dr. Y.K. Chaudhary, PW3 has further denied the suggestion that the disability in question would decrease with the passage of time. The relevant bills for hospitalisation and medical expenses to the tune of ₹81,000/- have been proved on record by the appellant.

Keeping in view the entire facts and circumstances of the case, the appellant is indeed entitled to enhanced compensation on account of injuries suffered by him in the accident in question.

Appellant has claimed to be earning ₹4000-5000/- per month as a driver. It is the specific case of the appellant that he used to drive a truck for the purpose of his livelihood. There is no evidence on record to refute the specific stand of the appellant. There is, however, no evidence on record to prove that the appellant was earning ₹4000-5000/- per month but in the factual matrix of the case it is reasonable to assume that he would be earning at least a sum of

₹2500/- per month by working as truck driver in the year 1999.

The appellant remained hospitalised for a period of about one month at the time of accident and the nature of injuries would clearly not permit him to resume his work as a driver for at least a period of three months thereafter, thus, he is entitled to loss of earning for the period of four months i.e. ₹10,000/- (₹2500 x 4).

Keeping in view the nature of injuries and the permanent disability of 10% suffered by him, the appellant is also entitled to compensation on account of loss of future income. It 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** that the Court should be sensitive about the functional disability suffered by the injured in a motor vehicular accident. Being a truck driver, the appellant's functional disability cannot be less than 10%. Age of the appellant, admittedly, being 25 years at the time of accident, multiplier of 18 has to be applied and an increment of 50% has to be included in view of the guidelines in **Syed Sadiq's** case (supra).

Therefore, the appellant would be entitled to loss of future income which works out to be **₹3,24,000/-** [2500x10/100 + 2500x50/100 x 12 x 18).

The amount of compensation awarded to the appellant is reworked as under:-

Loss of actual income for four months	₹ 10,000/-
Loss of future income	₹3,24,000/-
Loss of amenities	₹ 50,000/-
Pain and suffering	₹ 50,000/-
Actual medical expenses	₹ 81,000/-
Special diet, attendant charges, Transportation	₹ 20,000/-
Total	₹5,35,000/-

Appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 6.5% per annum from the date of filing of claim petition till its realization.

Amount already awarded by the Tribunal to the claimant shall obviously stand deducted from the amount of compensation as assessed above.

With the abovesaid modification in the amount of compensation, this appeal is disposed of.

April 12, 2016
rts

(Lisa Gill)
Judge