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

FAO No.546 of 2000 (O&M)
Date of Decision: May 06, 2016.

Kaushal Ram

..........APPELLANT(s).

VERSUS

Muni Shankar and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Sambodhi Kasni, Advocate, Amicus Curiae
and Ms. Kamal, Advocate for
Mr. Adarsh Jain, Advocate for the appellant (s).

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

Mr. Adish Gupta, Advocate
for respondent No.5.

Mr. Nitin Mittal, Advocate
for respondent No.6.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for respondent No.7.

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SURINDER GUPTA, J.

This is appeal filed by Kaushal Ram (later referred to as 'the claimant') seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Faridabad (later referred to as 'the Tribunal') vide award dated 05.11.1999 for the injuries suffered by him on 26.04.1996 in a motor vehicle accident while travelling in truck bearing registration No.HR-

29/C-4166, as a labourer.

2. As the only issue involved in this appeal relates to seeking of enhancement of compensation awarded by Tribunal, detailed facts of the case are being skipped for the sake of brevity.

3. The Tribunal, while deciding issue No.1, recorded the finding that the accident was caused due to rash and negligent driving of the offending vehicle by its driver and there was no lapse on the part of other vehicle involved in the accident bearing registration No.DL-1G/9935 (tanker). It awarded compensation of ₹46,880/- to claimant, which was calculated as follows:-

(i) Medical expenses	:	₹16,880/-
(ii) Pain and sufferings	:	₹30,000/-

4. Learned counsel for the appellant-claimant has argued that the claimant had suffered grievous injuries in the accident, which not only resulted in loss of earning capacity of the claimant, loss of income, loss of future amenities of life but have also made him incapable of doing labour work. The Tribunal while awarding the compensation has allowed the medical expenses of which bills were produced. No compensation was allowed towards future medical expenses, nutritious diet, attendant and transportation charges, as such, the compensation awarded by the Tribunal is highly inadequate.

5. Learned counsel for respondent No.7 has argued that the claimant did not suffer any permanent disability. The Tribunal, though, has not allowed compensation under the conventional heads separately, but awarding a sum of ₹30,000/- as compensation for pain and sufferings, which

virtually include compensation under all the conventional heads. This compensation was allowed keeping in view the status of claimant, the nature of injuries and the price index prevailing at the time of accident, as such, the compensation awarded to the claimant calls for no further enhancement.

6. The claimant, while appearing as PW1, has stated that after the accident, he was shifted by the passers-by and others to Civil Hospital, Ballabhgarh from where he was referred to Safdarjung Hospital, Delhi, where he remained admitted from 26.04.1996 to 27.06.1996 i.e. for a period of more than two months. After his discharge from the hospital, he had visited Safdarjung Hospital, Delhi for follow up treatment which was going on even on the day, he had deposed before the Tribunal on 21.01.1998. He had incurred expenses of about ₹1,40,000/- on his treatment, medicines, transportation and special diet etc. The injuries in the accident had crippled him and he faces difficulty while answering the call of nature and while attending other daily routine jobs. Prior to the accident, he was earning ₹100/- per day by doing the job of loading and unloading the trucks but now he cannot earn anything.

7. Dr. Kapil Bhatia, who was posted as Medical Officer, General Hospital, Ballabhgarh on 26.04.1996 had medico-legally examined the claimant and after examination found following injuries on his person:-

> "(i) Swelling in the left forearm 3" x 2" lacerated wound 1" x 1" bleeding present, skin deep, advised x-ray left forearm.
>
> (ii) Swelling in right thigh, painful movement. Advised x-ray right thigh, AP & Lateral view.
>
> (iii) Swelling in left thigh, painful movement. Advised x-ray left thigh, AP & Lateral view.
>
> (iv) Abrasion over the left knee 2" x 1" bleeding present, skin

deep, advised x-ray left knee, AP and Lateral view.

(v) Abrasion over posterior aspect of right foot, 1” x 1” skin deep, bleeding present, advised x-ray right foot, AP and lateral.”

8. Dr. Kapil Bhatia, while appearing in the witness box as PW4, has stated that the claimant was referred to All India Institute of Medical Sciences, New Delhi vide reference slip Ex.P4. He later on left the job and started his own nursing home under the name and style of *Ballabhgarh Nursing Home*. The claimant got himself admitted in his hospital on 17.03.1998 and was discharged on 14.04.1998. He was having fracture of left forearm both bones and was operated upon for plating of left ulna and nailing of left radius with bone grafting. The rod from left femur was removed at later stage. He has stated that for such type of injuries, patient remained bed ridden for 3-4 months and it takes 6 to 7 months to heal up the injuries. About disability of the claimant, he has stated that he was suffering pain and slight restriction which is permanent in nature. When the claimant was admitted in his hospital, the plating and nailing done in Safdarjung Hospital, Delhi were broken and repair was done by inserting nail and putting plate of left forearm. He was advised rich protein diet.

9. The evidence on record shows that the claimant remained under treatment for the injuries suffered by him for a period of about two years. It is a well known fact that even after re-union of fractures, a person requires medicines and physiotherapy etc. and has to spend a lot on these counts. As per the opinion of Dr. Kapil Bhatia, claimant has also suffered permanent disability, though he has not given any percentage of the disability and claimant has also not produced any disability certificate. However, all these

factors call for attention while determining the quantum of compensation. The Tribunal, while awarding the compensation, has looked into the bills produced on record. For the pain and suffering, the claimant has undergone for such a long period of more than two years, awarding of compensation of ₹30,000/- cannot be termed as excessive. Under the conventional heads like loss of income, future medical expenses, attendant charges, nutritious diet, transportation, loss of amenities of life etc., the claimant is entitled to compensation which have not been awarded by the Tribunal. Claimant is also entitled to loss of income for the period he remained under treatment i.e. for a period of 2 years and his loss of income being a labourer is assessed as ₹3000/- per month.

10. Keeping in view the above discussed facts and the evidence on record, compensation to the claimant is assessed/revised as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Medical expenses (as awarded by the Tribunal)	₹16880
(ii)	Pain and suffering(as awarded by the Tribunal)	₹30000
(iii)	Future medical expenses	₹20000
(iv)	Loss of income @ ₹3000 p.m. for 2 years	₹72000 (3000X24)
(v)	Attendant services	₹10000
(vi)	Transportation charges	₹10000
(vii)	Loss of amenities of life	₹40000
(viii)	Nutritious/Special diet	₹10000
Total		₹208880

11. The next question which arises for consideration is, as to who is liable to pay compensation awarded to the claimant. The Tribunal exempted the insurance company from its liability to pay the amount of compensation on the ground that the driving licence of driver of offending vehicle was not

produced on record and on this score, inference was drawn that the driver of the offending vehicle was not holding a valid driving licence.

12. The above observations of the Tribunal are not sustainable in the eyes of law; firstly, in view of the observations in case of ***National Insurance Company Ltd. vs. Swaran Singh and others, 2004(3) SCC 297***, wherein it has been held that in such eventuality, insurance company has to pay the compensation amount at the first instance and it can be allowed recovery rights against the insured for breach of terms and conditions of insurance policy. Secondly, under Section 149(2)(a) of Motor Vehicle Act, allowing of vehicle to be driven by a person not holding a valid driving licence amounts to breach of specified condition of the policy, thereby exempting the insurer from paying the amount of compensation. In this petition, there was a specific issue i.e. issue No.3, which reads as follows:-

> "(3) Whether respondent no.1 and respondent no.4 were not holding valid driving licences for driving the respective vehicles at the time of accident, if so, its effect? OPR-3 & 6

13. The onus to prove this issue was on the insurance company. On perusal of the file of the Tribunal, I find that insurer has not taken any steps to call upon the driver or owner of the offending vehicle to produce driving licence. Here, a question will arise as to whether the owner of the offending vehicle can be held liable to pay the amount of compensation or recovery rights can be allowed against him if the driver had not produced the driving licence and the insurance company has taken no steps to call upon the driver to produce the licence or had led no evidence that the driving licence of the driver was not valid.

14. Learned counsel for the insurance company has argued that when the driving licence of driver of the offending vehicle has not come on file, presumption is to be drawn that it was not valid one.

15. The above submission of learned counsel for the insurance company call for outright rejection as the onus was on the insurance company to prove that the insured has breached the terms and conditions of the insurance policy. Before the Tribunal, absolutely no attempts were made by the insurer to call upon the insured or even driver of the offending vehicle to produce his driving licence on file. Respondents No.4 and 5 have taken specific plea in the written statement that driver of the offending vehicle i.e. respondent No.4 was having valid and effective driving licence at the time of accident. This reflects that the owner of the offending vehicle had taken a specific plea that he had not breached any term and condition of the insurance policy by allowing the vehicle to be driven by a person not holding valid driving licence. The onus was on the insurer to call for the original driving licence and then to prove that it was either fake or invalid and the insured was, in any manner, responsible for the breach of terms and conditions of the insurance policy. No application was ever moved by the insurance company calling upon the driver of the offending vehicle or even its owner to produce driving licence. For the lapse on the part of insurance company, it has failed to discharge the onus to prove that the driver of the offending vehicle was not holding valid and effective driving licence. The Tribunal, has erroneously drawn adverse inference against the driver and owner of the offending vehicle which is not tenable in the eyes of law. The finding of the Tribunal on this point, while recording finding on issue No.3,

is reversed. The insurer-respondent No.7 is held liable to pay he amount of compensation.

16. The appeal is accordingly allowed with costs. Compensation amount of the claimant is enhanced from ₹46,880/- to ₹2,28,880/-. The claimant shall be entitled to the interest on the enhanced compensation amount @ 7.5% per annum, from the date of filing of the claim petition till its realisation. He is also entitled to the costs of this appeal. Respondent No.7, insurer of the offending vehicle, shall pay the compensation amount to the claimant, either by depositing the same directly in his bank account or by demand draft. Counsel fee is assessed at ₹20,000/-.

(SURINDER GUPTA)
May 06, 2016. **JUDGE**
Sachin M.