

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2657 of 1999 (O&M)
Date of Decision : 25.04.2016

Paramjit Kaur

.....Appellant

Versus

Batra Brother and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vivek Suri, Advocate
for the appellant.

Mr. R.K. Girdhar, Advocate
for respondents 1 and 2.

Mr. Manmohan Kumar, Advocate
for Mr. Suman Jain, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal by claimant-Paramjit Kaur seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Ludhiana (later referred to as 'the Tribunal') for the injuries suffered by her in a motor vehicle accident with Tanker No. HR-29-D-3099 (later referred to as 'the offending vehicle').

2. Case of claimant, in brief, is that on 04.08.1995, Paramjit Kaur-claimant alongwith her husband, son and daughter was going from village Malikpur to Ludhiana on the scooter. When they reached in the area of village Tibba near canal bridge, the offending vehicle came from side of Dehlon. Driver of the offending vehicle, who was driving it in a rash and negligent manner at a high speed, hit the scooter of husband of claimant as a result of which all the occupants of scooter fell on

the ground and suffered multiple grievous injuries. Claimant was taken to hospital of Dr. Harbans at Doraha from where she was referred to DMC, Ludhiana.

3. Claimant, aged 30 years, was running a dairy farm thereby having an income of ₹2000/- per month. She remained admitted in DMC, Ludhiana for two months and even thereafter she remained under treatment as OPD patient. A sum of ₹1 lac was spent on her treatment which included the costs of medicines purchased from outside, taxi charges, special diet and charges of attendant. She was still incurring expenses on her treatment even at the time of filing of claim petition and had suffered permanent disability due to injuries received by her.

4. Respondents no. 1 and 2 i.e. owner of the offending vehicle denied the accident and took the plea that offending vehicle was fully insured having unlimited liability of insurance company i.e. respondent no. 3. Respondent no. 4-Daljit Singh filed separate written statement, denying the accident.

5. Respondent no. 3-Insurance Company also denied its liability to pay any compensation on the ground that insured had committed breach of terms and conditions of the policy and also denied all the averments of claimant relating to accident for want of knowledge.

6. Pleadings of parties led to framing of the issues as follows:-

- (i) Whether the claimant suffered injuries in the accident as alleged due to rash and negligent driving by respondent-driver? OPP

- (ii) To what amount of compensation, the claimant is entitled to, if so, from whom? OPP.
- (iii) Whether the respondents are not liable for the payment of compensation for reasons stated in the written statement? OPR
- (iv) Relief.

ISSUE NO. 1

7. The Tribunal held that in the absence of any corroboration to the statement of claimant, she has failed to prove that the accident had taken place due to rash and negligent driving of the offending vehicle by its driver.

8. Learned counsel for the appellant has argued that claimant is the victim and eye-witness of the accident. She appeared as PW-1 and has stated that driver of the offending vehicle was driving it in a rash and negligent manner and hit against the scooter. In her cross-examination, no suggestion was given to her that the accident had not taken place due to rash and negligent driving of the scooter. Driver of the offending vehicle has not appeared to rebut the statement of claimant and the Tribunal has committed grave error while concluding that due to non-appearance of husband of claimant, who was driving the scooter, and in the absence of any corroboration, the statement of claimant cannot be believed to conclude that the accident had taken place due to rash and negligent driving of driver of the offending vehicle. The strict proof of appraisal of evidence as are applicable in criminal cases cannot be applied to claim petitions filed under the Motor Vehicles Act and conclusion

in such claim petitions are drawn by applying principle of preponderance of probabilities.

9. Learned counsel representing respondent no. 3- Insurance Company and respondents no. 1 and 2 have argued that instant petition was filed under Section 166 of the Motor Vehicles Act and the onus was heavily on claimant to prove that the accident had taken place due to rash and negligent driving of driver of the offending vehicle. The matter was reported to the police vide DDR No. 15 dated 05.08.1995, wherein claimant had stated that the accident was caused as her husband applied brakes but due to rain the scooter did not stop and hit the front tyre of Tanker (offending vehicle). Tanker dragged the scooter and she came in between the scooter and tyre of the tanker resulting in fracture of her right thigh and hip. She also received injuries on various parts of her body. DDR mentions that nobody was negligent for this accident. This is the first version given by claimant regarding the accident, as such, the Tribunal has rightly concluded that it is not proved on record that the accident had taken place due to rash and negligent driving of driver of the offending vehicle.

10. On giving careful thought to submissions of learned counsel for parties, I find that conclusion drawn by the Tribunal that statement of Paramjit Kaur-claimant does not find any corroboration, as such, the accident is not proved to have been caused due to rash and negligent driving of driver of the offending vehicle, are not legally and factually correct. The Apex

Court in the case of **Bimla Devi vs. Himachal Road Transport Corporation, 2009 (13) SCC 530** held as under:-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

11. Claimant-Paramjit Kaur while appearing as PW-1 has stated that the accident had taken place due to rash and negligent driving of the offending vehicle by its driver. He had come from side of Dehlon at a very high speed and hit the scooter. The only suggestion in cross-examination given to rebut her statement is “It is incorrect to suggest that no alleged accident took place with tanker No. HR-29-D-3099. It is further incorrect that above said vehicle was never involved in any manner in this accident.” It was nowhere suggested to claimant that the accident had not taken place due to rash and negligent driving of the offending vehicle by its driver or husband of claimant, who was driving the scooter was responsible for

causing the accident. Driver of the offending vehicle has not appeared to rebut and controvert the statement of claimant.

12. Reference of learned counsel for respondents towards *rapat* no. 15 dated 05.08.1995, has no relevance as claimant-Paramjit Kaur was not confronted with this *rapat* so as to give her chance to explain the same. This '*Rapat*', however, proves one fact that the accident had taken place with the offending vehicle. It is usually found that after the accident attempts are made to hush-up/settle the matter and such type of settlements/statement, as recoded in DDR no. 15 dated 05.08.1995 are got recorded to the police. In case, claimant-Paramjit Kaur had been confronted with this statement in her cross-examination she must have explained the circumstances under which this statement was made.

13. For the reasons and discussion above, findings recorded by the Tribunal, being not tenable, are set aside and it is held on issue no. 1 that the accident had taken place due to rash and negligent driving of the offending vehicle.

ISSUE NO. 2

14. The Tribunal while recording finding on issue no. 2, assessed quantum of compensation to which claimant is entitled as follows:-

Sr. No.	Heads	Calculation
(i)	Hospital expenses	₹32750/- (excluding medicines)
(ii)	Transportation charges	₹2500
(iii)	Expenses on medicines	₹9514

(iv)	Compensation for 20% permanent disability	₹20000
(v)	Compensation for pain and suffering	₹10000
<i>Total</i>		₹74764

15. The Tribunal in view of its finding on issue no. 1 allowed compensation of ₹25000/- to claimant under the principle of no fault liability.

16. Learned counsel for the appellant has argued that it is proved on record that claimant had remained admitted in the hospital for a long period from 04.08.1995 to 23.09.1995. Medical evidence produced on record proves that she had not only suffered physical injuries but had also suffered trauma. The Tribunal has not allowed any compensation for the nutritious diet, she required during her treatment, attendant charges, loss of amenities of life and the compensation allowed on account of transportation charges, pain and suffering are also on lower side.

17. Learned counsel for respondents have argued that the accident took place in the year 1995. The Tribunal assessed amount of compensation while taking into account price index prevailing at that time. The compensation allowed is just and reasonable and calls for no further enhancement.

18. Dr. R.S. Pandey of DMC Hospital, Ludhiana while appearing as PW-2 has stated that claimant remained admitted in their hospital from 04.08.1995 to 3.09.1995. She paid hospital charges as ₹32,750/- excluding medicines expenses. Dr. Anil Mittal of DMC Hospital, Ludhiana appeared as AW-5 and has stated that claimant was operated four times during her

admission in the hospital. At the time of her discharge on 24.09.1995, she was required to visit as OPD patient. AW-6 Dr. Gagandeep Singh, Orthopedic Surgeon, Civil Hospital, Ludhiana had issued disability certificate (Ex. A-6/1) to claimant. He has stated that claimant was operated case of K-nailing left femur with fracture tibia left with fracture pelvis. She was having pain at hip. Her disability was 20% more or less permanent but after removing K-nailing there may be some change.

19. Claimant while appearing as Pw-1 has stated that she spent about ₹1,50,000/- on her treatment which included hospital charges, taxi charges, medicines, attendant charges etc. The disability suffered by her has affected her dairy business and now she cannot walk and sit easily. Due to her accident, a servant had to be employed for domestic work to whom they paid ₹500/- per month with meals. The evidence produced by claimant proves that she remained admitted in hospital for 45 days. Even after her discharge, she was asked to visit as OPD patient. She had to undergo four operations for mending of her fractures. K-nailing was also done to manager her fracture injuries and she suffered 20% disability.

20. Even if claimant be taken as housewife, the injuries suffered by her have resulted in loss of care to her children, household jobs and discharge of matrimonial function for the husband. During her admission in the hospital, she continuously required attendant and even after her discharge she was not fully cured and required continuous medical care, treatment, physiotherapy etc. Though, AW-6 Dr. Gagandeep has

stated that after removal of K-nailing, there may be some change in her disability but no such evidence is on record to show that any change has taken place. As OPD patient she was required to visit DMC Hospital, Ludhiana from village Malikpur, Khanna and had to spend on transportation. Though, she could produce 5 receipts of transport expenses, which was looked into by the Tribunal, yet this fact cannot be ignored that for every visit to DMC Hospital, Ludhiana and physiotherapy, she may not have kept all the bills of transport expenses. The injuries have also resulted in loss of amenities of life to claimant. The Tribunal has though allowed compensation for pain and suffering and transportation charges but it had not allowed any compensation for the attendant charges, future medical expenses, loss of amenities of life. The compensation of ₹20,000/- allowed towards disability suffered by claimant is also on lower side.

21. In view of my discussion above, compensation to which claimant is entitled is assessed/revised as follows:-

Sr. No.	Heads	Calculation
(i)	Hospital expenses as allowed by the Tribunal	₹32750
(ii)	Medicine expenses as allowed by the Tribunal	₹9514 rounded off ₹9500
(iii)	Transportation charges	₹5000
(iv)	Compensation towards pain and suffering	₹10000
(v)	Compensation towards attendant charges	₹10000
(vi)	Compensation for loss of service to family	₹50000
(vii)	Compensation for loss of amenities of life	₹20000
(viii)	Compensation for 20% disability	₹100000

(ix)	Compensation for future medical expenses and physiotherapy	₹10000
<i>Total</i>		₹247250

12. As a sequel of my above discussion, the appeal is accepted. Award of the Tribunal is modified and compensation allowed to claimants is enhanced from ₹25,000/- to ₹2,47,250/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realization. Respondent No. 3 being insurer of the offending vehicle will deposit the share of claimant in her bank accounts or pay the same through demand draft.

April 25, 2016
jk

(SURINDER GUPTA)
JUDGE