

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1103 of 2001 (O&M)
Date of Decision : 23.02.2016

Raj Kumar

....Appellant

Versus

Parduman Sood and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Varun Baanth, Advocate
for Mr. A.K. Jain, Advocate
for the appellant.

Mr. Suman Jain, Advocate
For respondent no. 2.

Surinder Gupta, J.

This is appeal filed by Raj Kumar-claimant seeking enhancement of compensation allowed by the Motor Accident Claims Tribunal, Ambala (later referred to as 'the Tribunal') for the injuries suffered by him in a motor vehicle accident with Maruti car bearing registration No. CH-01-K-0751 (later referred to 'the offending vehicle') owned and driven by Parduman Sood-respondent no. 1 and insured with respondent no. 2-New India Assurance Company Ltd. Claimant was posted as Head Constable in Haryana Police, who has now taken voluntary retirement vide order dated 26.07.2000 (Ex. P-6).

2. Case of claimant, in brief, is that on 07.02.1997 at about 05.15 p.m., he was returning from duty on his scooter bearing registration No. CH-01-M-3253, on which his colleague Manjit Singh was pillion rider. The scooter was hit by the offending vehicle, which was being driven by respondent no. 1, in a rash and negligent

manner. In the accident he received grievous injuries and was taken to Civil Hospital, Panchkula by Manjit Singh. After first aid he was referred to Sector 16, General Hospital (Government Multi-Specialty Hospital), Chandigarh, from where he was referred to PGI, Chandigarh as he was in critical condition. He remained admitted in PGI from 07.02.1997 to 20.02.1997 for about 15 days. He incurred expenses of ₹20,000/- on medicines and operation, ₹5000/- on conveyance, ₹10,000/- on special diet and ₹3000/- as salary paid to attendant. He remained confined to bed. Even after discharge from hospital, he kept on visiting PGI and required operations for removal of nailing and for future medical treatment. He has also suffered 20% disability as per disability certificate (Ex. P-1) issued by the medical board. The injuries have resulted in loss of his future avenues of promotion. He cannot sit cross-leg, stand or walk for a long duration. Up-bringing of his dependants and education of his children was also adversely affected.

3. The Tribunal allowed compensation of ₹31,000/- to claimant, which was computed as follows:-

Sr. No.	Heads	Calculation
(i)	Towards pain and suffering	₹5000
(ii)	Towards special diet	₹10000
(iii)	Loss of 73 days basic salary as claimant had to remain on leave for 256 days out of which 73 days leave was allowed on full salary	₹16000
Total		₹31000

4. I have heard learned counsel for the parties, perused the paper-book and record of the Tribunal with their assistance.

5. In order to prove that claimant has suffered disability of

20%, claimant examined PW-1 Subhash Chander, Clerk in the office of Civil Surgeon, who has stated that claimant suffered 25% (sic 20%) disability as per disability certificate (Ex. P-1) issued by the medical board. Dr. P.K. Nigam, who was member of medical board that examined claimant and issued disability certificate (Ex. P-1), appeared as PW-4 and has stated that due to this disability claimant will have difficulty in sitting, standing and walking and may feel pain and require medicines for the same. The effect of injuries will remain for whole life.

6. Learned counsel for the appellant has argued that the Tribunal has not allowed any compensation for the disability suffered by claimant on the ground that it was not a permanent disability. Dr. P.K. Nigam, who appeared as PW-4, has categorically stated that the effect of this disability will remain throughout life, which shows that this is a permanent disability, though medical board has committed error while not mentioning this fact in disability certificate.

7. Learned counsel for respondent no. 2 has argued that disability as per disability certificate (Ex. P-1) was not permanent disability, as such, the Tribunal has committed no error while declining to grant any compensation on this score.

8. The Tribunal is duty bound to look into the evidence produced on record while allowing just and reasonable compensation. Claimant, immediately after the accident, was taken to Civil Hospital, Panchkula and then to GMSH, Sector 16, Chandigarh from where he was referred to PGI, Chandigarh. The medicolegal report (Ex. P-17) of claimant shows that injuries of claimant were bleeding and blood was coming out of mouth. He remained admitted in PGI, Chandigarh for

about 10 days i.e. from 11.02.1997 to 20.02.1997. There was fracture of left femur and nasal bone as mentioned in discharge and follow up card (Ex. P-7). As per entries in the discharge card (Ex. P-7), claimant remained under treatment upto December, 1997 when his fracture bone united. As per disability certificate (Ex. P-1), claimant was having partial stiffness of left hip joint. In the medical certificate, disability is not mentioned as permanent disability but Dr. P.K. Nigam while appearing as PW-4 has stated that effect of injury will remain life long. A person, who suffers fracture injury of left femur, nose etc. had to remain on bed for a quite long time. Claimant was continuously advised rest upto June, 1997 i.e. even after four months of accident. Even if, disability suffered by claimant was not declared as permanent disability by the medical board still it had impact on performance of duty by claimant who was a member of disciplinary force. This has also affected his future prospects of promotion. Ultimately in the year 2000, claimant had to apply for voluntary retirement vide application (Ex. P-4) wherein he submitted that due to disability suffered by him he is not in a position to perform his duty. On his request, he was allowed retirement w.e.f. 31.10.2000.

9. Taking all the above facts into account, I am of the considered opinion that the Tribunal has committed grave error while not allowing compensation under the conventional heads i.e. for the disability suffered by claimant; towards future medical expenses; loss of promotional avenues; expenses of attendant; and transportation charges. Taking into account the above discussed factors, claimant is held entitled to compensation as follows:-

Sr. No.	Heads	Calculation
(i)	Towards pain and suffering	₹25000
(ii)	Future medical expenses	₹20000
(iii)	Loss of salary as assessed by the Tribunal	₹16000
(iv)	Towards nutritious/special diet as allowed by the Tribunal	₹10000
(v)	Loss of promotional avenues	₹100000
(vi)	Attendant charges	₹10000
(vii)	Compensation on account of disability	₹100000
Total		₹281000

10. In view of my above discussion, this appeal has merit and is accepted. Award of the Tribunal is modified and the compensation allowed to claimant is enhanced from ₹31,000/- to ₹2,81,000/-. The amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. Respondent No. 2 being insurer of the offending vehicle will pay the amount of compensation to claimant.

February 23, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters? *Yes/No*