

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

FAO-3573-2001

DATE OF DECISION: 23.5.2016

INDERJIT

.... Appellant

VS.

RAMESH KUMAR AND OTHERS

.... Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Kulvir Narwal, Advocate
for the appellant.

Mr. Vipul Sharma, Advocate
for Mr. P.S. Saini, Advocate
for respondent No.3.

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

LISA GILL, J. (ORAL)

This appeal has been preferred by Inderjit son of Daya Nand praying for enhancement of compensation awarded by learned MACT, Rohtak on account of injuries suffered by him in an accident which took place on 25.06.1998.

Brief facts as revealed in the claim petition are that the claimant, aged 16 years at the time of accident was proceeding from the school on bicycle on 25.06.1998 at about 3:30 p.m. When he reached near government quarters, Nehru College, Jhajjar, on Jhajjar-Bahadurgarh road, the offending vehicle Tata Saloom No.DL-9CA-3186 approached from Jhajjar side. The vehicle was being driven in rash and negligent manner at a high speed and it struck against the appellant due

to which he received serious injuries on his head, hands and legs etc. The appellant was moved to the Civil Hospital, Jhajjar and thereafter to the PGIMS, Rohtak. FIR No.281 under Section 279/336/337 IPC was registered in this regard. The appellant was discharged from hospital on 22.08.1998 but continued with sustained treatment thereafter. It is averred that the appellant is permanently disabled to the extent of 92% and has lost a bright future. His studies were discontinued due to the long illness and treatment. The claimant-appellant filed a claim petition under 166 of Motor Vehicles Act claiming a compensation of Rs.8,00,000/- on this account. The claim was resisted by respondents and the following issues were framed by the learned Tribunal on the basis of the pleadings:-

- “1. Whether the accident dated 25.6.98, in the area of Jhajjar-Bahadurgarh Road, in which Inderjit petitioner suffered injuries was caused due to rash and negligent driving of Tata Saloom bearing no.DL 9CA/3186 by its driver respondent no.1? OPP
2. Whether the petitioner is entitled to any amount of compensation, if so, how much and from whom? OPP
3. Whether the petition is not maintainable as the petitioner has no cause of action? OPR1
4. Whether the respondent no.1 was not holding a valid driving licence on the date of alleged accident, if so its effect? OPR3
5. Whether the petition was filed by the petitioner in collusion with respondent no.1 and 2? OPR3

6. Relief.”

The learned Tribunal after considering the facts and circumstances of the case awarded a sum of Rs.1,12,082.75 as compensation to the appellant which is detailed as hereunder:-

I	Pecuniary Damages	Amount
(i)	Medical attendance (Bills Ex.P8 to Ex.P26)	Rs.2082.75
(ii)	Loss of earning of profit	-- -
(iii)	Other material loss Loss of one year in study	Rs.10,000/-
II	Non-Pecuniary Damages	Amount
(i)	Damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future (Ex.P1 to Ex.P7) 50% Permanent Disability.	Rs.50,000/-
(ii)	Damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit.	Rs.20,000/-
(iii)	Damages for the loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened.	Rs.20,000/-
(iv)	Inconvenience, hardship, discomfort, disappointment frustration and mental stress in life	Rs.10,000/-
	Total	Rs.1,12,082.75

Learned counsel for the appellant submits that the evidence on record proves that the appellant who was a young boy of 16 years at the time of accident, is unable to carry on with his routine activities. His

future prospects have been totally ruined because of the injuries suffered by him. As per the disability certificate Ex.P1, the appellant has suffered 50% permanent disability which is proved by the testimony of the PW1- Dr. D.S. Dhankar. The appellant has been rendered unfit for doing any job whatsoever. In such a situation, an extremely meagre amount of compensation has been granted by the learned Tribunal which deserves to be enhanced.

Above-said arguments have been refuted by learned counsel for respondent No.3, who while submitting that though the Insurance Company has been absolved of its liability to pay the compensation and the liability stands fixed upon the owner, the amount of compensation awarded is reasonable and just.

I have heard learned counsel for the parties.

This Court on 19.5.2011, on hearing submissions of the parties, passed the following order:-

“The appeal is for enhancement of claim for compensation for injuries suffered in a motor vehicle accident. The claimant is said to have suffered head injuries and the doctor, who was examined, to say that his IQ was 70 also said he was not fit for work. How the injury had really affected his general faculties or how he has become incapable of doing any work, is woefully absent from the evidence. The doctor’s evidence is also skeletal. It is a pity that in cases where serious injuries come about, there is hardly any attempt made by the parties to adduce appropriate evidence. Their anxiety lies no more than seeking sumptuous compensation only on conjectures and

there is no effort made to bring to Court what is essential for a Court to assess.

I have gone through the original file and I find that at the time when he was taken to the hospital at PGIMS Rohtak, the initial entries in the hospital record are that there are no neurological defects and that the patient was managed conservatively. Initially, X-rays of the skull taken at the hospital on 7.9.1998 show that there was no fracture of the skull and there had been, however, a fracture of the right clavicle bone. X-ray of the abdomen had also been taken. It also revealed no fracture in any part of the lower organ. The initial regimen of treatment has been conservative and the doctor has merely referred to the fact that the patient could require physio therapy and no action for neurological procedure is required. If any meaningful assessment to compensation for injuries must be made the hospital records do not provide any clue about the actual disability and how it affects his daily living.

I have already observed that the doctor's evidence and the certificate provide no assistance for the Court to make a meaningful assessment. The Tribunal has already assessed the compensation. The learned counsel argued that the disability is very serious and there is also evidence that the claimant is not fit for doing any work. The assessment of mere ₹ 50,000/- for his disability is grossly inadequate. If this disability has brought about inability to do work in future, the proper assessment must have been to

secure loss of earning capacity for the rest of his life. I am not able to, however, make such an assessment in the absence of such evidence.

I, therefore, direct that the appellant be assessed properly in his existing state of mental and physical condition and to bring appropriate evidence relating to his present status. The appellant shall appear for examination before the Director, PGIMS, Rohtak who will assign the petitioner to a Medical Board, duly constituted for assessing his disability. The Medical Board shall examine him with reference to his old medical records and give graphic details of his physical and mental condition of the petitioner.

Copy of this order is directed to be sent to the Director, PGIMS for appropriate action. The appellant shall present himself before the Director, PGIMS, Rohtak on 3.6.2011 with a copy of this order.

Report in 2 months time.

Adjourned to 20.7.2011.

Copy of order shall be issued under the signatures of the Reader of this Court.”

On 10.01.2014, it was submitted before the Court that the appellant was unable to appear before the Medical Board within the specified time. In this situation, further indulgence was afforded to the appellant and he was directed to appear before the Medical Board on 19.5.2011. As per report dated 14.07.2011, sent by the Medical

Superintendent, PGIMS, Rohtak, it was informed that the appellant-Inderjit did not appear on the said date as well. None appeared on behalf of the appellant on 06.04.2015 and this appeal was dismissed for want of prosecution on 06.04.2015 while observing as under:-

“Vide order dated 19.05.2011, this Court ordered that the Director, PGIMS, Rohtak to give report regarding medical condition of the appellant.

As per report, the appellant has not appeared before the said Board. So, it seems that the appellant is not interested in pursuing the appeal, the same stands dismissed for want of prosecution with the observation that the appeal be restored in case of necessity.”

The appeal was restored on an application moved by the appellant on 31.07.2015 and the appellant was yet again directed to appear before the Director, PGIMS, Rohtak as per order dated 19.05.2011 within one month. Surprisingly, the appellant still did not present himself before the authorities at PGIMS, Rohtak as per order dated 19.05.2011 and subsequent orders.

Learned counsel for the appellant submits that he has intimated the appellant about all the orders passed by this Court directing him to appear before the authorities at PGIMS, Rohtak. He had informed his client about the order dated 31.07.2015 as well, wherein opportunity had been afforded to the appellant to yet again submit himself before the authorities at PGIMS, Rohtak for proper evaluation of his mental and physical condition. Such information has been given by the counsel

telephonically as well as through letters. Thereafter, no information is forthcoming from the appellant despite strenuous efforts made by the counsel to contact his client. Learned counsel submits that letter dated 11.04.2016 was last sent to the appellant through a registered post. Yet again, there is no response from the appellant.

In view of the events as narrated above, and the specific observations of this Court on 19.05.2011, there appears to be no justification for assessing the functional disability of the appellant in any manner. There is indeed no evidence on record to show that the appellant suffers from any disability or inability to do any work due to the injuries suffered by him in the said accident. By not submitting to the authorities at PGIMS, Rohtak, the appellant has successfully prevented a proper assessment of his existing state of mental and physical condition though this Court had repeatedly extended its indulgence at various stages.

In this situation, reliance by learned counsel for the appellant on the judgment of Hon'ble the Supreme Court in **V. Mekala Vs.M. Malathi & Anr. in Civil Appeal No.4880 of 2014** is irrelevant. In the said case, there was specific evidence on record to show the nature of disability of the claimants.

Be that as it may, there is no dispute that the appellant remained hospitalized from 25.06.1998 to 22.08.1998.

In this view of the matter, the compensation awarded under the head of pain and suffering is enhanced from Rs.50,000/- to Rs.1 lac, taking the total compensation to be awarded to Rs.1,62,682.75 instead of Rs.1,12,082.75. The appellant will be entitled to interest @ 6.5% on the enhanced amount from the date of petition till realization. The amount already paid shall obviously be adjusted accordingly.

No further interference is called for, in this appeal. With the above-said modification in the quantum of compensation awarded to the appellant, this appeal is disposed of.

(LISA GILL)
JUDGE

23.05.2016
SwarnjitS