

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

**FAO No.794 of 2001 (O&M).
Date of Decision: 07.04.2016.**

Ramesh Kumar

....Appellant.

VERSUS

Baldev Singh and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Jagdeep Singh, Advocate for
Mr. R.S. Mamli, Advocate for the appellant.

Mr. I.P.S. Issar, Advocate for respondent No.1.

Service upon respondent No.2 was dispensed with vide order
dated 21.04.2015.

SNEH PRASHAR, J.

By way of this appeal, appellant-claimant Ramesh Kumar seeks enhancement of compensation awarded by Motor Accident Claims Tribunal, Jagadhri (for short, "the Tribunal") vide award dated 15.02.2000 passed in MACT Case No.85 of 1998 filed by him on account of injuries sustained in a vehicular accident that took place on 31.08.1998.

The submissions made by Mr. Jagdeep Singh, learned counsel for the appellant and Mr. I.P.S. Issar, learned counsel for respondent No.1 have been heard and record perused.

On 31.08.1998, the appellant-claimant alongwith his younger brother Yash Pal was going to village Jeena Majra by means of his motorcycle bearing registration No.HR-02A-4742 when at about 8:00 a.m. his motorcycle was hit by a four-wheeler bearing registration No.HNE-9122 (hereinafter referred to as the “offending four-wheeler”). His allegation was that the accident occurred due to rash, negligent and high speed driving of the said four-wheeler by Baldev Singh (respondent No.1). The appellant filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) against driver-owner and insurer of the offending four-wheeler. For want of particulars the insurer was not named. Respondent No.1 could also not disclose the particulars but he contested the petition raising various objections. On the basis of the rival pleadings of the parties, issues were settled. Considering the evidence led by the parties and the submissions made on their behalf, learned Tribunal partly allowed the petition and awarded compensation of Rs.14700/- alongwith interest at the rate of 12% per annum from the date of filing the petition till realization to the appellant.

Feeling unsatisfied with the award, the appellant preferred the instant appeal.

Learned counsel for the appellant argued that as mentioned in the discharge slip Ex.P1 the appellant had suffered head injury with hemiplegia. He remained hospitalized for a period of one month and the amount of Rs.5000/- awarded by learned Tribunal on account of pain and suffering is extremely less. Huge amount was spent by the appellant on

miscellaneous expenses like transportation, special diet etc., but nothing was awarded by learned Tribunal on those counts. The appellant also suffered loss of income during the period he remained hospitalized and when he was on follow up treatment but that was also not taken into consideration by learned Tribunal.

The finding of learned Tribunal that the accident that took place on 31.08.1998 was caused by respondent-Baldev Singh while driving the offending four-wheeler to the extent $2/3^{\text{rd}}$ i.e. 66.7% and by the appellant to the extent of $1/3^{\text{rd}}$ i.e. 33.3%, had not been challenged by the appellant by way of instant appeal. His only grievance is that he has not been adequately compensated for the pecuniary and non-pecuniary loss suffered by him due to the injuries sustained in the accident.

From the discharge slip Ex.P1, it stands established that the appellant had suffered head injury with hemiplegia during the accident and that he remained hospitalized w.e.f. 31.08.1998 to 30.09.1998 i.e. for a period of one month at Gaba Hospital, Yamuna Nagar. Learned Tribunal observing that since it was stated by PW1 Des Raj, father of the appellant, that the appellant was taken to P.G.I., Chandigarh for better treatment on the day of accident but on the very next day he was sent back to Jagadhri and was admitted in Gaba Hospital, shows that the injury suffered by the appellant was not considered to be serious requiring treatment from an expert like neurologist at the P.G.I., awarded only Rs.5000/- on account of pain and suffering undergone by the appellant. The appellant may have remained admitted just for one day at P.G.I., Chandigarh but the fact

remains that he remained hospitalized at Gaba Hospital, Yamuna Nagar for one month and that he had suffered head injury with hemiplegia. In Ex.P1, it is mentioned that the CT scan report showed small contusion in right temporal-parietal region with minimal mass effect. Because the doctor at Yamuna Nagar was competent to treat the injury suffered by the appellant, it cannot be said that the injury was minor and was not so serious. Considering the nature of injury suffered by the appellant, the amount of Rs.5000/- awarded on account of pain and suffering is enhanced to Rs.15,000/-.

At the first instance, the appellant was brought to P.G.I., Chandigarh from Yamuna Nagar for better treatment but on the next day he was taken back to Yamuna Nagar and he remained hospitalized for about one month. The facts prove that the appellant had spent on his own transportation as well as on the transportation and boarding-lodging of his family members during the period he was hospitalized. He also must have spent a good amount on his special diet etc. On both these counts, a further amount of Rs.5000/- is allowed.

Needless to say that during the period the appellant remained hospitalized and also when he was on follow up treatment i.e. atleast another one month after discharge, he was not able to attend to his normal duties and he suffered loss of income for that period. The accident is of 1998 when the appellant was 28 years old. Assessing his income as Rs.2500/- per month, an amount of Rs.5000/- is allowed to the appellant on account of loss of income. Since the ratio of the appellant in causing the

accident was held as 33.3%, he is entitled to 2/3rd part i.e. 66.7% of the enhanced compensation.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 15.02.2000 passed by learned Tribunal is modified. The enhanced compensation of Rs.13,333/- shall be deposited by respondent No.1 within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization.

(SNEH PRASHAR)
JUDGE

07.04.2016.
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