

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

FAO No. 1504 of 2004 (O&M)

Date of decision : 27.05.2016

Israil

.....Appellant

Versus

Ighlas and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sandeep Jasuja, Advocate
for the appellant.

Ms. Sonal Datta, Advocate
for respondent No. 3.

LISA GILL, J.

This appeal has been preferred by the appellant – Israil son of Himmat Khan for enhancement of compensation awarded to him vide award dated 17.12.2003 passed by the learned Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'Tribunal') on account of injuries suffered by the appellant in the motor vehicle accident, which took place on 04.04.2002.

Brief facts as mentioned in the claim petition are that the appellant was proceeding from Sohna to Ghasera in a three wheeler driven by respondent – Ighlas on 04.04.2002. Driver of the three wheeler was driving the three wheeler vehicle in a rash and negligent manner and did not pay any heed to the request of the occupants to

drive the vehicle at a moderate speed. When the three wheeler was near Rewasan, it turned on its side due to which the appellant was crushed under the vehicle, thereby receiving serious injuries. Said three wheeler was not bearing any registration number and the number was mentioned as having been applied for. FIR mark 'F' was registered in respect to the accident in question. The appellant was taken to Civil Hospital, Nuh and thereafter referred to Safdarjung Hospital, New Delhi where he remained admitted till 06.05.2002. Appellant's spinal cord snapped and he lost all control of his limbs particularly his lower limbs. It was claimed that he was bedridden having no sensation of urination and defecation and he suffered 100% disability. Compensation to the tune of ₹15 lakhs was claimed on account of injuries received by the appellant, who was alleged to be engaged in purchase of wood and preparing coal from the same for the purpose of sale. Claim petition under Section 166 of Motor Vehicles Act was preferred by the appellant, praying for compensation to the tune of ₹15 lakhs.

The claim was resisted by the respondents and the following issues were formulated on the basis of pleadings of the parties:-

1. Whether the accident in question took place due to the rash and negligent driving of respondent No. 1 of a three-wheeler which had no registration number displayed thereon at the time of accident, as alleged in the petition? OPP
2. If issue No. 1 is proved, whether Israil petitioner sustained injuries in the accident in question and is entitled for compensation. If so, to what amount and

from whom? OPP

3. Whether respondent No. 1 had no valid and effective driving licence at the relevant time to drive the offending vehicle? OPR-3

4. Whether respondent No. 1 was not driving the offending three wheeler under the authority and control of the registered owner. If so, its effect? OPR

5. Whether respondent Nos. 1 and 2 had contravened any term and condition of the insurance policy. If so, its effect? OPR-3

6. Relief.

Learned Tribunal on taking into consideration the facts and circumstances of the case as well as the evidence on record decided issue No. 1 in favour of the claimant holding that the accident in question took place due to rash and negligent driving of the three wheeler bearing Engine No. AIN-20809 driven by respondent-Ighlas and the appellant sustained injuries in this accident leading to 100% disability. This finding is reported to have attained finality.

The appellant's income was taken to be ₹2,100/- in the absence of any evidence on record to prove a higher income. On account of permanent disability suffered by the appellant as well as loss of future prospects and amenities, including loss of income and expenses required for the attendant, a lump-sum amount of ₹3,40,000/- was awarded. ₹50,000/- was awarded on account of pain and suffering and ₹10,000/- for special diet, transportation and another sum of ₹13,000/- on account of medical expenses incurred by him. A total amount of ₹4,13,000/- was awarded by the learned

Tribunal and the insurance company has been held liable to make good the payment.

Learned counsel for the appellant vehemently argues that it is proved on record that the appellant has suffered 100% disability and is totally disabled and suffers from complete paraplegia. The appellant was aged about 40 years at the time of the accident and his entire life has come to a standstill due to this accident. He is unable to carry out the routine motions of a human being and is completely dependant on another in each and every aspect of life, apart from the fact of having to suffer the trauma and such misery throughout his life. In such a situation, the learned Tribunal has grossly erred in awarding such a meagre sum of money as compensation for the injuries suffered by the appellant. He prays for enhancement for the same.

Learned counsel for the respondent - insurance company while not refuting the factum of 100% disability suffered by the appellant as well as the fact that he suffers from complete paraplegia, submits that adequate compensation has been awarded by the learned Tribunal calling for no further enhancement.

I have heard learned counsel for the parties and gone through the available record. There is no dispute about the appellant having received the injuries in question due to rash and negligent driving of the three wheeler by respondent No. 1. The said finding has attained finality with no challenge to the same. It is also not in dispute that the appellant was hospitalised from 04.04.2002 till 06.05.2002.

Dr. Subhash Sindhu, PW1 has proved the disability certificate Ex. P1 whereby permanent disability suffered by the appellant has been assessed as 100% on account of traumatic fracture T-12 spine with complete paraplegia. He cannot carry on with his daily pursuits and leave alone the routine ablutions, he cannot even turn on his side without the attendant's aid. In such a situation, there is no escape from the fact that the functional disability of the appellant is indeed 100%.

It has been held by the Hon'ble Supreme Court in **Sayed Sadiq etc. versus Divisional Manager, United India Insurance Company 2014 (1) R.C.R. (Civil) 765** that the Court should be sensitive about the functional disability suffered by the claimant and award compensation accordingly. In the instant case, the appellant's age was about 40 years at the time of accident. Thus, he is entitled to 50% increment on account of loss of future prospects and a multiplier of 15 is required to be applied.

As per the guidelines in **Sayed Sadiq's** case (supra), the appellant would be entitled to loss of future income assessed at **₹5,67,000/-** $[(₹2100 \times 100/100 + 50/100 \times 100/100 \times ₹2100) \times 12 \times 15]$. Keeping in view the prolonged hospitalisation and unending trauma, which the appellant faces even today, compensation on account of pain and suffering is enhanced to ₹1,50,000/- from ₹50,000/- as awarded by the Tribunal. The appellant is also entitled to ₹1,00,000/- on account of loss of amenities. Keeping in view of the fact that the appellant suffers from complete paraplegia and is not even able to take a turn on his side by himself, it is considered

appropriate to award a sum of ₹1,50,000/- on account of future medical expenses including the expenses for attendant. Actual medical expenses of ₹13,000/- awarded by the Tribunal is maintained and compensation on account of special diet and transportation are assessed as ₹20,000/- instead of ₹10,000/-. The appellant is, thus, entitled to enhanced compensation detailed as under:-

Loss of future income	₹5,67,000/-
Pain and suffering	₹1,50,000/-
Loss of amenities	₹1,00,000/-
Future medical expenses including attendant charges	₹1,50,000/-
Actual medical expenses	₹13,000/-
Special diet and transportation	₹20,000/-
Total	₹10,00,000/-

Amount of compensation already awarded to the appellant shall stand deducted from the amount calculated as above. Appellant shall be entitled to interest at the rate of 6.5% per annum on the enhanced amount from the date of filing of the petition till realization.

With the abovesaid modification in the amount of compensation, present appeal is partly allowed.

May 27, 2016
rts

(Lisa Gill)
Judge