IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3165 of 2008
Date of Decision-20.10.2016

Imran Khan ... Appellant

Versus

Shammi Dutta and another ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Gopal Mittal, Advocate for the appellant.

Ms. Maninder Kaur, Advocate for respondent No.2.

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<u>RAJ MOHAN SINGH, J.</u>

[1]. This is an appeal filed by the claimant against the award dated 06.08.2007 passed by Motor Accident Claims Tribunal, Chandigarh (for short 'Tribunal') whereby the amount of Rs.66,500/- was awarded in favour of the appellant against the respondents jointly and severely. The appellant was also held entitled to an interest @ 8% per annum from the date of filing of the claim petition till final realization of the amount.

[2]. The accident took place on 24.07.2001 when the claimant was driving his motorcycle and Wasim was sitting as a pillion rider. Both of them left their residence from Kajheri Masjid. When they reached outer road Sector 43 near Kajheri Chowk divider, then the offending Maruti car came from behind which was being driven rashly and negligently by respondent No.1 and struck against the motorcycle. Due to impact, both the occupants of the motorcycle fell down on the road. Claimant-appellant suffered

multiple injuries. He was 30 years of age at the time of accident and was running beauty parlour and hair cutting saloon. He claimed his income to be 60,000/- to 70,000/- per annum. A rod was inserted in his right leg and he remained admitted in PGI, Chandigarh from 24.07.2001 to 27.07.2001.

[3]. Claimant alleged that he spent an amount of Rs.2,00,000/- on his treatment. The matter was also reported to the police and FIR No.209 of 2001 was registered at Police Station, Sector-36, Chandigarh. Claimant assessed loss to the tune of Rs.5,00,000/- and made a claim to that effect.

[4]. Respondent No.2 contested the claim petition. Respondent No.1 was proceeded against *ex parte* after service through publication. Respondent No.2-Insurance Company took all customary pleas that the driver of the car was not having valid and effective driving licence. Though respondent No.2 admitted the car was duly insured.

[5]. Tribunal decided issue No.1 in favour of the claimant by holding that the accident took place due to rash and negligent driving of respondent No.1. While deciding issue No.2, the Tribunal found that in view of documents Ex.C1 to Ex.C97, the claimant was admitted in PGI, Chandigarh and treated there from 24.07.2001 till 27.07.2001. A rod was also inserted in his right leg by way of operation on 25.07.2001. The stitches were removed after 15-20 days. The plaster was made for six weeks. The bones were not

united and plaster was removed. Again the claimant consulted Dr. Bhim Sen Aggarwal at Sector 18 on 20.04.2002, who advised the claimant that plates would be fixed and rod would be removed by way of operation. Therefore, the claimant consulted Dr. Santosh K. Aggarwal and got treatment from him. Claimant asserted that he had spent an amount of Rs.2,00,000/- on his medical treatment. He also spent an amount of Rs.10,000/- for regular check up at PGI, Chandigarh. Claimant was not in a position to move freely without an attendant. He had kept a full time attendant namely Ajit on the monthly salary of Rs.3000/- per month which was later on increased to Rs.3500/- per month w.e.f 01.01.2005. He had incurred an amount of Rs.3000/- towards special diet. He was self employed person and was earning Rs.60,000/- to Rs.70,000/- per annum. Tribunal found that the aggregate of the amount arising from bills Ex.P2 to Ex.P89 was Rs.39,900/-. For want of documentary proof with regard to running a beauty parlour and hair cutting saloon, Tribunal did not consider the said plea. Even the owner of the shop namely Rajesh Sood was not examined in order to prove tenancy of the claimant. Running a business of beauty parlour and hair cutting saloon was disbelieved. Since no disability certificate was produced on record, therefore, Tribunal assessed total amount of Rs.66,350/- rounded off to Rs.66,500/- as compensation to the claimant. The amount was ordered to be paid by the respondents jointly and severely along with interest @ 8%

per annum from the date of filing of the claim petition till final realization of the amount.

[6]. I have heard learned counsel for the parties.

[7]. Ex.C2 is a Saral form of income tax return for the assessment year 2002-03. The gross income was shown to be Rs.73,340/-. Tribunal has granted only Rs.39,900/- towards medical treatment. In day to day treatment there are some unforeseen expenses likely to be incurred by the claimant. In my considered opinion award of Rs.50,000/- under medical treatment would suffice to serve the purpose keeping in view the insertion of rod in the right leg of the claimant and his future treatment in different hospitals. Tribunal has granted an amount of Rs.1,450/- towards transportation charges which in considered opinion of this Court is on the lower side. Keeping in view the contingency factor and incapacity of claimant to move freely and for his impending future course of treatment, a consolidated amount of Rs.10,000/- would be sufficient to meet the requirement of transportation for the past and future events. Tribunal has awarded only a sum of Rs.25,000/- towards special diet, pain and suffering, loss of work and attendant charges. The consolidated amount of Rs.25,000/- for all these heads would be totally on the lower side inasmuch as that the injury suffered by the claimant would require strong protein diet in order to unite the bones. It has come in evidence that the plaster had to remove on account of non-union of the bones at one point of time.

Pain and suffering, loss of income on account of injury and attendant charges are to be awarded separately. It would be just and appropriate to award an amount of Rs.10,000/- towards special diet and an amount of Rs.25,000/- towards pain and suffering. Since no permanent disability has been brought on record, therefore, loss of income on account of permanent disability cannot be appreciated. However, there would be a definite loss of income on account of such an injury on the person of the claimant. Some guess work has to be done on that premise. Loss of income for at least 3 months can be assessed to meet the requirement on this head. An amount Rs.15,000/- would be just and appropriate under the head of loss of income on account of injury. Further it has come on record that the claimant had employed one person namely Ajit as his attendant at the monthly salary of Rs.3500/-. Attendant charges for 5 months can be assessed to the claimant keeping in view the injury and non-union of fracture at first point of time. An amount of Rs.15,000/- @ 3000/- per month would be just and appropriate in respect of attendant charges. In view of aforesaid, total amount of compensation would come out to be Rs.1,25,000/-.

[8]. In view of above, the amount of compensation is worked out as under:-

Sr. No.	Heads	Amount awarded by the Tribunal	Amount assessed in appeal	Difference
1	Medical expenses	39,900/-	50,000/-	10,100/-

2	Transportation charges	1450/-	10,000/-	8550/-
3	Special diet, pain and suffering, loss of income and attendant charges	25,000/-	65,000/- (10,000 + 25,000 + 15,000 + 15,000 = 65,000/-)	40,000/-
4	Total Compensation	66,350/- rounded off to 66,500/-	1,25,000/-	58,500/-

[9]. The enhanced amount i.e. 58,500/- shall carry interest @ 8 % per annum from the date of filing of the claim petition till final realization of the amount. The aforesaid amount would be payable by the respondents jointly and severely.

[10]. With the aforesaid modification, the present appeal stands disposed of.

(RAJ MOHAN SINGH)
JUDGE

20.10.2016
Prince

Whether reasoned/speaking Yes/No

Whether reportable Yes/No