

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 5432 of 2005 (O&M)
Date of Decision : 16.02.2016

Bani Singh

....Appellant

Versus

Ishaq Mohmad and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sagar Aggarwal, Advocate
for Mr. Ashit Malik, Advocate
for the appellant.

Mr. R.K. Bashamboo, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal by Bani Singh-claimant seeking enhancement of compensation allowed by the Motor Accident Claims Tribunal, Karnal (later referred to as 'the Tribunal') vide award dated 04.08.2005.

2. Case of claimant, in brief, is that on 11.06.2002 at about 09.30 a.m., Bani Singh-claimant (appellant) was going from village Bastara to Saharanpur on his scooter bearing registration No. UP-11-E-9408. He was driving the scooter at a moderate speed following the traffic rules. Mamtesh and 1½ year old Sahil were on pillion seat. When they reached at crossing of Bastara on G.T. road in the area of Karnal, he stopped the scooter waiting for traffic to clear. In the meanwhile, his scooter was hit by truck bearing registration No. HR-38-D-7532 (later referred to as 'the offending vehicle'), by coming on wrong side of the road, which was being driven in a rash and negligent manner by respondent no. 1-Ishaq Mohamad. The claimant and other occupants of scooter fell

on the road and received multiple serious and grievous injuries. The matter was reported to the police vide FIR No. 99 dated 12.06.2002, registered at Police Station Madhuban, Karnal.

3. Petition under Section 166 of the Motor Vehicles Act, claiming compensation for the injuries received by Bani Singh, was filed by his wife Smt. Mamtesh. She alleged that Bani Singh was 26 years old cloth merchant and was earning ₹5000/- per month. In the accident he had received injuries on his head and his leg also got fractured. He was treated at Civil Hospital, Karnal and Patel Super Specialty Hospital, Karnal. The injuries received by claimant Bani Singh have rendered him permanently disable and unable to earn anything. He had spent ₹50,000/- on his treatment which was still continuing.

4. Respondents no. 1 and 2 were proceeded *ex parte* while respondent no. 3-Insurance Company contested the claim petition *inter alia* pleading that the accident had taken place due to fault of claimant Bani Singh himself and the police had wrongly registered the FIR against respondent no. 1.

5. On appraisal of evidence, the Tribunal recorded the finding that the accident had taken place due to rash and negligent driving of offending vehicle by respondent no. 1.

6. While computing compensation for the injuries received by claimant, the Tribunal allowed compensation of ₹53,180/- towards medical expenses and ₹25,000/- towards pain and sufferings, admission in hospital, special diet, attendant charges, permanent disability etc. (total ₹78,138/-).

7. Learned counsel for the appellant has argued that

claimant remained admitted in hospital for one month. PW-4 Dr. Sameer Aggarwal has stated that the claimant remained admitted in Patel Super Specialty Hospital from 11.06.2002 to 19.06.2002. Dr. Rakesh Girdhar PW-2 has stated that the claimant remained admitted in General hospital, Karnal from 19.06.2002 to 11.07.2002. Disability certificate (Ex. P-4) prescribes the permanent disability of claimant as 50%. Dr. B.K. Mishra, who was member of medical board which issued the disability certificate, appeared as PW-3 and has stated that physical disability qua whole body was 12.13% and qua the particular limb it was 55%-60%, whereas remaining disability was mental disability. The claimant was suffering from schizophrenia due to head injury received by him. The disability suffered by claimant due to head injury has made him unable to earn his livelihood and this fact has not been looked into by the Tribunal while computing the amount of compensation. The compensation allowed under the conventional heads is also on lower side.

8. Learned counsel for respondent no. 3-Insurance Company has argued that disability, the claimant has suffered, due to the accident is of mal-union and deformity of leg joint which in no manner affect the earning capacity of a person. So far as problem of schizophrenia is concerned, the claimant has failed to prove that it was result of injury suffered by him in the accident. The Tribunal besides reimbursing the medical expenses has allowed ₹25,000/- towards the conventional heads which is sufficient and reasonable amount of compensation. The plea that claimant is suffering from schizophrenia due to injuries received

by him, has been added just to seek inflated amount of compensation. Dr. B.K. Misra PW-3 has not ruled out that he may be suffering from schizophrenia even prior to the accident in question.

9. It is proved on record that the claimant remained admitted in hospital for a period of about one month. Immediately after the accident he was taken to Patel Super Specialty Hospital, Karnal. Dr. Sameer Aggarwal, who treated the claimant, has stated while appearing as PW-4 that the claimant had sustained head injury and fracture of both bones right lower limb. The head injury was managed by him conservatively while the fracture of both bones right lower limb was managed by Dr. Girdhar, an orthopedic surgeon. However, Dr. Sameer Aggarwal has nowhere stated that schizophrenia, with which the claimant is suffering, is the result of head injury suffered by him. The claimant had been visiting clinic of this doctor even after his discharge from Patel Hospital. PW-2 Dr. Rakesh Girdhar, Medical Officer, Civil Hospital, Karnal has stated that on 19.06.2002, the claimant was admitted in General Hospital, Karnal with head injury and compound fracture of leg bones of the right side. He was discharged on 11.07.2002. Unilateral fixator was applied for fracture of leg bones, which was removed by operation at the time of discharge. PW-3 Dr. B.K. Misra was the member of medical board, which assessed physical and mental disability of claimant. He has stated that the claimant was found suffering from schizophrenia and mal-union of fracture of right leg causing deformity when examined on 02.09.2004 i.e. more than two years after the

incident. The behaviour of claimant was abnormal, aggressive and violent at times and he talked incoherently and had abnormal perceptions.

10. From the medical evidence as discussed above, it is not made out that any injury suffered in the accident has resulted in the claimant suffering from schizophrenia. There is no evidence that he has been rendered 100% disable to earn his livelihood. The doctor has opined that at occasions he was aggressive and violent.

11. PW-2 Dr. Rakesh Girdhar has stated that the claimant was initially treated at Patel Neurosurgical centre. PW-4 Dr. Sameer Aggarwal, who has treated him, has nowhere stated that the injury suffered by claimant has resulted in his suffering from schizophrenia or has aggravated this problem. In the absence of direct medical evidence on this score, the Tribunal has rightly concluded that the claimant is not suffering from schizophrenia because of the injuries received by him.

12. From the evidence on record, it is proved that claimant has suffered 12.13% disability of whole body. He also remained admitted in hospital for one month. Even thereafter, he had been going for medical check up. The Tribunal has not taken into account all these factors while assessing compensation under the conventional heads and has committed grave error while allowing a gross sum of ₹25,000/- in lump sum on this score.

13. The claimant had suffered loss of income and it is well known factor that when a person suffers fracture of bones of leg it takes 8 to 12 week for bones to unite before he can attend his regular business. The deformity in the leg has also resulted not

only in disability but also the loss of amenities of life. Such a patient also requires future medical treatment including repeated visits to doctor and physiotherapy etc. but the Tribunal has not allowed any compensation on this score.

14. Keeping in view the above facts and circumstances, compensation to which the claimant is entitled in this case is tabulated as follows:-

Sr. No.	Heads	Calculation
(i)	Towards medical expenses (as calculated by the Tribunal)	₹53138
(ii)	Towards disability	₹120000
(Iii)	Future medical expenses	₹20000
(iv)	Loss of income @ ₹5000/- per month for three months	₹15000
(v)	Nutritious diet	₹10000
(vi)	Towards pain and suffering	₹25000
(vii)	Transportation expenses	₹15000
(viii)	Attendant charges	₹20000
(ix)	Loss of amenities of life	₹30000
Total		₹308138

15. 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 ₹78,138/- to ₹3,08,138/-. The amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petition till actual realization.

February 16, 2016
jk

(SURINDER GUPTA)
JUDGE

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