

203.

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

FAO No.4223 of 2011 (O&M)

Date of decision: 08.02.2016

Tej Singh

... Appellant

versus

Rajesh Kumar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Satinder Kumar Rana, Advocate,
for the appellant.

Mr. D.K. Prajapati, Advocate,
for Mr. R.S. Madan, Advocate,
for respondent No.3.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The appeal is for enhancement of claim for compensation for injuries suffered in an accident that took place on 20.06.2009 and the evidence revealed that on account of the accident, he had suffered serious injuries that involved fracture of the neck of femur, fracture of segment sharp femur and a compound fracture of the tibia. External fixators were made apart from an attempt at open reduction by implants for joining the broken bones.

The evidence already given was that he had three spells on hospitalization, one on 20.06.2009 upto 01.07.2009 and again on 21.04.2010 for a week and after the appeal was filed, he was again admitted on 14.05.2011 and discharged on 19.05.2011. For the hospital expenses incurred after the filling of the appeal, the appellant had filed an application for collection of additional evidence and this court had allowed the additional evidence to be collected from the Motor Accident Claims Tribunal. Before the Tribunal, the appellant has sought to summon Dr. Mukesh Jain, who was treating him and the Surgeon has merely deputed a hospital Manager to give evidence on the medical expenses incurred but he himself had not come to court to testify. The appellant has also secured the evidence for the purchase of medicines by examining a Storekeeper and Pharmacist. The report given by the Tribunal on the basis of evidence was that the best person who could have spoken about the additional expenses and the need for a third surgery was the doctor himself and he was not examined. Even the appellant did not recall himself to speak about the present injuries and the compulsions that required yet another surgery.

2. The report is an obvious fallout of the poor quality of evidence adduced by the appellant before the Tribunal. Unfortunately, the parties are only guided by the counsel whom they employ and it is a reality that we have not learnt many a lesson for

what is appropriate to be stated and what is quality of evidence that has to be brought in. Section 169 of the Motor Vehicles Act allows for a flexible approach at the trial and empowers the Tribunal to adopt its own procedure and not to be trammled by the trappings of CPC. If the Tribunal has any doubt that the treatment undertaken was not a sequel to the injury which he had suffered, it should have been possible for the Tribunal to invoke its power under Section 169 (3) of the Motor Vehicles Act and collect such evidence. It must be remembered at all times that the proceedings under Motor Vehicles Act are not adversarial litigation and there are legislative imperatives for adopting a pro-active approach to give meaning to welfare legislation of securing to the claimant what is just.

3. I have seen through the evidence given already at the time of trial and the compound fracture that is suffered. I have also seen through the bills which are now produced and vouched for their genuineness by the examination of a hospital Manager. The major portion of the expenses are the Surgeon's fee of ₹50,000/- and cost of implant at ₹55,000/-. Most desirably, the claimant himself must have examined to speak about the requirement of such replacement but I venture to believe that the nature of surgery that is carried out at the very same spot could not have been for any reason other than the fact that the implant already placed was required to be replaced and therefore another surgery was required to be performed. This

again ought to have been through proper medical bills but if I allow for these claims, basing reliance on the fact that the documents produced help me assess the necessity for such an operation. It should have normally come through proper evidence of the party himself and the doctor. The additional expenses are to the tune of ₹2,15,902/- and I reckon this to be a part of the treatment expenditure for the injuries already suffered. To this extent, the report of the Tribunal is set aside and I will allow for the additional amount of what was brought through these bills. Component of damages for pain and suffering has been exceedingly modest. In an attempt to standardize the claim for compensation for injuries, this court has suggested for a minimum amount of not less than ₹7,500/- for each fracture and for pain and inconvenience that a person goes through surgery procedure to an additional amount of ₹5,000/-. For three surgeries and for a prolonged hospitalization at various different stages and the post operative treatment which the claimant had undertaken on 26.05.2011, 13.06.2011, 20.06.2011, 27.06.2011, 28.07.2011, 02.09.2011 and 19.10.2011, I will make possible an additional amount of ₹10,000/- towards transportation. I will also provide for ₹5,000/- as an additional amount for special diet. I will take the component of pain and suffering for the three fractures and the surgical intervention made at ₹15,000/- each. This would constitute an additional amount of ₹45,000/- over what had been

already assessed. In all, therefore, the total additional amount shall be ₹2,15,902/-, ₹10,000/- as transportation, ₹5,000/- as special diet and additional amount of ₹45,000/- as pain and suffering, that would come to ₹2,75,902/-. I will make no modification with reference to the disability for the best of evidence simply not possible without examining the doctor of the present condition after the surgery. There shall be consequently an additional compensation of ₹2,75,902/- which shall attract interest at 7.5% from today till date of payment, for, many of the heads are expenses incurred subsequent to the filing of the petition and during the course of appeal and, therefore, the Insurance Company cannot be unnecessary mulcted with interest more than what is necessary.

4. The award stands modified and there shall be claim of compensation in the manner referred to above. The appeal is allowed on the above terms.

(K.KANNAN)
JUDGE

08.02.2016
sanjeev