IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

XOBJC-215-CII-2014 in/and
FAO No.1930 of 2012 (O&M)
Date of Decision: August 08, 2016.

Ajit Singh

..........APPELLANT(s).

VERSUS

Jagtar Singh and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sham Lal Bhalla, Advocate
for the appellant (s).

Mr. Gaurav Mohunta, Advocate
for respondent No.2/cross-objector.

Mr. Maninder Arora, Advocate
for respondent No.3-insurance company.

****

SURINDER GUPTA, J.

CM-24852-CII-2014

Learned counsel for respondent No.2/cross-objector has argued that delay of 121 days in filing the cross-objections was caused as the cross-objector was not intimated about the decision of the claim petition. It was on receipt of notice in the execution petition, he came to know and immediately filed application under Order 9 Rule 13 CPC seeking setting aside of ex parte award. In the meanwhile, claimants filed appeal seeking enhancement of amount of compensation. The cross-objector withdrew the application to pursue their remedy before this Court, which resulted in delay of 121 days in filing the cross-objections.

The application is supported by affidavit. The same is allowed and delay of 121 days in filing the cross-objections is, hereby, condoned.

FAO-1930-2012

This is appeal filed by Ajit Singh (later referred to as 'the claimant') seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Patiala (later referred to as 'the Tribunal') vide award dated 25.07.2011 for the injuries suffered by him in a motor vehicle accident, which took place on 07.06.2008 due to rash and negligent driving of truck bearing registration No.HR-58B/0223 ((later referred to as 'the offending vehicle') by respondent No.1 Jagtar Singh.

The owner of the offending vehicle namely Tarsem Kumar also filed cross-objections challenging the rights allowed by the Tribunal to the insurance company i.e. respondent No.3 to recover the amount of compensation paid to the claimant from him.

As the only issues involved in this appeal and the cross-objections relate to seeking of enhancement of compensation as well as recovery rights allowed to the insurance company respectively, detailed facts of the case are being skipped for the sake of brevity.

Firstly, I take the cross-objections filed by Tarsem Kumar ***(XOBJC-215-CII-2014)***.

On issue No.4, as to "*whether respondent No.1 was not holding a legal and valid driving licence at the time of accident? OPR*", the Tribunal recorded the findings in para 9 and 10 of the award, which are reproduced as follows:-

> "9. Ld. Counsel for respondent no.3 submitted that the driver of the truck was not having valid and effective driving licence at the time of accident. The report of investigating agency Ex.R2 has been relied upon. Ex.R3 is the copy of driving licence of respondent no.1 Jagtar Singh along with report of licensing authority, Patiala. As per the said report, driving licence No.7212/R/02 is in the name of Sukhwinder Singh son of Chain Singh.
>
> 10. It is proved that driving licence which is alleged on the name of Jagtar Singh, is fake document. In the office of licensing authority, said driving licence No.7212/R/02 is actually issued in the name of Sukhwinder Singh son of Chain Singh. Neither respondent no.1 nor respondent no.2 has rebutted the said evidence. They have preferred not to contest the petition. No other driving licence alleged to have been possessed by respondent no.1 has been placed on record. The evidence of the respondent no.3 is unrebutted and it is proved that on the day of accident, respondent no.1 was not holding valid and effective driving licence. This issue is decided accordingly against respondent no.3 and in favour of respondents no.1 and 2 (*sic in favour of respondent no.3 and against respondents no.1 and 2*)."

On perusal of the record of the Tribunal, I find that the above finding is based on misreading of evidence on record. Driving licence of Jagtar Singh, driver of the offending vehicle was produced on record as Ex.R3. It was bearing No.12732/R/C/06. Licensing Authority, Patiala has made report that this licence was issued in the name of Jagtar Singh and is valid. Based on the report of Licensing Authority, investigator engaged by the insurance company also gave report Ex.R2 that the driving licence, copy of which is Ex.R3 had been issued in the name of Jagtar Singh son of Nirmal Singh (respondent No.1). The report (Ex.R2) of investigator is reproduced as follows:-

> "Sub:- Verification of DL No.12732/Rev Dt. 23.6.06 in the name of Jagtar Singh s/o Nirmal Singh in MACT Case '*Ajit Singh V/s Jagtar Singh*'
>
> Sir,
>
> I have verified the above DL from Sh. Sampuran Singh, Clerk D.T.O. Patiala on 15.12.10. D.L. No.12732/R/C/06, 23.2.06 to 22.02.2009 for LMV/HMV. DL No.997/C/2000 Endst. No On 31.3.2000, DL No.9770/R/99, 21.10.99 to 20.10.2002 has been issued in the name of Jagtar Singh son of Nirmal Singh, DL No.7212/R/02 is in the name of Sukhwinder Singh son of Chain Singh as per DTO Patiala record. Report of Sh. Sampuran Singh Clerk D.T.O. Patiala is enclosed. Bill is also enclosed."

The Tribunal misread this document and recorded the finding regarding driving licence No.7212/R/02, which was in the name of one Sukhwinder Singh son of Chain Singh. This appears to have skipped the attention of the Tribunal that the number of driving licence of respondent No.1 as mentioned in Ex.R3 is 12372/R/C/06. The investigator had made report regarding three driving licences simultaneously and the Tribunal by mistake or inadvertence, took note of the last driving licence mentioned in his report.

Learned counsel for respondent No.3-insurance company could not rebut the evidence produced by it. Consequently, the findings of the Tribunal on issue No.4 are reversed and are recorded against respondent

No.3-insurance company. Being the insurer of the offending vehicle, respondent No.3 is under liability to indemnify the insured i.e. cross-objector. The award passed by the Tribunal to the extent it grants right to the insurance company to recover the amount of compensation paid to the claimant from the insured is set aside and the cross-objections are allowed.

Now, I take the appeal filed by the claimant (***FAO No.1930 of 2012***) seeking enhancement of compensation.

The Tribunal allowed compensation of ₹1,48,800/- for the injuries suffered by claimant Ajit Singh, which were computed as follows:-

1.	Loss of income	: Rs.4600/-
2.	Attendant Charges	: Rs.1500/-
3.	Pain and sufferings	: Rs.12,500/-
4.	Amputation of leg	: Rs.75,000/-
5.	Loss of future income	: Rs.55,200/-
	Total	: Rs.1,48,800/-

Learned counsel for the claimant has argued that the claimant had suffered 70% permanent disability due to amputation of his right leg below knee level. The claimant is an ex-serviceman and was working as a security guard with a bank. The amputation has rendered him incapable to perform the job as security guard, who is expected to be very active and is supposed to respond to emergency situation as and when so arise. In this manner, he has suffered 100% loss of income. Even if the loss of income is taken as 70%, the same work out to be around ₹1,80,000/- as per the age of the claimant and salary he was getting at the time of accident. The compensation awarded by the Tribunal on the conventional heads i.e.

towards pain and suffering and expenses on attendant is quite meagre, particularly when it is proved on record that claimant remained admitted in hospital from 07.06.2008 to 28.07.2008 i.e. for about 52 days. He had also lost amenities of life and now requires artificial limb but no compensation has been granted under these heads. The Tribunal did not allow any compensation towards nutritious diet and transportation expenses.

Learned counsel for respondent No.3-insurance company has argued that the Tribunal awarded just and reasonable amount of compensation keeping in view the price index prevailing at the time of accident. For the loss of future income, compensation of ₹55,200/- and for amputation of leg, compensation for ₹75,000/- was allowed. The claimant has not produced on record any evidence that after the accident, he has lost his income which he was getting as security guard.

The claimant is an ex-serviceman. After the accident, he remained admitted in the Army Hospital for about 52 days and even afterwards, he required assistance of an attendant. His right leg was amputated below knee. Colonel K.S. Kumar, Senior Advisor, Surgery and Orthopaedics, Command Hospital, Eastern Command, Chandi Mandir appeared as PW4 and stated that the claimant was admitted with crush injury on right leg and foot with compound fracture tibia fibula with vascular injury. He was operated and emergency amputation below knee level of right leg was conducted on 08.06.2008. On 03.07.2008, wound debridement and skin grafting was done. On his discharge on 28.07.2008, he was advised for follow up in OPD. Two months later, he was given below knee prosthesis right side. He has further opined that with this kind of injury, claimant has become permanently disabled and he is unable to walk and run, thereby, affecting his daily activities.

The statement of Colonel K.S. Kumar shows that the claimant remained under treatment for about 4-5 months. In a case of amputation of any organ, victim/patient require continuous medical advice, care and treatment, which affect his daily routine. The claimant has also suffered loss of future amenities of life and require artificial limb so as to be able to walk. The amount of compensation under the head of pain and suffering and expenses on attendant, in the facts and circumstances, call for upward revision and re-assessed as ₹20,000/- and ₹10,000/- respectively. The Tribunal has not allowed any compensation towards nutritious diet and transportation charges, which is also allowed @ ₹5,000/- each on both heads. 100% loss of income to the claimant for a period of five months is allowed, which is enhanced from ₹4,600/- to ₹11,500/-. For loss of amenities of life, he is awarded compensation of ₹40,000/- and for artificial limb ₹25,000/-. The Tribunal has also allowed loss of future income to the claimant for two years. His age has been taken as 56 years. He would have continued performing his services as security guard, which is a private job, for any length of service, at least upto the age of 65 years. By applying the multiplier as provided in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121*** and taking the loss of income as 70%, I assess the compensation on this score as ₹1,80,000/-.

In view of my above discussion, the compensation to which the claimant is entitled to is re-assessed as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Loss of income for five months	₹11500
(ii)	Amputation of leg (as assessed by the Tribunal)	₹75000
(iii)	Pain and suffering	₹20000
(iv)	Loss of future income	₹1,80,000
(v)	Attendant services	₹10000
(vi)	Transportation charges	₹5000
(vii)	Loss of amenities of life	₹40000
(viii)	Nutritious/Special diet	₹5000
(ix)	Artificial limb	₹25000
Total		₹3,71,500

The appeal is accordingly allowed. Compensation allowed to claimant is enhanced from ₹148,800/- to ₹3,71,500/-. The claimant shall be entitled to the interest on the enhanced compensation amount @ 7.5% per annum, from the date of filing of the claim petition till its realisation. Cross-objections filed by cross-objector i.e. owner of the offending vehicle are also accepted and the award passed by the Tribunal to the extent it grants right to the insurance company to recover the amount of compensation paid to the claimant from the insured is set aside.

The statutory amount of ₹25,000/- deposited by the cross-objector be refunded to him.

(SURINDER GUPTA)
JUDGE

August 08, 2016.
Sachin M.

√
Whether speaking/reasoned: ***Yes/No***
√
Whether Reportable: ***Yes/No***