

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

FAO No.5946 of 2011.

Date of Decision: 01.04.2016.

Jaibir

....Appellant.

VERSUS

Pawan Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. K.K. Saini, Advocate for the appellant.

Mr. Jagjit Beniwal, Advocate for respondents No.1 and 2.

Mr. Rajneesh Malhotra, Advocate for respondent No.3.

SNEH PRASHAR, J.

Appellant-Jaibir filed a petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) claiming compensation for the injuries suffered by him in a motor vehicular accident that took place on 15.12.2009 at 5:00 p.m. near the office of Municipal Council, Bhiwani. He was travelling in auto rikshaw No.HR-61-9659 which turned turtle due to its rash and negligent driving by Pawan Kumar (respondent No.1). A First Information Report No.324 dated 16.12.2009 in respect of the accident was registered at Police Station Civil

Lines, Bhiwani under Sections 279, 337 and 338 of the Indian Penal Code against Pawan Kumar.

The driver Pawan Kumar, owner Balbir and insurer Cholamandalam MS General Insurance Company were impleaded as respondents in the petition. They contested the petition but based on the evidence led by both the parties, learned Tribunal arrived at the conclusion that the accident had occurred due to rash and negligent driving of the Auto Rikshaw by Pawan Kumar-respondent No.1 and the appellant is entitled to compensation for the multiple serious and grievous injuries suffered by him. The consolidated amount of Rs.50,000/- on account of disability, pain and suffering, hospitalization, special diet and transportation etc. was awarded to the appellant.

Feeling dissatisfied with the award, the appellant preferred the instant appeal.

The submissions made by Mr. K.K. Saini, learned counsel for the appellant, Mr. Jagjit Beniwal, learned counsel for respondents No.1 and 2 and Mr. Rajneesh Malhotra, learned counsel for respondent No3-insurance company have been heard and record perused.

Learned counsel for the appellant contends that the appellant suffered grievous injuries including fracture in both legs during the accident. He spent approximately Rs.1,00,000/- on his treatment. Being a government employee, though some medical bills were reimbursed to him by his department, but the entire expenditure on treatment, medicine etc. had not been reimbursed. He suffered permanent disability to the extent of

22% and also spent huge amount on transportation, attendant, special diet etc., but was not adequately compensated by learned Tribunal.

Controverting the above argument, learned counsel for the respondents submitted that the disability suffered by the appellant was qua lower limb and left upper limb and not qua the whole body. It was also likely to improve with physiotherapy etc.

A perusal of the disability certificate Ex.P7 shows that the physical impairment suffered by the appellant was qua lower limb involving both legs and left upper limb. As per the note given in Ex.P7 the disability was 'non progressive' and 'reassessment was not recommended'. Meaning thereby that the disability was permanent and was not likely to improve, but it was not qua whole body. Indeed, the appellant being a government employee had suffered no loss in earning capacity because it was not his case that he had been terminated or demoted or that he was facing reduction in salary due to the disability suffered by him. It was also not pleaded or proved that is pecuniary promotional avenues had been affected in any manner. Yet, the fact remains that because of the disability the appellant will suffer loss of enjoyment of amenities in life and will have discomfort in discharge of daily necessities of life especially when the disability was with regard to both legs. The physical structure once shattered does not get normal even with best of treatment. Following the law laid down by Hon'ble Apex Court in **Ram Karan Goyal vs. Sub Divisional Engineer, Mechanical and others, 2008(2) R.C.R. (Civil) 103** the appellant is awarded an amount of Rs.44,000/- (Rs.2000/- per percentum) as

compensation for the disability suffered by him. For loss of amenities of life a further amount of Rs.50,000/- is awarded to the appellant.

Having suffered serious injuries including fracture in both legs the appellant remained hospitalized at General Hospital, Bhiwani w.e.f. 15.12.2009 to 06.01.2010 i.e. for 22 days. Needless to say that he required a special attendant during the period of hospitalization as well as till he was able to stand on his own legs and walk. Even if it is taken that his family members were attending on him, he must have spent on their transportation, boarding-lodging etc. In addition to that he must have spent on his own transportation and special diet. Considering all the said facts, an amount of Rs.50,000/- is allowed to him for the pain and suffering undergone by him and Rs.30,000/- for transportation, attendant and special diet etc.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 22.03.2011 passed by the Tribunal is modified. The appellant-claimant is held entitled to enhanced compensation of Rs.1,74,000/- which will include the consolidated amount of Rs.50,000/- already awarded by learned Tribunal. The enhanced amount of compensation shall be deposited by the respondents within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization.

(SNEH PRASHAR)
JUDGE

01.04.2016.

jitender