

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

FAO No.7283 of 2011.

Date of Decision: 10.02.2016.

Bablu

....Appellant.

VERSUS

Parveen Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Vivek Khatri, Advocate for the appellant.

Mr. Vijay Singh Kajla, Advocate for respondent No.1.

Mr. Ravi Malik, Advocate for
Mr. Sandeep Goyat, Advocate for respondent No.2.

Mr. Harsh Aggarwal, Advocate for respondent No.3.

SNEH PRASHAR, J.

The present appeal has been filed by the claimant-appellant, seeking enhancement of the compensation amount awarded by the learned Motor Accident Claims Tribunal, Hisar (for short, “the Tribunal”), on account of the injuries sustained by him, in a motor vehicular accident, which took place on 20.01.2010.

The facts that emerge from the record are as under:-

On 20.01.2010 appellant Bablu alongwith Meera and Bharpai was coming from Sanjay Nagar to Hisar city by means of a three-wheeler

No.HR-39B-2763 (hereinafter referred to as the “offending vehicle”) driven by Parveen Kumar (respondent No.1) in a rash and negligent manner. As there was heavy fog, Meera and Bharpai requested Parveen Kumar to drive the vehicle at a moderate speed but he did not pay any heed and continued driving the vehicle rashly and negligently and in a high speed and at about 10:00 a.m. when they reached near Gagandeep Colony, Parveen Kumar lost control/balance and the offending vehicle turned turtle. As the appellant fell down on the road he suffered fracture and head injury.

The appellant was first admitted to AMC Hospital, Churamani Complex, Hisar for treatment. Subsequently he was treated and operated upon by Dr. Neeraj Satija and Dr. Sanjay Sheoran and other doctors of various hospitals. He pleaded that he remained admitted in the hospital for one month and spent Rs.2 lacs on his treatment, transportation, special diet, medicines and physiotherapy.

A petition claiming compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) filed by the appellant against driver, owner and insurer of the offending vehicle was partly allowed by the Tribunal and an amount of Rs.1,00,000/- alongwith interest at the rate of 9% per annum from the date of filing of the petition till realization of the amount was awarded to him as compensation.

Feeling unsatisfied with the award dated 20.09.2011, the appellant preferred the instant appeal.

The submissions made by Mr. Vivek Khatri, learned counsel representing the appellant, Mr. Vijay Singh Kajla, learned counsel

representing respondent No.1, Mr. Ravi Malik, learned counsel for respondent No.2 and Mr. Harsh Aggarwal, learned counsel for respondent No.3 have been heard and record perused.

Learned counsel for the appellant submitted that on the date of accident i.e. 20.01.2010 the appellant was a minor child aged 12 years. PW4 Dr. Neeraj Satija, Consultant Orthopaedic Surgeon, Balaji Hospital, Hisar who treated the appellant, testified that the appellant was admitted in his hospital on 24.01.2010 with diagnosis of 'closed fracture left both bones forearm with hand injury and with facial injury'. He was operated with close reduction and internal fixation of left forearm and was discharged on 26.01.2010.

Learned counsel further referred to the statement of PW1 Dr. Reena Jain, Medical Officer, General Hospital, Hisar, who being member of the Board of Doctors proved the disability certificate Ex.P1 of the appellant. Learned counsel asserted that as mentioned in the discharge certificate Ex.P1, the appellant had suffered permanent disability to the extent of 11%. He had also suffered disfiguration of face. While assessing the non pecuniary damage, learned Tribunal has not considered the fact that the appellant has become permanently disabled in his childhood and therefore deserves to be compensated for the mental and physical shock suffered by him and for loss of immunity of life on account of inconvenience, discomfort, frustration etc. and for loss of future prospects. To support his argument that for the disability of the appellant being 11% he should have been allowed compensation to the tune of Rs.3 lacs, learned counsel relied

upon **Master Mallikarjun vs. Divisional Manager, The National Insurance Company Limited and another, 2013(4) R.C.R. (Civil) 295.**

Indeed, according to the disability certificate Ex.P1 proved by PW1 Dr. Reena Jain, the appellant was found to be suffering from permanent disability to the extent of 11% in relation to his left upper limb and cosmetic disfiguration of face. Apparently, the disability was not qua whole body but was only qua left upper limb and disfiguration of face. Indeed, as pointed out by learned counsel for the respondents, the other medical evidence produced by the appellant does not appear to be much reliable as while according to PW3 Dr. Sanjay Sheoran, the appellant was hospitalized at Malik Hospital, Hisar on 20.01.2010 with history of roadside accident and was discharged on 07.02.2010, PW4 Dr. Neeraj Satija, Consultant Orthopaedic Surgeon, Balaji Hospital, Hisar deposed that the appellant was admitted in his hospital on 24.01.2010 and was discharged on 26.01.2010. The appellant could not have been admitted at two hospitals i.e. Malik Hospital, Hisar and Balaji Hospital, Hisar at the same time during the period 24.01.2010 to 26.01.2010. It only shows that some manipulation was done in getting prepared the treatment record of the appellant.

In any case, the disability certificate Ex.P1 could not be disputed by the respondents. Learned tribunal awarded Rs.22,000/- on account of the disability suffered by the appellant. However, considering the fact that the appellant has sustained permanent disablement in his left upper limb and there has also been facial disfiguration due to the injuries, the compensation on the count is enhanced to Rs.1 lac (which will include

the amount already awarded by the tribunal). The amount spent by the appellant on treatment and medicines etc. i.e. Rs.63,800/- was allowed to him which calls for no intervention.

The tribunal awarded Rs.14,200/- on account of expenses on hospitalization, pain and suffering and other remaining heads. Considering the fact that the appellant, being a small child even if was being taken care of by his parents in the hospital, they must have spent good amount on their transportation, boarding and lodging etc. and they also must have incurred expenses on transportation of the appellant from one hospital to the other, the amount of Rs.14,200/- is enhanced to Rs.50,000/- on account of expenses on transportation, pain and suffering, special diet, attendant etc.

In view of the above, the claimant-appellant is held entitled to enhanced compensation of Rs.1,13,800/- as indicated above. The amount shall be paid within a period of 45 days from the date of receipt of certified copy of this judgment, failing which, the appellant shall be entitled to interest at the rate of 7.5 per annum from the date of filing of the appeal till its realization.

In view of the above, the present appeal is partly allowed and the impugned award is modified to the above extent. The question regarding liability interse respondents will remain the same.

(SNEH PRASHAR)
JUDGE

10.02.2016.
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