

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 6549 of 2012
Date of Decision : 18.05.2016

National Insurance Company Ltd.

.....Appellant

Versus

Mohan Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Mr. Jagjit Singh, Advocate
for Mr. Ashwani Talwar, Advocate
for the appellant.

None for the respondents.

Surinder Gupta, J.

This is appeal by National Insurance Company Ltd. against award dated 10.10.2012 passed by the Motor Accident Claims Tribunal, Kurukshetra (later referred to as 'the Tribunal') allowing compensation of ₹8,01,835/- for the injuries suffered by claimant-Mohan Singh in accident with motor vehicle bearing registration No. HR-05V-6339 (Swift Car) (later referred to as 'the offending vehicle').

2. Case of claimant, in brief, is that on 08.07.2011, he alongwith Randhir Singh was coming from village Dhand to their village Hathira on motorcycle. Claimant was pillion rider on the motorcycle which was being driven by Randhir Singh. Near *Fauji Dhaba* in the area of Police Station, Dhand, the offending vehicle, which was being driven by its driver in a rash and negligent manner, hit the motorcycle resulting in serious injuries to claimant and Randhir Singh.

3. As the only point raised by learned counsel for the appellant is with regard to grant of excessive compensation to claimant on account of

50% disability, detailed facts of the case are being skipped for the sake of brevity.

4. The Tribunal computed amount of compensation awarded to claimant as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Medical Bills	₹196935
(ii)	Compensation for pain and agony and amount spent during 31 days admission in hospital	₹46500
(iii)	Compensation towards pain and suffering	₹40000
(iv)	Compensation towards 50% disability	₹518400 (taking the salary of claimant as ₹5400/- per month to which annualized multiplier of 16 was applied?)
<i>Total</i>		₹801835

5. Learned counsel for the appellant while confining his submissions with regard to grant of compensation of ₹5,18,400/- on account of 50% disability suffered by claimant has argued that the disability suffered by claimant was not a functional disability. It was disability due to restriction of movement of left hip and knee with non-union of right tibia. PW-3 Dr. R.L. Arya, who has proved the disability certificate, has stated that disability was assessed qua a particular limb and not qua whole body and it will definitely reduce to some extent with passage of time, physiotherapy and medication. The Tribunal has wrongly taken 50% disability as 50% loss of income to claimant.

6. On giving a careful thought to submissions of learned counsel for the appellant, I find that calculation of compensation on account of permanent disability as awarded by the Tribunal is excessive. The disability

suffered by claimant was not functional disability to the tune of 50% and has not resulted in loss of income to the tune of 50% as calculated by the Tribunal.

7. It is a settled principle of law that the Tribunal has to award just, fair and reasonable compensation to the victim in a motor vehicle accident. Claimant while appearing as PW-1 has stated that he received various fracture injuries in the accident. He is an agriculturist and was earning ₹15,000/- per month. However, he could not produce any evidence with regard to his income. He was not possessing any agricultural land and was cultivating the land owned by his father. 50% disability of an organ has no doubt restricted the movement of claimant but has not resulted in loss of income to the tune of 50%. The compensation on this score as calculated by the Tribunal by taking monthly income of claimant as ₹5400/- and by applying multiplier of 16, was not called for in this case. Though, loss of functional disability has not come on file but restriction in movement of hip and knee certainly affect earning capacity and future prospects of claimant.

8. Though, claimant is not in appeal but while re-assessing compensation, the other aspects which have been ignored by the Tribunal while awarding compensation can be looked into this appeal to calculate just, fair and reasonable amount of compensation. In this case, the Tribunal has not allowed any compensation for the attendant charges, nutritious diet, future medical expenses, loss of amenities of life, transportation charges and loss of income etc. Claimant has remained admitted in hospital for three months. It can be visualized that a person, who has suffered fracture injury and has remained admitted in hospital for three months will take about six months to fully cure. Even at the time of his medical examination while

united. His medical examination was conducted about nine months after the accident.

9. Taking note of all the above facts, I am of the opinion that while reducing amount of compensation awarded for the disability, claimant is also entitled to compensation on the above conventional and other heads as discussed above. The compensation allowed for 50% disability is reduced from ₹5,40,000/- to ₹3,00,000/-. Under the conventional heads, claimant is entitled to compensation as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	For future medical expenses	₹50000
(ii)	Loss of income for four months @ ₹5400	₹5400x4=21600
(iii)	Attendant charges	₹15000
(iv)	Nutritious diet	₹10000
(v)	Transportation	₹10000
(vi)	Loss of amenities of life	₹150000
<i>Total</i>		₹256600

10. The compensation when allowed on all the above heads will compensate for the cut imposed towards the compensation awarded for 50% disability.

11. In view of my above discussion, despite accepting the contention raised by learned counsel for the appellant, I find no reason to reduce amount of compensation as awarded by the Tribunal. Consequently, this appeal has no merits.

Dismissed.

May 18, 2016
jk

(SURINDER GUPTA)
JUDGE