

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

FAO No.2343 of 2013

Date of Decision: 20.12.2016

Mahabir Singh

... Appellant

Vs.

Rang Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Akashdeep Singh, Advocate,
for the appellant.

Mr. R.N. Singal, Advocate,
for respondent No.3.

Amol Rattan Singh, J.

This is an appeal filed by the claimant before the Motor Accident Claims Tribunal, Rohtak, seeking enhancement of the compensation of Rs.10,03,332/- awarded to him vide the impugned Awarded dated 24.01.2013, on account of the injuries suffered by him in a motor vehicle accident that took place on 28.11.2010.

In the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, it was stated that on the aforesaid date, at about 2:30 pm, the petitioner was returning to his house on his motorcycle bearing registration no.DL-3G-BJ-3215 from the side of Jhajjar. When he reached in the area of village Gurawara, District Rewari, a truck/'trolla' bearing registration no.RJ-14GB-2316, came from the opposite side and struck against his motorcycle due to the rash and negligent manner in which it was

being driven by respondent no.1 herein.

The petitioner fell down and received multiple injuries on his body due to the accident.

It was further contended that respondent no.1 stopped his vehicle for a few minutes and upon disclosing his name to the numerous persons who had gathered there, slipped away from the spot upon seizing a chance to do so.

The appellant is stated to have been shifted to the Civil Hospital at Rewari, where a medico-legal report was prepared and he was provided first aid, but on account of his serious injuries, he was referred to the PGIMS, Rohtak, from which, (as contended) because he was not getting adequate treatment, he was taken to the Sir Ganga Ram Hospital, New Delhi, where he remained admitted till 07.12.2010.

2. It was further contended that he was operated upon at the said hospital and his right leg had to be amputated on 30.11.2010, below the thigh.

Consequently, the claim petition was filed, stating therein that he was still under treatment at the time of its filing and had been advised to obtain an artificial limb, for which a huge sum of money was required by him. It was also contended that Rs.3,00,000/- had been spent on his treatment.

As regards the accident, FIR No.128, dated 29.11.2010, was stated to have been registered at Police Station Rohada, District Rewari, against respondent no.1, for the alleged commission of offences punishable under Sections 279/337 and 338 IPC.

It was further contended that the appellant-claimant was 29

years of age and was an ex-serviceman from the Indian Army and since 07.09.2010, he was working as a Chowkidar at the M.D. High School, Paintawas Kalan, Bhiwani, from where he was getting a monthly salary of Rs.6000/-.

3. Upon notice being issued to the three respondents before the Tribunal, i.e. the driver, owner and insurer of the aforementioned truck, respondent no.1, i.e. the driver, did not appear despite service and was proceeded against *ex parte* by the learned Tribunal, vide an order dated 08.08.2012.

The owner of the vehicle, i.e. respondent no.2, filed a written statement raising various preliminary objections and on merits, contended that the petitioner himself was wholly responsible for the accident, due to his own rash and negligent driving. Hence, the negligence of respondent no.1 in driving the truck was denied, as were the other averments in the claim petition.

4. The insurance company filed a separate written statement, also raising various preliminary objections including the fact that the first respondent was not holding a valid and effective driving licence and that respondent no.2 had violated the terms and conditions of the insurance policy.

On merits, it was contended that a false FIR had been registered against respondent no.1, in collusion with the police.

Still further, the vehicle being insured with the 3rd respondent, i.e. the insurance company, on the date of the accident, was also denied, further stating that the whole story of the accident had been concocted only to grab “false compensation”.

Thus, even the factum of the accident with the truck aforementioned, on the date, time and place given in the claim petition, were denied by the insurance company in its reply, as were all other contentions made by the appellant.

5. No replication having been filed, the following issues were framed by the learned Tribunal:-

- “1. Whether present accident is the outcome of rash and negligent driving of offending vehicle bearing No.RJ-14-GB-2316 being driven by respondent no.1 Rang Lal on 28.11.2010 in which Mahabir sustained injuries, as alleged? OPP
2. If issue no.1 is proved in affirmative, to what amount and from whom, the petitioner is entitled to recovery? OPP
3. Whether respondent no.1 was not holding a valid and effective driving licence on the date of alleged accident and respondent No.1 has violated the terms and conditions of the insurance policy? OPD
4. Relief.”

6. Eight witnesses were examined by the appellant-claimant, including himself, a Medical Record Officer, one Dr. Ashish Laddha, another doctor, Dr. Bagri, a Prosthetist, Koshal Kishore, and one ASI Jai Singh. The Principal of the High School where the appellant was working, was also examined.

34 documents were also tendered by way of evidence, including a disability certificate, the FIR, medical bills, discharge summary, the pay roll and an attendance sheet of the appellant, his qualification certificates, the first MLR and his driving licence.

7. On the issue of negligence, one Dinesh Kumar having testified

as PW6, claiming to be an eye witness to the accident, seen with the testimony of the present appellant himself, as also the testimony of the ASI, eventually the negligence in causing the accident was held to be that of respondent no.1, against which finding no appeal filed by the respondents has been brought to the notice of this Court.

8. As regards the quantum of compensation to be paid, the learned Tribunal found that the appellants' leg had been amputated on 30.11.2010, with different operations conducted upon him, with him still being under treatment.

The bills issued by the Sir Ganga Ram Hospital were found to be amounting to Rs.2,31,502/- and other medical bills amounting to Rs.1500/- + Rs.2530/- were also held to be proved. Hence, as regards the actual expenses incurred, a sum of Rs.2,35,532/- was awarded by the Tribunal.

It was recorded by the Tribunal that PW5, i.e. the Prosthetist, had placed on record an estimate of an artificial limb, for a sum of Rs.7,20,000/-, as Ex.P10, but in cross-examination he had admitted that the value of an artificial limb varies from Rs.50,000/- to Rs.60,000/-.

On the aforesaid testimony, the petitioner was awarded Rs.70,000/- for purchasing an artificial leg.

9. On the loss of income to the petitioner due to his permanent disability, it was found that his leg had been amputated upto a 1/3rd of the thigh and the orthopaedic percentage of his disability had been assessed to be 80% by PW1, Dr.Tirath Singh Bagri. Therefore, applying the ratio of the judgment of the Supreme Court in **Yadava Kumar v. Divisional Manager, National Insurance Company Ltd.** 2010 (4) PLR 242, it was held by the Tribunal that the loss of ability to earn could only be determined by applying

a multiplier to the income of the claimant.

Though the Headmaster of the school where the appellant was stated to be employed, had testified that his salary was Rs.4800/- in September 2010, Rs.6000/- in October 2010 and Rs.5200/- in November 2010, it was held by the Tribunal that the possibility of these documents having been “procured” could not be ruled out, especially in view of the fact that the document by which the appellant was shown to be appointed as a Chowkidar in the school, which was termed to be a resolution, Ex.P18, was actually “a sort of letter” issued by the Secretary, M.E. Development Education Society, which could not be relied upon, as the actual resolution had not been tendered in evidence.

Therefore, it was held that as the petitioner was an able bodied person, his salary could best be assessed at Rs.4000/- per month, and due to the disability the loss of future prospects of income could be assessed to be Rs.3200/- per month or Rs.38,400/- annually. Accordingly, a multiplier of 17 was applied, holding his age to be 29 years and thereby a sum of Rs.6,52,800/- was awarded, under the head of loss of income.

10. On account of the amputation and pain and suffering that the appellant went through, he was awarded a sum of Rs.20,000/-.

He was further awarded Rs.5000/- as transportation charges. (Though he had submitted a receipt only for an amount of Rs.1560/-, however, holding that because of his amputation, he would not have been able to travel by public transport for his treatment etc., Rs.5000/- was awarded under that head).

He was further awarded a sum of Rs.20,000/- on account of the special diet that he would have been required to take, as well as for the

services of an attendant upon him.

Consequently, the break-up of the compensation awarded by the Tribunal, was given as follows:-

Medical expenses (including the price of an artificial limb)	Rs.2,35,532/ +Rs.70,000/- =Rs.3,05,532/-
Loss of income due to permanent disability	Rs.6,52,800/-
Pain and sufferings	Rs.20,000/-
Transportation charges	Rs.5000/-
Attendant & special diet	Rs.20,000/-
Total	Rs.10,03,332/-

11. The vehicle owned by respondent no.2 having been found to be duly insured with respondent no.3 on the date of the accident, all three respondents were held jointly and severally liable to pay the compensation amount, and with no evidence led by the insurance company to the effect hat respondent no.1 was not holding a valid driving licence, or that any other condition of the policy had been breached, that issue was decided against the company.

12. Eventually, a compensation of Rs.10,03,332/- having been awarded, the Tribunal also awarded interest @ 6% per annum thereupon, running from the date of the filing of the claim petition, till realization thereof.

13. In this appeal, Mr. Akashdeep Singh, learned counsel for the appellant, submitted that the Tribunal firstly wholly erred in not accepting the evidence led with regard to the appellant-claimant being employed as a Chowkidar with the MD High School, Paintawas Kalan, District Bhiwani, despite the fact that there were salary certificates, an appointment letter and even attendance sheets from the attendance register of the school that were

led in evidence, in support of which the Headmaster of the school duly testified as PW-7.

He next submitted that the Tribunal wholly misread the evidence of PW-5 Koshal Kishore, Prosthetist, inasmuch as, this witness had deposed that artificial limbs may be available in the market from between Rs. 50,000/- to Rs. 60,000/- but he did not know that and in fact, he had testified that an artificial limb from the Ottobock Health Care India Private Limited would cost Rs. 7,20,000/-.

The Tribunal however took the above testimony to be an admission that such a limb was available in the market for Rs. 50,000/- to Rs. 60,000/- and awarded only Rs. 70,000/- for the purchase of such a prosthetic limb.

14. Yet further, learned counsel submitted that since the appellant-claimant was working on a salaried post, he would also be entitled to loss of future prospects of an increased income, in terms of the judgments in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another**, (2009) 6 SCC 121, **Rajesh and others vs. Rajbir Singh and others**, (2013) 9 SCC 54 and **Vimal Kanwar and others vs. Kishore Dan and others** (2013) 7 SCC 476, which the Tribunal has not awarded.

Consequently, he submitted that the compensation awarded by the Tribunal, of an amount of Rs. 10,03,332/-, deserves to be enhanced to the amount claimed, i.e. Rs. 20,00,000/-.

Mr. Akashdeep Singh relied upon the following judgments to support his arguments:-

1. **Sanjay Verma vs. Haryana Roadways** 2014 (1) RCR (Civil)

914;

2. Govind Yadav vs. The New India Insurance Company Limited 2011 (4) RCR (Civil) 817;

3. Sanjay Kumar vs. Ashuok Kumar and another 214 (1) RCR (Civil) 875.

15. Mr. R.N. Singal, learned counsel for respondent No. 3-insurance company, on the other hand, submitted that Rs. 7,20,000/- claimed for the prosthetic limb is a wholly exaggerated amount and as such, the Tribunal rightly awarded Rs. 70,000/- for such a limb. He further submitted that as regards the employment of the appellant in the aforesaid school, the evidence in that regard was rightly considered by the Tribunal to have been possibly 'manufactured', in view of the fact that the appellant was shown to have joined the school only about two and a half months prior to the accident, i.e. on 07.09.2010, and had remained working there only till 26.11.2010, i.e. two days prior to the accident.

He also submitted that if the compensation to be awarded for the loss of limb is to be enhanced for the purpose of purchasing an artificial limb, then due to the mobility of the appellant obviously increasing, commensurate with the quality of the limb purchased, the loss of income on account of such mobility would be required to be reduced.

Learned counsel also cited a judgment of the Supreme Court in UPSRTC vs. Mamli Devi (2016) 2 RCR 48, to submit that even though the issue of negligence has been decided against respondent No 1, i.e. the driver of vehicle No. RJ-14-GB-2316, actually the appellant himself was also negligent in driving his motor cycle and as such, 50% negligence should be attributed to him and this Court, as a court of first appeal, can interfere in that finding, even with no appeal having been filed by the respondents.

Mr. Singal also cited the following judgments:-

1. Bijoy Kumar Bugar vs. Bidya Dhar Dutta and others (2006) 2 SCC 242;
2. Sukhbir Singh and another vs. Ram Mehar and others 2012 ACJ 1824;
3. Milapa Devi and another vs. Om Parkash and others 2012 ACJ 1480.

16. Having considered the arguments of learned counsel, as also the Award of the learned Tribunal, the first issue which is to be dealt with is the contention of learned counsel for the respondent insurance company to the effect that the negligence in causing the accident cannot be attributed wholly to respondent no.1 and that the appellant was also equally responsible for it and therefore, 50% negligence must be attributed to him.

Without going into the detail on the principle of reversing a finding recorded by the lower Court (Tribunal), without any appeal or cross-objections filed by the respondents on any of the findings recorded by the Tribunal, in view of the fact that on the merits of the contention itself, I find absolutely no ground to interfere with that finding, the argument is rejected, for the reason hereinafter recorded.

The contention of learned counsel for the respondent in this regard is wholly and completely without any basis, because firstly, not an iota of evidence is seen to have been led by any of the respondents, to the effect that the appellant was actually negligent in any manner in causing the accident. Other than the bare statement of the insurance company, no witness to the accident, no investigation report, not even the report under Section 173 Cr.P.C. (if at all such a report had been filed by the time the Tribunal was seized of the evidence of the parties), or any other document was tendered in

evidence, by which it could be inferred that the appellant was negligent in causing the accident in any manner.

On the contrary, the appellant examined himself in support of the contentions made in the claim petition and also examined one Dinesh Kumar as PW6, who also testified to the effect that he was not related to the appellant in any manner and that he had lodged a report with the police on the after-noon of the accident at 3:00 pm and that the police had got the medical examination of the appellant conducted (as per this witness' cross-examination). The affidavit filed by way of examination-in-chief by this witness (Ex.PW6/a), reveals that the witness was going to village Gurawara on his bicycle at 2:30 pm, and when he reached near the new road in the area of the village, a truck bearing registration No.RJ-14GB-2316 was seen coming from the opposite side, going towards Jhajjar, driven in a rash and negligent manner at a high speed.

The affidavit further states that a motorcycle bearing registration no.DL-3G-BJ-3251 (Pulsar) was coming from the side of village Gurawara, driven at a moderate speed on the correct side of the road, and that the truck hit the motorcycle, resulting in the driver of the motorcycle receiving injuries on both his legs. The name of the rider was disclosed to be Mahavir Singh son of Satbir @ Satvir Singh, resident of village Ritholi Kaboolpur, i.e. the present appellant.

The affidavit further goes on to state that the accident was caused due to the rash and negligent driving of the driver of the truck and that an FIR was lodged at the instance of the deponent (PW6) and that the name of the driver of the truck/trolla was disclosed to be Rang Lal son of Dhana Lal, resident of Baratakhta Tonk, Rajasthan.

Thus, the testimony of PW6 corroborated that of the appellant himself. Nothing from the testimony of either of these two witnesses has been pointed to by learned counsel for the respondent company, so as to draw any inference that the appellant was negligent in any manner in causing the accident.

17. This Court is not oblivious to the fact that there can be collusion between the owner of the vehicle involved in an accident and the claimants in a motor vehicle accident claim case, if the parties realise that eventually the compensation awarded would be payable by the insurance company with which the vehicle involved in the accident was insured.

However, to prove such collusion/connivance, the onus lies upon the insurance company, and in the absence of any kind of evidence led in that regard, simply because the driver of the truck did not step into the witness box, that alone cannot be taken by the Court to be a sufficient discharge of the onus on the company to prove that there was any collusion.

In the present case of course, that has not been specifically argued, but was taken as a defence in the written statement. Yet, to repeat again, there being no evidence led whatsoever, in any form, by the insurance company, to make good its contention, that the appellant was negligent at least to some extent in causing the accident, the argument has to be rejected and would have been so rejected by this Court, in this case, even if cross-objections/an appeal had been filed by the insurance company, without any evidence led in support of such a contention.

18. Coming therefore to the issue of whether the compensation awarded to the appellant, by the Tribunal, is sufficient or not.

First, as regards the contention of Mr. Akashdeep Singh, learned

counsel for the appellant, that the income of the appellant was wrongly assessed to be only Rs.4000/- per month, I do not find any ground to interfere in that finding of the Tribunal, in view of the fact that it was specifically found that the appellant was shown to have been employed in the school as a Chowkidar, only about two and half months prior to the accident, i.e. from September 2010 and the salary certificates that were produced, were accordingly only of the months of September, October and November 2010. Hence, I see no error in the finding of the Tribunal that at best the appellant could be assessed to be an able bodied person earning at least the minimum wages notified.

19. However, as regards the contention of learned counsel for the appellant that the amount awarded for the purchase of artificial limb, i.e. Rs.70,000/-, is highly inadequate, I agree with the contention, in view of the fact that even if a top quality artificial leg is not to be purchased (though I see no reason for that either), however, for a reasonably good leg that would enable the appellant to at least move about in a semi-normal manner, and to actually obtain a job as Peon or some such work, an artificial leg at least of some good quality, would be his right to purchase. Thus, as regards the compensation for an above average though not top quality, artificial leg, he is awarded a sum of Rs.3,00,000/- as against Rs.70,000/- awarded by the Tribunal for that purpose.

In the opinion of this Court, the amount of Rs.20,000/- as awarded by the Tribunal, for pain and suffering leading to the amputation of a leg, is highly inadequate and consequently, the compensation under that head is enhanced to Rs.1,00,000/-.

Though learned counsel for the appellant is not entirely incorrect

in submitting that the appellant should also be awarded loss of future prospects of an increased income, however, with the compensation for the quality of the limb to be purchased by him having been increased substantially, I do not find it wholly appropriate to award compensation for loss of future prospects of an increased income also.

20. Thus, the total compensation now awarded (including what was awarded by the Tribunal) is as follows:-

i)	Medical expenses	Rs.2,35,532/- (as awarded by the Tribunal)
ii)	For the purchase of an artificial limb	Rs.3,00,000/-
iii)	For pain and suffering	Rs.1,00,000/-
iv)	Towards loss of income due to permanent disability (as awarded by the Tribunal)	Rs.6,52,800/-
v)	For transportation charges (as awarded by the Tribunal)	Rs.5000/-
vi)	Towards cost of an attendant and special diet (as awarded by the Tribunal)	Rs.20,000/-
	Total	13,13,332/-

Thus, the compensation awarded by this Court is Rs.3,10,000/- more than what was awarded by the Tribunal. The enhanced amount of compensation would carry an interest @ 6% per annum thereupon, running from the date of the filing of the claim petition, till the realisation thereof, as awarded by the Tribunal.

21. The appeal is accordingly allowed to the aforesaid extent, with costs of Rs.10,000/-.

(AMOL RATTAN SINGH)
JUDGE

December 20, 2016
dinesh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No.