

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

**FAO No.2987 of 2013.
Date of Decision: 10.03.2016.**

Ram GopalAppellant.

VERSUS

Sanjay Gupta and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Rohit Rana, Advocate for
Ms. Priyanka Dawar, Advocate for the appellant.

Respondent No.1 exparte vide order dated 31.10.2014.

None for respondent No.2.

Mrs. Vandana Malhotra, Advocate for respondent No.3.

SNEH PRASHAR, J.

This appeal has arisen from an award dated 22.02.2013 passed by learned Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as, “the Tribunal”) in MACT Case No.26 of 21.01.2013 titled “Ram Gopal vs. Sanjay Gupta and others” filed under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) awarding compensation to the appellant for the injuries suffered by him during a vehicular accident.

Power of Attorney filed on behalf of respondent No.3-

insurance company is taken on record.

The relevant facts are that on 12.07.2010 the claimant-appellant alongwith one Sawarmal was going for work by means of scooter No.HR-29F-8234 (hereinafter referred to as, “the scooter”). The scooter was being driven in a slow speed and on his left side of the road by the claimant whereas Ram Gopal was pillion rider. When they reached near the Wine shop on Sector-16 - Sector 16-A Dividing Road, Faridabad, a car bearing registration No.HR-51U-1001 (for short, “the offending car”), being driven by its driver (respondent No.1) rashly, negligently and in a high speed came from Old Faridabad side and struck into the scooter. As a result of accident, the appellant and his companion fell on the road and sustained injuries.

First Information Report No.414 dated 17.07.2010 under Sections 279, 337, 338 and 427 of the Indian Penal Code in respect of the accident was registered against respondent No.1 at Police Station Central Faridabad.

The appellant-claimant filed a petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) seeking compensation from the respondents (driver, owner and insurer of the offending car). The petition was contested by the respondents. In the joint written statement filed by respondents No.1 and 2 (driver and owner), the occurrence of accident and other averments of the claimant were denied. In the written statement filed by respondent No.3-insurance company, all preliminary objections available to the insurer under the Act of 1988 were raised.

Considering the evidence adduced by both the parties in support of their respective narration of the accident, learned Tribunal partly allowed the claim petition of the appellant-claimant and an amount of Rs.1,83,500/- was awarded as compensation to him.

Feeling dissatisfied by the award dated 22.02.2013 passed by learned Tribunal, the claimant-appellant filed the instant appeal.

The submissions made by Mr. Rohit Rana, learned counsel for the appellant and Mrs. Vandana Malhotra, learned counsel for respondent No.3-insurance company have been heard and record perused.

Learned counsel for the appellant argued that the first hospital from where the appellant had taken treatment was Manchanda Ortho and Physio Care Centre, Faridabad. He remained under treatment of Dr. S.C. Manchanda at the said hospital who appeared as PW1 and proved the bill Ex.P3 of Rs.90,000/- raised by his hospital. However, learned Tribunal awarded only Rs.60,000/- towards treatment charges against the bill Ex.P3. Amount of the bills relating to charges incurred by the appellant during treatment taken at Jaipur and Ahemdabad had also not been allowed in full by learned Tribunal. The amount of Rs.10,000/- allowed under the head of transportation charges and Rs.5,000/- on account of special diet is also on the lower side. The amount spent on keeping an attendant was wrongly declined by learned Tribunal. The appellant suffered multiple fractures for which he was operated upon number of times. He remained under treatment for more than one and half year and during the said period he suffered complete loss of income but learned Tribunal awarded a sum of Rs.13,500/-

i.e. for three months only under the said head assessing the monthly income of the appellant as Rs.4500/-.

On the other hand, learned counsel for the respondent-insurance company submitted that the compensation awarded by learned Tribunal covers all pecuniary and non pecuniary counts on which the appellant had suffered loss due to the injuries sustained by him.

The bill Ex.P3 raised by Manchanda Ortho and Physio Centre and proved by PW1 Dr. S.C. Manchanda was discussed by learned Tribunal in Para No.36 of the award. It was rightly observed that since the detail/break up of Rs.90,000/- was not mentioned in the bill Ex.P3, the entire amount could not be taken into consideration. Indeed, no receipt of payment of Rs.90,000/- against the bill Ex.P3 was produced by the claimant. In absence of details the amount of the bill does not appear to be genuine. Considering the fact that the appellant had remained hospitalized w.e.f. 12.07.2010 to 16.07.2010 and had undergone surgery on 13.07.2010 at Manchanda Ortho and Physio Care Centre, learned Tribunal rightly allowed Rs.60,000/- as treatment expenses incurred by the appellant at the said hospital and the finding calls for no intervention. The amount of Rs.8329/- of the remaining bills Ex.P4 to Ex.P10 and Ex.P12 to Ex.P14 proved in evidence by the appellant was allowed by learned Tribunal. As regards, expenditure on treatment at Jaipur and Ahemdabad no medicine bill could be proved in due process of law by the appellant, yet considering the documents produced Rs.40,000/- as expenditure at Jaipur and Ahemdabad was allowed. In that manner, the amount of Rs.1,10,000/- as round figure

awarded as compensation on account of expenditure on medicine treatment etc. is adequate and calls for no intervention.

As mentioned by learned Tribunal in Para No.39 of the award, PW4 Ram Gopal (appellant) admitted in his cross-examination that he was not advised to keep an attendant and there was no requirement for the same also. In view of his statement, learned Tribunal declined attendant charges to him. However, since the appellant had suffered grievous injuries, it is obvious that he required help during hospitalization as well as during the follow up treatment. Besides the hospital staff his family members must have been attending on him and would have spent a good amount on their transportation and boarding-lodging. Under this head, an amount of Rs.15,000/- is allowed. The appellant had spent on his own transportation also as he had taken treatment from various hospitals. The amount of Rs.10,000/- allowed to the appellant for transportation and the amount of Rs.5,000/- on account of expenditure on special diet are enhanced to Rs.15,000/- and Rs.10,000/- respectively. The rate of interest allowed by learned Tribunal shall remain the same.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 22.02.2013 passed by the Tribunal is modified. The appellant-claimant is held entitled to enhanced compensation of Rs.25,000/- in addition to the amount of Rs.1,83,500/- 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

10.03.2016.
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