

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

FAO No.2264 of 2014 (O&M)

Date of Decision:11.07.2016

Aryan

.....Appellant

Vs

Iqbal and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Punit Jain, Advocate for
Mr. Rajesh Bansal, Advocate
for the appellant.

None for the respondents (already proceeded against
ex parte).

RAJ MOHAN SINGH, J.(ORAL)

[1]. Minor claimant-Aryan through his father is in appeal against the award passed by Motor Accident Claims Tribunal, Sonapat vide which an amount of Rs.3,50,000/- was awarded to the claimant-appellant on account of injuries sustained by him in a vehicular accident. The liability was held joint and several against respondents No.1 and 3. However, respondent No.4 was directed to satisfy the award at the first instance with a right to recover the same from respondents No.1 to 3 insured by way of execution petition.

[2]. The accident took place on 23.08.2010 at about 5 P.M when Om Parkash along with his wife and claimant were going

from Moi Huda to Mundlana on a motor cycle. When they reached in village Mundlana, offending vehicle i.e. Truck bearing No.UP-17A-8014 came from backside in a rash and negligent manner and hit the motor cycle of the complainant from backside. The occupants of motor cycle fell down and received grievous injuries.

[3]. Having taken note of the evidence adduced by the parties, the Tribunal decided issue No.1 in favour of the claimant thereby holding that the accident was the result of rash and negligent driving of the offending vehicle by respondent No.3. Issue No.2 was also decided in favour of claimant thereby holding that the claimant was entitled to receive compensation in the manner as discussed in the impugned award. Issue No.3 was decided in favour of respondent No.4 i.e. Reliance General Insurance Company. However, recovery rights were given to respondent No.4 to recover the awarded amount from respondents No.1 to 3 by way of filing execution petition.

[4]. After issuance of notice of motion, respondents were duly served. None appeared on their behalf on 07.05.2015 and therefore, they were proceeded against ex parte.

[5]. Learned counsel for the appellant referred to the disability suffered by the claimant who was minor about one and half year of age at the time of accident. The claimant suffered

permanent disability to the tune of 40% which was proved by Dr. I.S. Punia who appeared as PW3. The disability was further corroborated by medical record as well as other evidence viz. medical bills and treatment of the injured.

[6]. Tribunal held that claimant had suffered permanent disability to the tune of 40% in the accident in question. Ultimately, Tribunal awarded an amount of Rs.3,50,000/- as compensation on account of injuries received by the claimant in the accident in question along with interest @ 7.5 % per annum from the date of filing of the petition till final realization of the amount.

[7]. I have heard learned counsel for the appellant.

[8]. An amount of Rs.50,000/- was awarded towards medical expenses. Learned counsel for the appellant has not challenged the same being adequate amount. Main stress has been made by the learned counsel on the inadequacy of the amount awarded under disability clause, transportation charges, special diet, attendant charges and loss of matrimonial prospects of the claimant with advancement of the age.

[9]. By placing reliance upon **2013 (4) RCR (Civil) 295, Master Mallikarjun Vs. Divisional Manager, The National Insurance Company Limited and another,** learned counsel emphasized that in case of award of compensation to a child

who suffered permanent disability in vehicular accident, structured formula is not required to be followed. In case of disability upto 60 %, an amount of Rs.4 lakhs is required to be awarded as per aforesaid dictum laid down by the Hon'ble Apex Court.

[10]. It is further submitted that the injured remained hospitalized for more than 53 days and during the course of treatment, family of the injured undertook so many visits from the place of residence and in view of attending circumstances, the transportation charges are required to be suitably given and the award of Rs.20,000/- is totally a meagre amount. Similarly, an amount of Rs.50,000/- towards special diet and attendant charges is totally inadequate inasmuch as that with 40 % disability on record and prolonged hospitalization, the claimants must have incurred more amount. The award towards transportation charges, special diet and attendant charges are wholly on the lower side. Besides addressing arguments on aforesaid premise, learned counsel also emphasized that the Tribunal should have awarded adequate compensation under the head of loss of matrimonial prospects.

[11]. In considered opinion of this Court, an amount of Rs.40,000/- would be just and adequate towards transportation charges and the award of Rs.50,000/- towards special diet and

attendant charges is required to be enhanced to the tune of Rs.1 lakh. An additional amount of Rs.1 lakh has to be awarded for the loss of matrimonial prospects of the claimant who was of tender age at the time of accident, but with 40% disability on his person his marriage prospects would be materially marred. In view of above assessment, it would be just and appropriate to fix the amount under heading of disability to the tune of Rs.4 lakhs, an amount under transportation charges to the tune of Rs.40,000/-, an amount towards special diet and attendant charges should also be enhanced to the tune of Rs.1 lakh and an amount of Rs.1 lakh has to be awarded towards loss of matrimonial prospects of the applicant-claimant. Ordered accordingly

[12]. In the light of aforesaid discussion, this appeal is allowed thereby awarding total compensation to the tune of Rs.8,40,000/- inclusive of the amount of Rs.3,50,000/- as awarded by the Tribunal along with interest @ 7.5 % per annum from the date of filing of the petition till final realization of the amount. Other conditions with regard to recovery right would remain the same. With the aforesaid modification, this appeal is allowed.

11.07.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**