

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

FAO No.3951 of 2013

Date of decision : 07.09.2016

Raju

.....Appellant

Versus

Mohd. Ikram and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. S.S. Khurana, Advocate for appellant.
 Mr. H.S. Dhandi, Advocate for respondent No.2.
 Mr. Vinod Chaudhary, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-claimant Raju against the award dated 25.04.2013 passed by the learned Motor Accidents Claims Tribunal, Rewari (hereinafter called the “Tribunal”) vide which the appellant-claimant has been awarded compensation to the tune of Rs.11,280/- on account of the injuries suffered by him in this motor vehicular accident, which took place on 05.10.2009.

2. The present appeal has been filed by the appellant-claimant for enhancement of compensation and to assail the findings of the learned Tribunal exonerating the respondent No.3-Insurance Company to pay the amount of compensation.

3. I have heard learned counsel for the parties and gone through the record carefully.

4. Learned counsel for the appellant-claimant contended that the claimant has suffered the fracture on tibia. He remained confined to bed for about two months. He was a mason by profession and was earning Rs.10,000/- per month. So, he has suffered the loss of income for two months. He further contended that very less amount has been awarded towards other heads.

5. He further contended that the learned Tribunal has wrongly exonerated respondent No.3-Insurance Company to pay the awarded amount. The claimant has filed the claim petition against the driver, owner and insurer of the offending vehicle *i.e.* trailer bearing registration No.HR-47A-3775 and not against the driver, owner and insurer of the tractor on which he was travelling.

6. On the other hand, Mr. Vinod Chaudhary, Advocate, learned counsel for respondent No.3 contended that just amount of compensation has been awarded by the learned Tribunal keeping in view the nature of the injuries suffered by the claimant. He further contended that as the claimant was travelling on the mudguard of the tractor, so the insurance company was not liable.

7. Mr.H.S. Dhandi, Advocate, learned counsel for respondent No.2 contended that the offending vehicle was trailer bearing registration No.HR-47A-3775 and not the tractor upon which the claimant was

travelling. So, respondent No.3-Insurance Company cannot be absolved of the liability.

8. I have duly considered the aforesaid contentions.

9. The learned Tribunal has awarded total Rs.11,280/- as compensation to the claimant on account of the injuries suffered by him in this accident. Rs.1280/- have been awarded for the treatment, hospitalization and medicine charges and Rs.10,000/- have been awarded on account of pain and suffering, special diet, attendant and transportation charges, etc. As per the medical evidence available on record, the claimant has suffered fractures tibia. He has pleaded that he was a mason by profession and was also running milk dairy. However, he has not adduced any cogent evidence to establish his plea but even if he is considered to be a casual labourer, he must be earning Rs.5000/ per month. Due to the injuries suffered by him, he might not have been able to resume his duties at least for two months. So, he has suffered the loss of income for two months and will be entitled to Rs.10,000/- on account of loss of income. The learned Tribunal has awarded only Rs.10,000/- for pain and suffering, special diet, attendant and transportation charges. As already mentioned, the claimant has fractures tibia, so he must had to undergo lot of pain and suffering. He also had to spend sufficient money for special diet. He had to visit the hospital even for follow up treatment. So, the amount of compensation under these heads is enhanced to Rs.15,000/-. In this way, there is increase of Rs.15,000/- and the total

amount of compensation, which comes to Rs.26,280/-.

10. The learned Tribunal has given a totally erroneous finding with respect to the liability. It has exonerated respondent No.3-Insurance Company on the ground that the claimant was sitting on the mudguard of the tractor and he himself was negligent. So, the Insurance Company could not have held liable to pay the compensation. The learned Tribunal has totally lost sight of the fact that the offending vehicle is not the tractor on which the claimant was travelling, rather the offending vehicle is trailer bearing registration No.HR-47A-3775, which caused the accident and was duly insured with respondent No.3-Insurance Company. The insurer of the trailer cannot be absolved of the liability on the ground the claimant was travelling on the mudguard of the tractor. This proposition could have been applicable only if the claim petition would have been filed against the driver, owner and insurer of the tractor. So, these findings cannot be sustained in the eye of law and respondent No.3 Insurance Company shall be liable to indemnify the insured and to pay the awarded amount.

11. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation is enhanced to Rs.26,280/- from Rs.11,280/- as awarded by the learned Tribunal. The appellants-claimants shall be entitled to interest on the enhanced amount from the date of filing the petition till realisation at the rate as awarded by the learned Tribunal. The respondents No.1 to 3,

being the driver, owner and insurer of the offending vehicle i.e. trailer bearing registration No.HR-47A-3775 are jointly and severally liable to pay the amount of compensation to the appellant-claimant.

07.09.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No