

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

FAO No.5185 of 2013

Date of Decision: 03.11.2016

Rinku

.....Appellant

Vs

Bhushan Dass and others

.....Respondents

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

Present: Mr. Pankaj Mehta, Advocate
for the appellant.

Mr.Vaibhav Jain, Advocate
for respondents No.1 and 2.

Mr.Subhash Goyal, Advocate with
Mr.Nitin Mittal, Advocate for
respondent No.3.

RAJ MOHAN SINGH, J.

Injured-claimant has preferred this appeal for enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Hisar (for short 'Tribunal'), on account of injuries received by him in a vehicular accident.

The accident in question took place on 21.7.2008 when the injured-claimant along with his father Krishan Kumar and uncle Dheer Singh had gone to Jindal Ghee Factory, Talwandi Rana, District Hisar. At about 10:30/ 11:00 AM, they

were standing in front of the factory with their tanker parked on left side of the road. They were waiting to get the tanker loaded with ghee. In the meanwhile, offending vehicle i.e. Ambassador Car came in a rash and negligent manner, which was being driven by respondent No.1 and struck against the claimant. As a result of the impact, claimant fell down and received multiple injuries on his person. Driver of the offending vehicle fled away from the spot. Claimant was shifted to the hospital and a criminal case was registered against the driver of the offending vehicle.

It was asserted by the claimant that the accident took place solely due to rash and negligent driving of offending car. After admission to Civil Hospital, Hisar, the claimant was immediately referred to CMC Hospital, Hisar for treatment. On the next day i.e. 22.7.2008, the claimant was again shifted to Sri Balaji Action Medical Institute, Paschim Vihar, Delhi, where he remained admitted up to 30.7.2008 and was operated upon. According to the claimant, he had incurred an amount of ₹ 10,00,000/- on his treatment as well as on transportation, special diet and towards attendant charges. The claimant was a student at the time of accident and, thereafter, he became permanently disabled and could not perform his daily pursuits.

The claim petition was resisted by the respondents on all counts.

The Tribunal on the basis of evidence, assessed an amount of ₹ 70,000/- towards pain and sufferings, an amount of ₹ 73,753/- towards treatment expenses and an amount of ₹ 40,000/- towards special diet, conveyance and attendant charges. In this way, total compensation of ₹ 1,83,753/- was awarded, which was rounded off to ₹ 1,84,000/- along with interest @ 9% per annum from the date of filing of claim petition till realisation of the amount. Liability of the respondents was held joint and several.

I have heard learned counsel for both the parties and have perused the record.

So far as components towards treatment expenses and special diet etc. are concerned, there is no scope of any enhancement. Learned counsel for the appellant has vehemently argued that the award for pain and sufferings is highly on a lower side. General condition of the appellant was semi conscious and irritating. CT scan of the head was conducted which revealed brain edema and fracture of lateral wall of left orbit. On X-ray examination, fracture line of distal end of second meta carpal of hand was found. X-ray of chest was done which showed fracture of clavicle/ collar bone. Though no permanent disability was assessed by the Medical Officer nor any evidence was led on this aspect by the claimant, but in the discharge card, it was shown that the patient had suffered brain

edema and fracture of lateral wall of left orbit besides fracture of distal end of second meta carpal of hand and fracture of collar bone. Patient was also operated for debridement and suturing of wounds over left thigh and leg. Plastic surgery was also done. Tribunal has also observed that the pain suffered by the claimant was enormous.

The aforesaid facts, if appreciated in the light of settlement of the claim, would reveal that the claimant, while appearing as PW-5, had tendered his affidavit as Ex.PW-5/A. In para No.4 of the affidavit, it was deposed that the accident has rendered the claimant totally helpless and he has acquired permanent disability. The claimant was a student and due to his disability, he could not continue his studies. The claimant has also suffered a memory loss apart from other disability. The aforesaid facts pleaded in examination-in-chief, have gone un-rebutted in the cross-examination. Only suggestion was given to the claimant that the deposition in the affidavit was false. It is true that there is no medical opinion on record to suggest physical disability and mental disability suffered by the claimant, but that itself is not sufficient to rule out any disability suffered by the claimant. The disability may not be permanent in nature, but certainly in view of injuries suffered by the claimant the agony of the claimant was enormous and for that he was required to be compensated suitably under the head of pain and sufferings.

Since the claimant has specifically submitted in his examination-in-chief that he could not continue his studies on account of accident and disability and has also suffered memory loss, the amount granted under the head of pain and sufferings needs to be enhanced.

In my considered opinion, keeping in view the totality of facts and circumstances, the amount of compensation under the head pain and sufferings needs to be enhanced from ₹ 70,000/- to ₹ 1,50,000/-. The enhanced amount of ₹ 80,000/- would carry the same rate of interest as awarded by the Tribunal i.e. 9% from the date of filing of claim petition till final realisation of the amount.

With this modification, the present appeal stands disposed of.

(RAJ MOHAN SINGH)
JUDGE

November 03, 2016
anita

Whether Reasoned/Speaking Yes/No
Whether Reportable Yes/No