

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

FAO No.550 of 2013 (O&M)

Date of Decision :18.02.2016

Parveen Kumar

.....Appellant

Versus

Kanwar Pal @ Papu and Others

.....Respondents

Coram Hon'ble Mr. Justice Amol Rattan Singh.

Present: Mr.Parminder Singh, Advocate, for the appellant.

Mr.Lalit Garg, Advocate for
respondent No.3/Insurance Company.

AMOL RATTAN SINGH, J.

1. The claimant before the learned Motor Accident Claims Tribunal, Karnal, is in appeal before this Court, seeking enhancement of the compensation awarded to him on account of his having suffered injuries and for the suffering that he went through, after he met with a road accident on 16.05.2009.

The facts given in the Award are not contested to the extent of factum of the accident, and the negligence attributed to respondent No.1, who was driving bus bearing registration No.HR45-8691.

The appellant and his brother, Pardeep Kumar were riding a motorcycle bearing registration No.HR-05S-8589 on that date, going to the SD School, Karnal, at about 7:45 PM. The aforesaid bus driven by respondent No.1, is stated to have come from the bus-stand side, driven in a rash and negligent manner and struck against the motorcycle.

The appellant and his brother fell down on the road with the appellant receiving grievous injuries on various parts of his body, on account of which he was taken to the Civil Hospital from where he was referred to the PGIMER, Chandigarh, but was instead taken to Parveen Hospital, Karnal.

2. As per the claim, the appellant was a brilliant student of his college, allegedly earning from tuition work also, but due to injuries suffered by him, he had become permanently disabled. A sum of Rs.2,00,000/- was stated to have been spent on his treatment, which was said to be still on going at the time of filing of the claim petition.

3. The respondents, on notice issued by the Tribunal, appeared and took the usual preliminary objections with regard to locus-standi and maintainability etc. but admitted the accident in question, though denying the manner of the same.

Upon issues being framed and evidence led, the learned Tribunal found that the accident was caused due to the rash and negligent driving of respondent No.1. That finding is not under challenge, as already noticed.

4. One Dr.Rohit Goel, neuro surgeon of the aforesaid Parveen Hospital, deposed as PW1 and stated that the appellant was admitted with diagnosis of severe head injury (right side depressed fracture, with bilateral frontal acute SDH). He proved the discharge card, test reports and medical bills and further deposed that the injury can affect the memory of the patient.

The learned Tribunal accepted the claim with regard to the expenses incurred, as per the bills produced, to the extent of Rs.1,30,851/- (rounded off to Rs.1,31,000/-) and further granted a sum of Rs.2000/- for special diet etc.

However, as regards the disability to the appellant, the claim in that respect was not accepted, on the ground that no disability certificate was produced and though the appellant had stated that he could not pass the B.A. 1st year examination, it was held that there was no proof of the fact that it was on account of the accident that he could not do so.

5. As regards the loss of income claimed, it was found that the appellant was 18 or 19 years old and could not produce any proof of income and as such, with no disability also proved, no compensation was granted under that head (loss of income).

Finally, the Tribunal awarded the following damages to the appellant under the head of pecuniary and non-pecuniary expenses/damages:-

A. Pecuniary Damages.

- i) Medical Expenses : Rs.1,31,000/-
- ii) Transportation expenses : Rs.2000/-
- iii) Special Diet and Nutrition : Rs.2000/-

B. Non-pecuniary Damages.

- i) Pain and sufferings : Rs.10,000/-
- ii) Loss of amenities of life : Rs.5000/-

Thus, the total compensation awarded was Rs.1,50,000/-, alongwith the interest @ 6% per annum, running from the date of institution of the petition till realization of the compensation.

6. On the ground that respondent No.1 was not holding a valid driving licence to drive a heavy passenger transport vehicle, it was ordered that the compensation would first be paid by the respondent Insurance Company, which would subsequently have a right of recovery from respondents No.1 and 2, i.e. the driver and owner respectively, of the bus.

7. Before this Court, Mr.Parminder Singh, learned counsel appearing for the appellant, submitted that the Tribunal had erred in not awarding anything on account of the disability which was proved by the fact that the appellant had not passed the B.A. 1st year examination, despite having been a brilliant student earlier. He also pointed to the fact that this could also be because of a loss of memory, as was deposed by the doctor who had treated the appellant.

Learned counsel further submitted that the amount of Rs.10,000/- awarded on account of pain and suffering and Rs.5000/- for loss of amenities of life was highly inadequate, looking at the nature of the injuries, period of admission to hospital and pain and suffering and trauma that the appellant at that stage would have gone through and is still going through.

He therefore submitted that the compensation deserves to be enhanced.

8. Learned counsel for the respondent/Insurance Company, on the other hand, submits that Rs.1,31,000/- having already been granted to the appellant on account of bills proved by him, with regard to payments made on his treatment, and a further amount of Rs.10,000/- having been awarded for pain and suffering and Rs.5000/- for loss of amenities of life, other than Rs.4000/- awarded under other miscellaneous heads, no further compensation is required to be awarded, as no disability has been proved, as specifically discussed by the Motor Accident Claims Tribunal.

Hence, he prayed for dismissal of the appeal.

8-A. It is appropriate to notice that despite service, none appeared for respondent No.2, i.e. the owner of the “offending vehicle” and though on an

earlier date Mr.J.S.Saneta, Advocate, had appeared on behalf of respondent No.1, i.e. the driver of the said vehicle, he has not come present today.

9. Having heard learned counsel for the parties and having considered the Award of the Tribunal in detail, I find myself able to agree with the contentions of learned counsel for the appellant, only to a limited extent, whereas on the issue with regard to there being no disability, I am in agreement with learned counsel for the respondent.

A perusal of para 24 of the Award of the learned MACT, shows that the appellant suffered a “severe head injury with a right side depressed fracture with bilateral frontal acute SDH”. He also remained admitted in hospital for about 10 days, from 16.05.2009 to 26.05.2009. Hence, in my opinion, the compensation awarded for pain and suffering, of Rs.10,000/-, by the learned Tribunal, is inadequate for the pain, suffering and trauma the appellant must have gone through on account of the accident, as also on account of having remained hospitalised with a fracture of his head.

Therefore, at least some what adequate compensation needs to be awarded for that pain and suffering. As such, an amount of Rs.50,000/- is awarded to the appellant on that count.

10. As regards the disability claimed, I find no error in the Award of the Tribunal, inasmuch as, though it is stated that the appellant failed in the B.A. 1st year examination, however, firstly there is nothing on record to show that he was a brilliant student prior to that, and secondly, even at this stage, there is no medical certificate produced by way of additional evidence or otherwise, to suggest that he suffered any kind of permanent disability.

Consequently, the compensation as awarded by the Tribunal

under all other heads, is left undisturbed. On the enhanced amount of Rs.40,000/-, over and above what has been awarded by the Tribunal, the appellant would be entitled to the same rate of interest as was awarded by the Tribunal, i.e. 6% per annum, running from the date of filing of the claim petition, till the date of realization of the enhanced amount.

Recovery rights as already awarded by the Tribunal to the respondent/Insurance Company, would also hold for the purpose of the enhanced amount of compensation.

The appeal is partly allowed as above.

18.02.2016
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(Amol Rattan Singh)
Judge