

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

FAO No.5384 of 2014 (O&M).

Date of Decision: 10.02.2016.

Deputy Chand Gupta

....Appellant.

VERSUS

Salman Khan and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Shiv Kumar, Advocate for the appellant.

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

SNEH PRASHAR, J.

This is an appeal filed by the claimant-appellant, seeking enhancement of the compensation amount awarded by the learned Motor Accident Claims Tribunal, SAS Nagar, Mohali (for short, “the Tribunal”), on account of injuries sustained by him in a motor vehicular accident, which took place on 30.04.2012.

The facts that emerge from the record are as under:-

On 30.04.2012 appellant Deputy Chand Gupta driving an Activa Scooter No.CH-04-2774 was going from Chandigarh to Gillco Valley, Kharar. His wife Minakshi Gupta was accompanying him as pillion

rider. When they reached Desu Majra near Canara Bank, Tehsil Kharar, a Tata Safari bearing registration No.CH-01AH-1043 (hereinafter referred to as the “offending vehicle”) being driven rashly and negligently and in a high speed, came from their backside and hit their Activa Scooter. The appellant and his wife fell on the road and sustained multiple injuries. The driver of the offending vehicle disclosed his identity as Salman Khan (respondent No.1).

The appellant alongwith his wife was first admitted to S.K. Hospital, Desu Majra Road Sunny Enclave, Kharar and from there he was shifted to Indus Super Specialty Hospital, Mohali where he remained admitted till 14.05.2012. He pleaded that he spent approximately Rs.2,50,000/- on his treatment and Rs.50,000/- on special diet, attendant etc.

A petition claiming compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) filed by the appellant against driver, owner and insurer of the offending vehicle (respondents) was allowed by the Tribunal and an amount of Rs.51,400/- alongwith interest at the rate of 9% per annum from the date of filing of the petition till realization of the amount was awarded as compensation.

Feeling unsatisfied with the award dated 01.02.2014, the appellant preferred the instant appeal.

The submissions made by Mr. Shiv Kumar, learned counsel representing the appellant and Ms. Vandana Malhotra, learned counsel representing respondent No.3 have been heard and record perused.

Learned counsel for the appellant contends that as mentioned in the discharge summary of the appellant Ex.A4 prepared at Indus Super Specialty Hospital, he remained hospitalized w.e.f. 30.04.2012 to 14.05.2012. Dr. B.S. Bhalla Consultant Surgeon of the said hospital who appeared as PW2 proved the injuries sustained by the appellant as were mentioned in the discharge summary Ex.A4 in the column of 'diagnosis'. The bill raised by the hospital is Ex.A1 of an amount of Rs.2,61,625/-. Out of the said amount, an amount of Rs.2,20,000/- had already been deposited by the appellant in advance. The hospital gave a discount of Rs.17,125/- and at the time of discharge the appellant deposited Rs.24,800/-. However, the Tribunal misread the bill as of only Rs.24,800/- and awarded that amount alongwith the amount of Rs.5000/- paid by the appellant vide receipt Ex.A2 at S.K. Hospital Desu Majra and Rs.1600/- paid vide receipt Ex.A3 to Diagnosis Centre, situated at Mohali towards compensation on account of expenditure on medical treatment. Learned counsel asserted that the appellant remained hospitalized for 15 days at Indus Super Specialty Hospital. The bill Ex.A1 provides the details of the charges levied by the hospital to which the appellant is entitled to.

Learned counsel also urged that the amount of Rs.10,000/- awarded on account of pain and suffering and the amount of Rs.10,000/- towards special diet were inadequate. Nothing was allowed towards expenses on transportation and attendant etc.

Learned counsel for respondent No.3-insurance company controverting the arguments of learned counsel for the appellant submitted

that the compensation awarded is just and adequate. It does not appear to reason that the appellant who pleaded that he was getting a salary of Rs.10,000/- per month had gone to a hospital for treatment and taken special room during his hospitalization by paying Rs.3500/- per day for eight days as mentioned in the bill Ex.A1. Learned counsel contended that the bill Ex.A1 does not appear to be genuine and reliable.

On perusal of the record of the Tribunal, it transpires that the appellant examined PW2 Dr. B.S. Bhalla Consultant Surgeon who treated him at Indus Super Specialty Hospital, Phase-I, Mohali. The doctor stated that the appellant was admitted in the hospital with history of roadside accident on 30.04.2012 and was discharged on 14.05.2012. He gave description of the injuries found on the person of the appellant. The injuries mentioned in the discharge summary Ex.A4 were (i) fracture rib 10th; (ii) haemopneumothorax; (iii) fracture frontal bone Rt. (undisplaced linear involving roof of right orbit; and (iv) K/C/O COPD (H/O pulmonary TB). It is noteworthy that in the column of clinical history/procedure, it is mentioned that when the appellant was brought to the said hospital he was in severe respiratory distress. That justifies the reference in the bill Ex.A1 that he was kept in a room of Intensive Care Unit for eight days of which the rent was Rs.3500/- per day. Nothing such could be derived from PW2 Dr. B.S. Bhalla during cross-examination by the respondents which could raise doubt in the genuineness of the bill Ex.A1 raised by the hospital. In the circumstances in which the appellant was admitted in hospital, he and the family would have naturally sought the required and proper treatment

for saving his life without caring for the expenses they would land up incurring.

Indeed, the Tribunal wrongly read the bill Ex.A1 as of a sum of Rs.24,800/- because no reason was explained for allowing the said amount and declining the remaining i.e. Rs.2,20,000/- which was shown to have been deposited as an advance amount and was adjusted towards the total amount of Rs.2,61,625/-. Finding no reason to disallow the amount of the bill paid by the appellant at the hospital where he remained admitted for 15 days, the compensation allowed on account of expenditure on treatment of the appellant is enhanced by Rs.2,20,000/-.

Considering the fact that the appellant suffered serious and grievous injuries and remained hospitalized for 15 days, the amount of Rs.10,000/- awarded towards pain and sufferings is enhanced to Rs.30,000/-. To cover all other heads i.e. special diet, transportation, attendant etc., further amount of Rs.20,000/- is allowed which shall include the amount of Rs.10,000/- already awarded by the Tribunal under the head of special diet.

In view of the above, the claimant-appellant is entitled to enhanced compensation of Rs.2,50,000/- as indicated above. The amount shall be paid within a period of 45 days from the date of receipt of certified copy of this judgment, failing which, the appellant shall be entitled to interest at the rate of 7.5 per annum from the date of filing of the appeal till its realization.

In view of the above, the present appeal is partly allowed and the impugned award is modified to the above extent. The question regarding liability interse respondents will remain the same.

(SNEH PRASHAR)
JUDGE

10.02.2016.
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