

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

**FAO No.965 of 2013 (O&M)
Date of decision: 08.01.2016**

Jaipal

....Appellant

Versus

Kuldeep Singh and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Dheeraj Narula, Advocate,
for the appellant.

Mr. R.C. Kapoor, Advocate,
for respondent No.2-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as 'the Tribunal') vide award dated 09.11.2012, on account of injuries received by him in a motor vehicular accident which took place on 05.03.2011.

Brief facts of the case are that on 05.03.2011, claimant-appellant along with Kuldeep Singh-respondent No.1 and Sandeep was returning from Abohar to Bhattu Kalan in a car bearing registration No. HR-22-F-5037 after attending the marriage of his friend. When they reached near Haryana Beej Bhandar, Sirsa, suddenly a cow appeared on the road and came in front of the car. In order to save the cow, driver turned the car with jerk, however, it struck against the divider of the road, as a result of which, all the occupants of the car received grievous injuries. Thereafter, the

claimant-appellant was taken to Dr. Y.K. Chaudhary, Hospital, Sirsa, where he was medico-legally examined. He remained admitted in the hospital from 05.03.2011 to 12.03.2011. He was operated upon for fractures. With regard to the accident, DDR No.6 dated 13.03.2011 was registered at Police Post, Khairpur. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

Upon notice, respondents filed their separate written statements and contested the claim of the claimant-appellant.

From the pleadings of parties, following issues were framed by the Tribunal:-

1. Whether petitioner Jaipal son of Baljit Singh sustained injuries in a roadside accident, which took place on 05.03.2011 in the area of Haryana Beej Bhandar, Hisar Road, Sirsa, within the jurisdiction of Police Station, City Sirsa, by use of Alto Car No. HR-22-F-5037 as alleged?
OPP
2. Whether petitioner is entitled to award of compensation and if so, how much and from whom? OPP
3. Whether the petition is not maintainable in the present form? OPR
4. Whether the petitioner has concealed the true and material facts from this Court and has not come with clean hands?
OPR
5. Whether respondent No.1 was not holding a valid driving license at the time of alleged accident, if so, to what effect?
OPR3
6. Relief.

In order to prove his case, claimant-appellant had examined Jagpal Singh, MC, Police Post, Kairpur (PW-1), who proved certified copy of rapat roznamcha No.6 dated 13.03.2011 as Ex.P1. Claimant himself

appeared as PW-4 and tendered his affidavit Ex.PW4/A, wherein he reiterated the entire version given in the claim petition. Driver of the car bearing registration No. HR-22-F-5037 did not step into the witness box.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the Jaipal-claimant had received injuries on account of use of car bearing registration No. HR-22-F-5037, which was being driven by respondent No.1 and thus, returned the finding on issue No.1 in favour of the claimant.

Thereafter, the Tribunal proceeded to assess the quantum of compensation. Dr. Y.K. Chaudhary (PW-2) deposed that patient Jaipal was admitted in his hospital on 05.03.2011. He was operated upon on 08.03.2011 and was discharged on 12.03.2011. He proved the discharge slip Ex.P2, medical bill Ex.P3, follow up treatment charges Ex.P4 and x-ray bills Ex.P5 to Ex.P8. The claimant had alleged that he had spent a sum of Rs.1,50,000/- on his treatment, operation, medicines, special diet, transportation etc. Claimant had also tendered into evidence medical documents Ex.P9 to Ex.P29 and Mark-M, amounting to Rs.59,583/-. Dr. Pawan Kumar, Medical Officer (PW-3) had proved the disability certificate, Ex.PW3/A, issued by the Medical Board, vide which, disability of the claimant had been assessed as 10%. Thus, Rs.20,000/- were awarded by the Tribunal on account of permanent disability. In addition to it, Rs.20,000/- were granted on account of special diet, transportation charges etc. and Rs.10,000/- were granted for loss of income. Ultimately, the claim petition was accepted by the Tribunal and the claimant was found entitled to a total compensation of Rs.1,09,583/- along with interest at the rate of 7.5% per annum from the date of filing of the petition till realization. Feeling

dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

Learned counsel for the appellant has referred to the judgment delivered by the Hon'ble Supreme Court in **Master Mallikarjun Vs. Divisional Manager, The National Insurance Company Limited and another**, 2013 (4) RCR (Civil) 295, to contend that apart from medical and treatment expenses, Rs.1,00,000/- should be awarded on account of disability upto 10%.

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved.

Dr. Pawan Kumar, Medical Officer while appearing as PW-3 had proved the disability certificate issued by the Medical Board as Ex.PW3/A, vide which, the permanent disability of the appellant has been assessed as 10%. The appellant had undergone surgical operation for fractures and small locking plates were inserted in his right hand. He was doing agricultural work and his income can be taken as a daily wager. As per schedule of minimum wages, income of daily wager in the year 2011 was Rs.4348/- per month. In the present case, by taking a round figure, income of claimant-appellant can be taken as Rs.4400/- per month i.e. Rs.52,800/- per annum.

In the peculiar facts and circumstances of this case, the compensation is being reassessed as under:-

SR. No.	HEADS	CALCULATION
(i)	Annual income	Rs.4400/- x 12 = Rs.52,800/-
(ii)	50% of (i) above is added as future prospects	52,800/- + 26,400 = Rs.79,200/-
(iii)	Loss of income on account of permanent disability to the extent of 10%	Rs. 7920/-

SR. No.	HEADS	CALCULATION
(iv)	Compensation on account of permanent disability and loss of income after applying multiplier of 16	Rs.7920 x 16 = Rs.1,26,720/-
(v)	Medical expenses	Rs.59,583/-
(vi)	Special died, transportation charges etc.	Rs.30,000/-
(vii)	Pain and sufferings	Rs.30,000/-
(xiii)	TOTAL COMPENSATION AWARDED	Rs.2,46,303/-
	Enhanced amount of compensation	Rs.2,46,303 – 1,09,583 = Rs.1,36,720/-

The enhanced amount of compensation of **Rs.1,36,720/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of **Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others**, 2015(1) SCC 539. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

08.01.2016
ajp