

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

**FAO No.8203 of 2014 (O&M)
Date of Decision: 26.04.2016.**

BabyAppellant.

VERSUS

Manoj and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ram Pal Verma, Advocate for the appellant.

Respondent No.1 was proceeded against exparte vide order dated 04.12.2015.

Ms. Kaavya Jariyal, Advocate for respondent No.2.

Respondent No.3 was reported to have died.

SNEH PRASHAR, J.

CM-22216-17-CII-2014

There being delay of 194 days in filing and 170 days in refiling the appeal, separate applications under Section 5 of the Limitation Act and under Section 151 of the Code of Civil Procedure for condonation of delay were filed by the appellant.

Considering the averments made in the applications, the delay in filing as well as in refiling of the appeal is condoned.

Applications stand disposed of.

FAO No.8203 of 2014

Appellant-Baby filed a petition invoking the provisions of Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) claiming compensation for the injuries suffered by her in a motor vehicular accident that took place on 20.04.2011 at about 7:30 p.m. near Veterinary Hospital, Jhakholi. She was travelling in auto rickshaw bearing registration No.HR-69A-3706, which turned turtle due to its rash and negligent driving by Manoj (respondent No.1). A First Information Report No.88 dated 21.04.2011 in respect of the accident was registered at Police Station Rai under Sections 279 and 337 of the Indian Penal Code against respondent-Manoj.

The driver-owner Manoj, insurer-Shriram General Insurance Co. Ltd. and insured-Dharam Pal were impleaded as respondents in the petition. Respondents No.1 and 2 contested the petition denying the occurrence of the accident. Respondent No.2-insurance company also raised objection that respondent No.1 was not holding a valid and effective driving licence at the time of accident and the vehicle was being driven in violation of the terms and conditions of the insurance policy. Respondent No.3 did not appear to contest the petition despite due service.

On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal accepted the petition and awarded Rs.1,50,000/- as compensation to the claimants alongwith interest

at the rate of 7.5% per annum from the date of filing the petition till realization. Respondents No.1 and 2 were held jointly and severally liable to pay compensation and respondent No.2 insurance company was held liable to indemnify the insured.

Feeling dissatisfied with the award dated 25.03.2013, the appellant preferred the instant appeal.

The submissions made by Mr. Ram Pal Verma, learned counsel for the appellant and Ms. Kaavya Jariyal, learned counsel for respondent No.2-insurance company have been heard and record perused.

It was submitted on behalf of the appellant that she suffered serious and grievous injuries including a fracture in her right leg during the accident in question. At the first instance, she remained hospitalized w.e.f. 20.04.2011 to 24.04.2011 and was operated upon on 20.04.2011. She was again admitted in the hospital on 30.04.2011 and was discharged on 09.05.2011 and during the intervening period she was twice operated firstly on 01.05.2011 and then on 07.05.2011 for Necrosis of skin of right leg. However, learned Tribunal ignored the said facts and awarded only a consolidated amount of Rs.10,000/- under the heads pain and suffering; special diet; and attendant charges which is on the lower side. In addition to that PW3 Dr. B.R. Jawa proved the disability certificate Ex.P2 according to which the appellant had suffered 30% temporary disability. On this ground also, only an amount of Rs.30,000/- was awarded to her, which is also inadequate. The amount of Rs.3900/- awarded as expenses for transportation and Rs.5000/- towards loss of income were also on the lower side.

So far as the medical expenses are concerned, on the basis of the bills etc., the amount of Rs.1,01,100/- was rightly awarded by learned Tribunal. Indeed, it is proved from the medico legal certificate Ex.P3, discharge summary Ex.P4 and Ex.P5 that the appellant suffered multiple injuries including fracture in her right leg and remained hospitalized for about 13 days on two different occasions. She had to undergo three operations. As such, considering the nature of the injuries suffered by her and the medical documents available on the record, a sum of Rs.20,000/- is awarded towards pain and suffering undergone by her. She required nutritious diet and an attendant during the period of her hospitalization. No substantive evidence was led to prove that she had engaged an attendant yet even if for the sake of arguments, it is assumed that her family members were attending on her, a good amount must have been spent on their transportation, boarding-lodging etc. Thus, an amount of Rs.10,000/- is allowed to the appellant under the said head. The above amount of Rs.30,000/- (Rs.20,000/- for pain and suffering and Rs.10,000/- as attendant charges) will include the amount of Rs.10,000/- awarded by learned Tribunal under the said head. The amount of Rs.3900/- awarded as expenditure on transportation appears adequate.

As regards, the disability suffered by the appellant, PW3 Dr. B.R. Jawa, who proved the disability certificate Ex.P2, stated in his cross-examination that the disability assessed as 30% was temporary in nature and was likely to improve with passage of time. The disability was also in respect of right leg only and was not qua whole body. It was not to affect

her future earning capacity. Therefore, considering that the disability on improvement may come down to even less than 20%, the amount of Rs.30,000/- awarded as compensation for the disability suffered by the appellant is enhanced to Rs.40,000/-.

Though the appellant claimed that she was earning Rs.6000/- per month but she could produce no reliable evidence to prove either her occupation or income. Learned Tribunal had assessed her income as Rs.4500/- per month. Having suffered fracture in her right leg, the appellant may not have been able to work and do her daily chores for about three months and accordingly the amount of Rs.5000/- awarded towards loss of income is enhanced to Rs.13,500/-.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 25.03.2013 passed by learned Tribunal is modified. The enhanced compensation of Rs.38,500/- shall be paid to the appellant-claimant within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization. The amount of compensation will be disbursed to the appellant in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

26.04.2016.
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