

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.219 of 1992 (O&M)
Date of Order: 06.11.2017

Banwari

.Appellant

Versus

Ghanshyam Dass and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwal Goyal, Advocate,
for the appellant.

Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate,
for respondent no.3-Insurance Company.

ANIL KSHETARPAL, J (Oral)

Injured-appellant is in appeal for enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal').

Banwari, the appellant suffered crush injury of the left leg, resulting in three fractures. He suffered permanent disability of 25%. He remains hospitalized for a period of 15 days. Initially he was taken to Civil Hospital, Jundla, from where he was referred to Medical College, Rohtak. The appellant has examined three doctors including Dr. R.S.Bhoria, Medical Officer, at Civil Hospsital, Jundla. It is also the case of the appellant that he has to undergo a surgery.

Learned Tribunal recorded a finding that involvement of the offending vehicle is proved, however, it is not proved that the offending vehicle was being driven by Satpal, respondent no.2. The court found that the appellant has failed to prove that the offending vehicle was rash and

negligent. Hence, under no fault liability the appellant was awarded a sum of Rs.12,000/-.

Although, the record of the case was burnt, however, a photocopy of the record has been supplied.

I have seen the statement of the injured-appellant as well as statement of Thandia Ram, who has been examined as PW5. Both the witnesses have categorically stated that respondent no.2-Satpal was rash and negligent in driving the offending vehicle. Learned Tribunal has given undue weightage to the rapat allegedly got entered by Ram Phal son of the appellant, who has been examined as PW6. The Tribunal has overlooked the fact that Ram Phal, PW6 when appeared in the witness box specifically stated that his signatures were obtained on a written report, which had been recorded by the police officials.

Still further, it is the case of crush injury and the appellant suffered three fractures. The Government doctor Dr. R.S.Bhoria, Medical Officer, Civil Hospital, Jundla, has appeared in the witness box as PW12 and has stated that such injury is not possible by a fall on the bricks. Dr. Sukhbir Singh Sangwan, who has been examined as PW13 has also supported the evidence of Dr. R.S.Bhoria. Another doctor Dr. Dhan Kumar has been examined as PW14, who is medical officer at Civil Hospital, Jind. He has also supported Dr. R.S.Bhoria.

Taking into consideration the overwhelming evidence available on the file, the findings of the learned Tribunal that the appellant has failed to prove rash and negligent driving on the part of the driver of the vehicle is erroneous and, therefore, set aside.

Since, the appellant has suffered 25% permanent disability, he

remained hospitalized for a period of 15 days and he had to undergo surgery, now I proceed to determine the compensation payable to the appellant.

<i>Heads</i>	<i>Compensation awarded by MACT</i>	<i>Compensation awarded by High Court</i>
Permanent disability 25%	NIL	Normally for per percentage of disability, Rs.2000/- is awarded. Hence, the amount comes to Rs.2000x25% Rs.50,000-00
Transportation Charges	Rs.2,000-00	NIL
Medical Expenses	Rs.2,000-00	Rs. 2,000-00
Pain and Suffering	Rs.5,000-00	Rs.25,000-00
Loss of Earning	Rs.3,000-00	Rs.25,000-00
Total	Rs.12,000-00	Rs.1,02,000-00

The total of this would come to Rs.1,02,000/-. The Tribunal had allowed Rs.12000/-, which would be deducted and the remaining enhanced amount of Rs.90,000/- would be paid to the appellant along with interest @ 6% per annum from the date of filing of the claim petition till its realization.

November 06, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No