

FAO No. 893 of 1990 (O&M)

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

**FAO No. 893 of 1990 (O&M)
Date of Decision: 3.7.2017**

Jagmal Singh

.....Appellant

Vs.

Raghbinder Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. R.S. Longia, Advocate
for the appellant.

Mr. Pardeep Goyal, Advocate
for the respondents.

RAMESHWAR SINGH MALIK J. (ORAL)

Present appeal, at the hands of claimant, is directed against the impugned award dated 2.6.1990 passed by the learned Motor Accident Claims Tribunal ('Tribunal' for short), whereby appellant was awarded an amount of ₹60,000/- as compensation for the injuries suffered by him in a road accident, which took place on 18.6.1989.

Brief facts of the case, as recorded by the learned Tribunal in para 2 of the impugned award, read as under:-

Facts of the case are that on 18.6.1989, Ram Chander, Head Constable, Jagmal Singh and Raj Kumar Constables were going on patrol duty on Ladwa, Radaur Road, Ram Chander HC and Raj Kumar Constable were on the right side of the road, while Jagmal Singh was on

the left side of the road. At about, 2:00 AM, they reached near Indian Oil Petrol Pump, Ladwa, when a truck arrived there from the side of Ladwa being driven rashly and negligently by respondent No.1. Jagmal Singh was moving on the left side of the road but the truck driver who was driving the truck rashly and negligently, hit him from behind and he fell down on the road and sustained injuries at his right leg. The truck driver stopped the truck at some distance near the Petrol Pump and Ram Chander HC noted down the number of the truck in the tube-light and it was bearing No. DHG-5463. It was loaded with logs of wood. When the Head Constable ran towards the truck, the truck driver speeded up the truck and ran away towards Yamuna Nagar. Then the Head Constable returned to the spot and he and Raj Kumar took the injured to Civil Hospital, Ladwa. He had sustained fractures at his right leg and one injury at his head. The doctor medically examined him and found fracture at his right leg at three places. On the report of Ram Chander, H.C. a case under Sections 279/338 IPC was registered against the truck driver.

The petitioner was employed as Constable in Haryana Police Department and was drawing Rs. 1750/- month as salary. From Ladwa, he was referred to Civil Hospital, Kurukshetra, where he remained admitted for about 15 days. He was then referred to Civil Hospital,

Panipat for better treatment because in those days there was strike in PGI Chandigarh. He remained admitted in Civil Hospital, Panipat, for about two months and plaster was applied on his leg. Despite that treatment he was unable to move independently and had to use Baisakhi. He spent an amount of Rs. 20,000/- on his treatment and further amount of Rs. 30,000/- on special diet. He has incurred the expenses of Rs. 5,000/- on hire charges. He obtained leave without pay for about six months.

Claim petition filed by the claimant was contested by respondents No.1 and 2, who were owner and driver of the truck bearing registration No. DHG 5463. The respondent-Insurance Company also contested the claim petition. On completion of pleadings of the parties, the learned Tribunal framed the following issues:-

- 1. Whether Jagmal Singh sustained injuries on account of his accident with truck No. DHG-5463 which took place on 18.6.1989 near Ladwa due to rash and negligent driver thereof by respondent No.1? OPP*
- 2. If issue No.1 is proved to what amount of compensation is the claimant entitled to and from whom?OPP*
- 3. Relief.”*

Parties brought on record their respective documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned Tribunal came to the conclusion that appellant suffered 20% permanent disability. Respondent-Insurance Company was found liable to indemnify the insured-claimant. Putting the amounts of compensation under different heads together,

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appellant was awarded an amount of ₹60,000/- as compensation for the injuries suffered by him. The amount of compensation was ordered to be paid along with interest @ 12% per annum from the date of receipt of the petition till the realisation of the awarded amount, directing the Insurance Company to make the payment of the whole amount along with the interest, vide impugned award dated 2.6.1990.

Respondent-Insurance Company did not challenge the correctness of the abovesaid award passed by the learned Tribunal. However, claimant-appellant felt dissatisfied and filed the present appeal, seeking enhancement of compensation. Appeal was admitted for regular hearing. That is how, this Court is seized of the matter.

Considering the evidence available on record, the learned Tribunal recorded its findings in para 11 of the award, assessing the amount under different heads. Para 11 of the impugned award deserves to be referred here and the same reads as under:-

“From the above evidence, it is evident that the petitioner sustained fractures at three places of his right leg. Even after a period of nine months of the accident, he was unable to move independently. He appeared in the witness box after about nine months of the occurrence walking with the help of Baisakhi. At two places, the fracture was of both the bones of the right leg. He remained confined to bed for about three months and obtained treatment for about 5/6 months. He had to obtain leave for about six months which was without pay. Thus, he sustained serious fractures at three places of his right leg and must have suffered much pain and agony and deprived of amenities of life and so an amount of Rs. 10,000/- is awarded on account of pain and suffering and

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loss of enjoyment of life. Further amount of Rs. 10,000/- is awarded as expenses incurred on the treatment and special diet. He has suffered permanent disability to the extent of 20% which shall persist throughout his life. So, an amount of Rs. 20,000/- is awarded on account of permanent disability. He had to take leave for about six months and according to him leave was without pay. However, no evidence to that effect was led that his entire leave spell was without pay. So, an amount of Rs. 5,000/- is awarded on account of loss of pay. He was due for promotion as Head Constable and thereafter, he could be promoted as Sub Inspector but now chances for promotion in the Police Department are apparently dim. Thus, an amount of Rs. 15,000/- is awarded on that account. So, the petitioner is entitled to total compensation of Rs. 60,000/-.”

So far as liability of the respondent Insurance Company is concerned, it has gone unchallenged and uncontroverted. During the course of hearing, learned counsel for the respondent-Insurance Company, despite making his best efforts, could not controvert the abovesaid findings recorded by the learned Tribunal on different counts, except compensation of ₹10,000/- granted to the appellant on account of treatment and special diet.

After hearing learned counsel for the parties and going through the record of the case, this Court is of the considered opinion that the appellant is entitled for an enhanced amount of compensation on three counts namely; pain and suffering, permanent disability to the extent of 20% and loss of income for a period of six months. It is so said, because the learned Tribunal has failed to apply proper multiplier for the purpose of assessing the amount of compensation on account of 20% permanent disability suffered by the appellant. The impugned award deserves to be

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modified accordingly.

Having given due consideration to the peculiar facts and circumstances of the case and proceeding on a holistic, pragmatic and constructive approach with a view to do complete and substantial justice between the parties, this Court is of the considered opinion that the appellant is entitled for an amount of ₹30,000/- instead of ₹10,000/- as compensation on account of pain and suffering. Since the appellant was admittedly aged 30 years at the time of accident, multiplier of 17 would be applicable. Admittedly, annual income on account of salary of the appellant was ₹21,000/-. Thus, after applying multiplier of 17, amount would come to ₹3,57,000/- and 20% thereof, will be ₹71,400/-. After deducting an amount of ₹20,000/-, already granted by the learned Tribunal, amount comes to ₹51,400/-, therefore, appellant shall be entitled for this enhanced amount of ₹51,400/- on account of 20% permanent disability suffered by him.

It has also gone undisputed before this Court that appellant remained on leave without pay for a period of six months due to the accident in question and total amount of his salary for six months was ₹10,500/- but the learned Tribunal awarded only ₹5000/- without any reason. Thus, appellant would be entitled for ₹5,500/- more on this count. Awarding any lesser amount of compensation on account of abovesaid three heads will be wholly unjustified.

So far as amount of ₹10,000/- awarded to the appellant as expenses incurred towards special diet and treatment is concerned, this Court is of the firm view that it was a reasonable amount awarded to the appellant. It is so said, because the appellant being government servant, he was entitled to medical reimbursement. Further, there was no convincing evidence in this

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regard available on record to justify any further enhancement. Putting the abovesaid three amounts together, i.e. ₹20,000/- ₹51,400 and ₹5,500/-, amount comes to ₹76,900/-, which is over and above the amount of compensation already awarded by the learned Tribunal vide impugned award.

The view that has been taken by this Court also finds support from the law laid down by the Hon'ble Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009 (3) RCR (civil) 77, Rajesh and others Vs. Rajbir Singh and others, 2013 (9) SCC 54 and Munna Lal Jain and another Vs. Vipin Kumar Sharma and others, 2015 (3) RAJ 459.**

So far as interest is concerned, the learned Tribunal was well justified in awarding the interest @ 12% per annum and the same deserves to be upheld.

Consequently, respondent Insurance Company is directed to pay to the appellant an amount of ₹76,900/- along with interest @ 12 % per annum from the date of filing of the claim petition, i.e. 19.8.1989 till the date of payment.

Resultantly, with the abovesaid modification in the impugned award, instant appeal stands allowed, however, with no order as to costs.

3.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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