

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

FAO No.3418 of 2005.

Date of Decision: 10.05.2017.

Joginder Singh

....Appellant.

VERSUS

Sher Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

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

Mr. Surender Saini, Advocate for respondents No.1 and 2.

Mr. Lalit Garg, Advocate for respondent No.3.

SNEH PRASHAR, J.

By way of this appeal, appellant-claimant Joginder Singh seeks enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Sonapat (for short, 'the Tribunal') vide award dated 02.04.2005 passed in MACT Case No.76 of 2003 filed by him on account of injuries sustained in a motor vehicular accident.

The relevant facts are that on 05.03.2003, appellant Joginder Singh alongwith Anil and Karambir was going towards Bahalgarh on a Hero Honda motorcycle. When they reached in the area of Bahalgarh Chowk, a truck bearing registration No.HR-06A-4138, which came from Panipat side and was being driven by Sher Singh (respondent No.1), struck against their motorcycle. As a result of accident, appellant Joginder Singh

Jitender
2017.05.26 13:43 and Anil sustained injuries. A First Information Report No.40 dated
I attest to the accuracy and
integrity of this document

06.03.2003 in respect of the accident was lodged with Police Station Rai on the statement of one Satbir.

Appellant Joginder Singh filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act of 1988') against the driver, owner and insurer of the offending truck claiming compensation for the injuries suffered by him during the accident. The respondents contested the petition. Respondents No.1 and 2 though admitted the factum of accident, but denied that respondent No.1 was at fault. They pleaded that the accident took place due to negligence on part of the motorcyclist. Respondent No.3-insurance company raised objections denying its liability to indemnify the insured alleging that the driver of the truck was not holding a valid and effective driving licence on the date of accident and the truck was being driven in violation of the terms and conditions of the insurance policy.

On the basis of the rival pleadings of the parties, issues were settled. Considering the evidence led by the parties and the submissions made on their behalf, learned Tribunal partly allowed the petition and awarded compensation of Rs.50,000/- to the appellant alongwith interest at the rate of 6 per cent per annum from the date of filing the petition till realization.

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

The submissions made by Mr. S.R. Hooda, learned counsel for the appellant, Mr. Surender Saini, learned counsel for respondents No.1 and 2 and Mr. Lalit Garg, learned counsel for respondent No.3-insurance company have been heard and record perused.

Learned counsel for the appellant argued that the compensation of Rs.50,000/- awarded to the appellant in lump sum by learned Tribunal is on the lower side. The appellant had to be repeatedly admitted in different hospitals due to the injuries suffered by him in the accident. He underwent three operations on his left leg and spent more than Rs.2,00,000/- on the treatment. He suffered loss of income during the period of treatment which extended for more than two years. The appellant is still incurring expenses on his treatment and is not able to enjoy the basic amenities of life. Learned Tribunal should have awarded compensation to the appellant on account of loss of enjoyment of life, attendant charges, special diet, loss of income, hospitalization, pain and suffering and transportation etc. Learned Tribunal also erred in considering the fact that left leg of the appellant was shortened by one inch and that he had suffered 48% disability. The rate of interest awarded by learned Tribunal is also on the lower side.

The medico legal report of the appellant-claimant is Ex.P11 according to which he had suffered multiple injuries on various parts of the body including left leg. The discharge slip Ex.P7 of Lok Nayak Hospital, New Delhi proved that the appellant was admitted in the said hospital on 06.03.2003 and was discharged on 08.03.2003. PW1 Dr. Vikas Goel deposed that Joginder Singh (claimant) was admitted in his hospital on 23.09.2003 as he was suffering from non united compound fracture tibia with bone loss. He was operated upon on 24.09.2003 and was discharged on 26.09.2003. The doctor added that the appellant was still coming to him for follow up treatment as the bone is still not united and at this stage there is little chance of recovery. Although the appellant did not produce any disability certificate, but from the statement of the doctor, it is apparent that

he had suffered disability qua left lower limb.

No doubt, the appellant did not produce any document to prove that he had suffered permanent disability due to the injuries sustained by him, but the fact remains that on 30.07.2004 when the statement of PW1 Dr. Vikas Goel, who treated the appellant was recorded, he deposed that the fracture suffered by the appellant has still not reunited and there is very little chance of recovery. The appellant tendered medical bills Ex.P8 to Ex.P39 amounting to Rs.36,000/-. All the said facts were duly noticed by learned Tribunal, yet a consolidated amount of Rs.50,000/- only was awarded as compensation, which needless to say is on the lower side. The award was not passed allowing compensation separately for the pecuniary and non pecuniary loss suffered by the appellant.

Considering the nature of injuries suffered by the appellant and the extended period of treatment taken by him, it is obvious that he must have gone through lot of pain and suffering. Since the appellant had suffered a compound fracture in his left leg, he must have remained bedridden and required an attendant to look after him and help him in his day to day necessities. Even if it is assumed for the sake of argument that his family members were attending on him, it is obvious that he must have spent a good amount on their transportation and boarding-lodging. He also must have spent on his own transportation and special diet etc.

Though the appellant stated that he was an agriculturist and was also engaged in the business of dairy farming as well as sale-purchase of Milch animals and he used to earn Rs.10,000/- to Rs.12,000/- per month, but no substantive evidence has been led by him to prove his income. There being no substantive evidence to prove the occupation and income of the

appellant, considering the relevant year and other circumstances, his income is assessed as Rs.3000/- per month. The statement of PW1 Dr. Vikas Goel proved that the appellant had been taking regular treatment for almost one year. During that period he may not have been able to do his normal work and earn anything for himself and his family members. Therefore, he is entitled to compensation under the head of loss of income also.

Because of the injuries, the appellant also must have suffered loss of enjoyment of amenities of life. As far as expenses on treatment is concerned, the bills tendered by him in evidence are of an amount of Rs.36,000/- and the said amount deserves to be allowed.

In the above premise, the appellant-claimant is held entitled to compensation as under:-

(i)	Pain and sufferings	:	Rs.30,000/-
(ii)	Medical bills/expenses	:	Rs.36,000/-
(iii)	Attendant charges	:	Rs.10,000/-
(iv)	Loss of enjoyment of life	:	Rs.20,000/-
(v)	Loss of income (Rs.3000/- X 12 months)	:	Rs.36,000/-
(vi)	Disability	:	Rs.30,000/-
(vii)	Special diet	:	Rs. 5,000/-
(viii)	Transportation	:	Rs.10,000/-
Total			<u>Rs.1,77,000/-</u>

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 02.04.2005 passed by learned Tribunal is modified. The enhanced compensation of Rs.1,27,000/- alongwith interest at the rate of 6% per annum from the date of filing of the claim petition till

realization shall be paid to the appellant 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 this order till realization.

(SNEH PRASHAR)
JUDGE

10.05.2017.
jitender sharma

Whether speaking / reasoned : **Yes/ No**

Whether reportable : **Yes/ No**