

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

**FAO No.2655 of 2010 (O&M)
Date of decision: 09.02.2017**

Subh Ram

..Appellant

Versus

Krishan Kumar and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Zorawar Singh, Advocate for
Mr. N.S. Shekhawat, Advocate
for the appellant.

Ms. Madhu Sharma, Advocate
for respondent No.3-Insurance Company.

Daya Chaudhary, J.

The present appeal has been filed by the claimant-injured for modification of award dated 16.02.2009 passed by the Motor Accident Claims Tribunal, Narnaul on account of injuries suffered by him in a motor vehicular accident on 02.09.2006.

Briefly, the facts of the case are that on 02.09.2006, the appellant along with one Kuldeep was returning on motorcycle bearing registration No.HR-35C-8492 from Gurgaon Gramin Bank Sheema. At about 12 pm, on reaching near Bus Stand Khampura, the offending tractor driven in a rash and negligent manner, hit their motorcycle from behind, due to which, the appellant suffered injuries on his left leg. He was shifted to Civil Hospital, Narnaul where he was medico-legally examined. Thereafter, he was referred to a hospital at Jaipur, resultant whereupon, his family members took him to Saini Orthopaedic Hospital, Jaipur. The matter was

reported to the Police and FIR No.159 dated 05.09.2006 under Sections 279, 337, 338 IPC was registered at Police Station Sadar, Narnaul against driver of the offending vehicle. Thereafter, a claim petition was filed for grant of compensation to the tune of ₹10,00,000/- on account of injuries suffered by him stating that he was 45 years of age and was getting salary of ₹18,000/- per month being employed as a teacher in Haryana Education Department. An amount of ₹70,000/- was stated to be spent on treatment, purchase of medicines and transportation etc.

A joint written statement was filed by the respondents No.1 and 2 wherein they denied the factum of accident. The claim petition was allowed and an amount of ₹1,48,000/- was awarded as compensation. Out of total amount, ₹25,000/- was awarded towards pain, agony, suffering, transportation and special diet whereas ₹41,000/- was awarded on account of expenses on medicines and treatment as per bills Ex.P-2 to Ex.P-11. ₹50,000/- was awarded on account of loss of earnings during hospitalization and recovery and ₹32,000/- on account of disability to the extent of 16%.

The appellant has filed the present appeal for enhancement of the amount of compensation contending that he has not been awarded adequate compensation.

Learned counsel for the appellant submits that not only the appellant remained admitted in hospital but all heads of pain, agony, suffering, transportation and special diet have also been included together for which meager amount of ₹25,000/- has been awarded whereas the appellant suffered disability as his leg was fractured and he remained on leave for a period of 90 days. Learned counsel also submits that the

appellant is also entitled for interest.

Learned counsel for respondent No.3 -Insurance Company has opposed the submissions made by learned counsel for the appellant and also submits that adequate amount has been awarded as it was a temporary disability and the appellant was given benefit of earned leave and as such, it cannot be said that he remained out of job during that period as he remained admitted in the hospital for a period of 2/3 days only.

Heard arguments of learned counsel for the appellant as well as counsel for respondent No.3-Insurance company and have also perused the impugned award and other documents available on the file.

The facts relating to accident, filing of claim petition, age and monthly salary are not disputed. It is also not disputed that the total payment against bills, which were submitted by the appellant, has been made. The grievance of the appellant is that only an amount of ₹25,000/- has been awarded towards pain, agony, suffering, transportation and special diet and an amount of ₹50,000/- has been awarded on account of loss of earnings.

As per statement of PW-5 Dr. Dinesh Podar, the appellant suffered the disability to the tune of 16% on account of range of motion of left knee joint reduced by 40% with mal-united fracture left tibia and pain and tenderness so the amount of ₹32,000/-, which has been awarded on account of disability, appears to be on lower side.

An amount of ₹25,000/- has been awarded towards pain, agony, suffering, transportation and special diet, which also appears to be on lesser side. All heads have been joined together whereas he was transferred from Narnaul to Jaipur and thereafter, to other hospital where he

remained admitted from 02.09.2006 to 05.09.2006. He was also operated upon, which has been proved from discharge slip Ex.P-19. He also visited the hospital at Jaipur on several occasions for follow up treatments and has stated to spend ₹70,000/- on treatment, which has been proved on record. He remained on medical leave w.e.f.02.09.2006 to 30.11.2006 and these leaves were converted into earned leave. Eventhough it has not come on record as to how many earned leaves the appellant was having to his credit but undisputedly, the appellant must have got less amount than the salary. There was pain, agony, suffering and he might have incurred expenses on special diet and attendant looking after him during the period of admission in the hospital as well as subsequently as he remained on leave for 90 days, which shows that he was not in a position to go to his school. Hence, the amount of ₹25,000/- awarded towards pain, agony, suffering, transportation and special diet is on the lower side, which deserves to be enhanced.

Keeping in view the facts as mentioned above, the amount of ₹32,000/- awarded towards disability is enhanced to ₹47,000/- and against the heads of pain, agony, suffering, transportation and special diet as well as attendant, the compensation is enhanced from ₹25,000/- to ₹60,000/-. However, there will be no increase towards the bills and loss of earnings.

The chart mentioning the amount, which has been awarded and which requires to be enhanced is prepared as under: -

<i>Sr. No.</i>	<i>Heads</i>	<i>Amount awarded</i>	<i>Amount enhanced</i>
1	On account of disability	₹32,000/-	₹47,000/-

<i>Sr. No.</i>	<i>Heads</i>	<i>Amount awarded</i>	<i>Amount enhanced</i>
2	On account of pain, agony, suffering, transportation and special diet etc.	₹25,000/-	₹60,000/-
3	On account of expenses on medicines and treatment as per bills	₹41,000/-	---
4	On account of loss of earnings	₹50,000/-	---
	Total	₹1,48,000/-	₹1,07,000/-

The amount, which has been granted towards disability and on account of pain, agony, suffering, transportation and special diet comes to ₹57,000/- and as such, the appellant-claimant is entitled to enhanced compensation by deducting the amount of ₹57,000/- from the enhanced amount of ₹1,07,000/-, which comes to ₹50,000/-.

Accordingly, with the aforesaid modification in the award, the appeal is allowed. The claimant shall be entitled to total compensation of ₹1,48,000/- + ₹50,000/- as enhanced. The respondent-Insurance Company is also directed to pay the amount awarded by the Tribunal as well as the enhanced compensation within a period of two months from the date of receipt of certified copy of this order, after deducting the amount, if any, already paid.

09.02.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No