IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.531 of 2012.
Date of Decision: 14.03.2017.

Roop Singh ....Appellant.

VERSUS

Harvinder Singh and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sham Lal Bhalla, Advocate for the appellant.

Mr. D.S. Gurna, Advocate for respondent No.1.

Mr. Abhishek Arora, Advocate for respondent No.2.

Mr. Gopal Mittal, Advocate for respondent No.3.

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SNEH PRASHAR, J.

By way of this appeal, appellant-claimant Roop Singh seeks enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Fatehgarh Sahib (for short, "the Tribunal") vide award dated 04.05.2011 passed in MACT No.86 of 22.12.2007 filed by him on account of injuries sustained in a motor vehicular accident that took place on 08.03.2007.

The relevant facts are that on 08.03.2007, Roop Singh alongwith his daughter Amandeep Kaur was going to village Badouchi Kalan on scooter bearing registration No.PIM-5197 to see a fair. When they reached near 'phirni' of village Rurki, a Hero Honda motorcycle No.PB-23F-0557, which came from the side of bus stand Rurki and was being driven by Harvinder Singh (respondent No.1), struck into their scooter. As a result of accident, Roop Singh and his daughter sustained injuries. A report in respect of the accident was lodged with the police wherein it was mentioned that as the road near the 'phirni' of village Rurki was under repair, the accident took place by chance and there was no fault on part of either the driver of the scooter or the driver of the motorcycle.

Appellant Roop Singh filed a petition under Section 163-A of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) against the driver, owner and insurer of the motorcycle claiming compensation for the injuries and the disability due to the injuries suffered by him during the accident. The respondents contested the petition. Respondent No.1 though admitted the factum of accident, but denied that he was at fault. Respondent No.2 Hakam Singh (owner) altogether denied involvement of his motorcycle in the accident. Respondent No.3-insurance company raised objections denying its liability to indemnify the insured alleging that the driver of the motorcycle was not holding a valid and effective driving licence on the date of accident and the motorcycle 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 accepted the petition and awarded compensation of Rs.2,93,000/- to the appellant alongwith interest at the rate of 7.5% 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. Sham Lal Bhalla, learned counsel for the appellant, Mr. D.S. Gurna, learned counsel for respondent

No.1, Mr. Abhishek Arora, learned counsel for respondent No.2 and Mr. Gopal Mittal, learned counsel for respondent No.3-insurance company have been heard and record perused.

Apart from deposition of the appellant, the Daily Diary Report dated 14.03.2007 (Ex.R5), registered in respect of the accident, proved the identity of both the vehicles i.e. the scooter and the motorcycle involved in the accident and learned Tribunal rightly recorded a finding to the said effect. Although respondent No.2 (owner of the motorcycle) denied involvement of his motorcycle in the accident, but the finding record by learned Tribunal against him was not challenged by him.

Learned counsel for the appellant argued that from the disability certificate Ex.P3 proved by PW2 Dr. Rohit Jindal, Member of the Board of Doctors of Govt. Medical College and Hospital, Sector-32, Chandigarh as well as from the statement of PW3 Dr. Arvind Malhotra, Neuro Surgeon, it stands established that the appellant was diagnosed as a case of left frontal contusion with mild dysphasia. His disability was assessed as 50% qua the whole body. The doctors also stated that the disability was permanent in nature. The appellant was running a flour mill and was also into dairy farming business. The income of the appellant assessed as Rs.3300/- per month and the amount of Rs.2,88,000/- awarded by learned Tribunal by applying the multiplier of '15' to 50% of the annual income for the disability suffered by the appellant is on the lower side. Learned counsel also contended that in addition to the said amount, only an amount of Rs.5000/- was awarded on account of pain and suffering undergone by the appellant which is also inadequate. No amount was added to the income of the appellant computing future prospects and nothing was awarded towards expenditure on treatment, loss of enjoyment of life etc. To support his argument, learned counsel relied upon ***Sri Kumaresh vs. The Divl. Manager National Insurance Co. Ltd. and another, 2011(2) R.C.R. (Civil) 913.***

On the other hand, learned counsel for the respondents argued that the compensation awarded to the appellant by learned Tribunal is already on the higher side. It has come in evidence that the appellant had already been compensated by respondents No.1 and 2 (driver and owner of the motorcycle) by paying him Rs.1,00,000/- on humanitarian grounds in presence of respectables and a DDR to that effect was lodged. Learned Tribunal noticed the said fact in the award but did not order for adjustment of the amount of compensation already paid.

In **Sri Kumaresh**'s case (supra), the compensation was awarded under Section 166 of the Act of 1988 whereas the claim petition by the appellant was filed under Section 163-A of the Act of 1988. Section 163-A is a special provision as to payment of compensation on structured formula basis. It postulates that notwithstanding anything contained in the Act of 1988 or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule of the Act of 1988, to the legal heirs or the victim, as the case may be. Note-5 of the Second Schedule provides as under:-

> *"Disability in non-fatal accidents:*
>
> *The following compensation shall be payable in case of disability to the victim arising on of non-fatal accidents:—*

Loss of income, if any, for actual period of disablement not exceeding fifty two weeks.

PLUS either of the following:—

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement/ Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923."

In the case in hand, the appellant himself deposed that he was running a flour mill and was also doing dairy farming business and from all sources he was earning Rs.3300/- per month. Learned Tribunal assessed the income of the appellant as stated by him. Since the appellant had suffered 50% disability qua the whole body, learned Tribunal held that the earning capacity of the appellant had reduced to 50%. The appellant being 40 years old, the multiplier of '15' was adopted and to the 50% income of the deceased i.e. Rs.1600/- per month or Rs.19200/- per annum, the multiplier of '15' was applied and the amount of Rs.2,88,000/- was awarded for the disability suffered by the appellant. There appears no ground for intervention in the said finding of learned Tribunal.

For the pain and suffering undergone by the appellant, the amount of Rs.5000/- as provided under Note-4(i)(a) to the Second Schedule was rightly allowed.

Indeed, as pointed out by learned counsel for the appellant, no amount was awarded towards expenses incurred on the treatment of the appellant. The bills produced by the appellants are Mark-H to Mark-Z, Mark-AA to Mark-AZ, Mark-BA to Mark-BK, which are of more than an amount of Rs.15,000/-. No doubt, the bills were not proved in due process of law, but there appears no reason to doubt the genuineness of the bills when the medical evidence in the shape of treatment record Ex.P1 tendered in evidence proved that an extensive medical treatment had been administered to the appellant w.e.f. 08.03.2007 to 21.03.2007. Note-4(ii) of the Second Schedule lays down that medical expenses-actual expenses incurred supported by bills/vouchers but not exceeding Rs.15,000/- as one time payment shall be paid as compensation. In view of the said provision, Rs.15,000/- is allowed to the appellant towards expenses incured by him on his treatment.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 04.05.2011 passed by learned Tribunal is modified. The enhanced compensation of Rs.15,000/- 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 filing the appeal till realization.

14.03.2017. **(SNEH PRASHAR)**
jitender sharma **JUDGE**

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

Whether reportable : **Yes/ No**