

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

**FAO No.10473 of 2014 (O&M)
Date of decision: 20.09.2017**

Parminder Singh

....Appellant

Versus

Jagtar Singh @ Kaka and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vikram Bali, Advocate,
for the appellant.

Mr. Naveen Kapoor, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

CM No.17336-CII of 2017

Disability certificate dated 09.08.2017 (Annexure A-1) is taken
on record.

Misc. application stands allowed accordingly.

CM No.28835-CII of 2014

In view of the averments mentioned in the application, same is
allowed and delay of 510 days in filing of the appeal is condoned.

FAO No.10473 of 2014

This appeal has been filed by the claimant-appellant (Parminder
Singh) seeking enhancement of compensation awarded by Motor Accident
Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal') vide
award dated 25.01.2013, on account of injuries suffered by him in a motor

Brief facts of the case are that on 29.03.2009, at about 05:15 P.M., Parminder Singh-claimant (appellant) along with Capt. Kanwaljit Singh, Cabinet Minister, Punjab, was coming back from Ludhiana in Alentra car bearing registration No. CH-03-S-0074. The said car was being driven by claimant-appellant. When they reached near village Khanpur, a truck bearing registration No. HR-55-B-9491 being driven by Jagtar Singh @ Kaka-respondent No1 in a rash and negligent manner, came from the opposite side at a very high speed and struck against the car, as a result of which claimant suffered multiple and grievous injuries including fracture of both the jaw bones, uprooting of two teeth of lower jaw and disfiguration of his face. Due to head injury, his left arm and left leg are not functioning properly. As per claimant, the said accident had occurred due to contributory negligence of driver of another truck bearing registration No. HR-58-A-9791, which was wrongly parked on the road. With regard to the accident, FIR No.112 dated 29.03.2009 under Sections 279/304-A IPC was registered at Police Station, Kharar. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

Upon notice, insurance company (respondent Nos.3 and 6) being insurer of both the offending vehicles, filed written statement, stating therein that drivers of both the trucks were not authorized to drive the offending vehicles and those trucks were being plied without valid route permits etc. It was further stated that the accident had occurred due to rash and negligent driving of car by the claimant himself. All other allegations levelled by the claimant were controverted and prayer for dismissal of claim petition was made.

Respondent Nos.1, 2, 4 and 5 had failed to appear before the

Tribunal, therefore, they were proceeded against exparte.

From the pleadings of the parties, following issues were framed:-

1. Whether the claimant has suffered injuries on account of the accident in question which took place due to contributory rash and negligent driving of truck bearing registration No. HR-55-B-9491 by respondent No.1 and another truck bearing registration No. HR-58-A-9791 by respondent No.4, as alleged? OPP
2. If issue No.1 is proved, whether the claimant is entitled to compensation, if so, to what amount and from whom? OPP
3. Whether the respondent No.1 and respondent No.4 were not holding valid and effective driving licence at the time of accident, if so, to what effect? OPR
4. Relief.

After going through the evidence led by the parties, the Tribunal came to a conclusion that the accident in question had been caused due to the contributory negligence of their respective trucks by respondent No.1 and respondent No.4. Accordingly, issue No.1 was decided in favour of the claimant.

While assessing compensation, the Tribunal has observed that as per discharge and follow-up cards Ex.P1, Ex.P2 and Ex.P4, the claimant had remained admitted at PGI, Chandigarh from 07.04.2009 to 15.05.2009, 20.06.2009 to 30.06.2009 and 22.01.2010 to 30.01.2010 i.e. for 59 days. Apart from this, as per documents Ex.P3, Ex.P5 to Ex.P8, he had visit PGI, Chandigarh on various dates as an outdoor patient. Accordingly, A sum of

Rs.50,000/- was awarded on account of hospitalization, Pain and sufferings, Rs.30,000/- on account of special diet and transportation charges. Further, a sum of Rs.71,666/- was awarded as treatment expenditure. The claimant was working as driver with Capt. Kanwaljit Singh. In the absence of any proof, income of claimant was assessed as Rs.6000/- per month. As he remained hospitalized for about two months, Rs.12,000/- were awarded towards loss of income. Dr. Umesh Modi (PW-2) had deposed that the claimant had appeared before the Medical Board on 08.09.2010 and on examination, he was found to be an operated case of head injury with hepiplegia viz. Weakness of half body left side and his diasbility was assessed to be 75%, which was permanent in nature. As per this witness, the claimant would not be able to work as a labourer, agriculture worker or driver. As per driving licence, Ex.P10, the claimant was 22 years of age at the time of accident. As per his income was assessed to be Rs.72,000/- per annum, loss of income due to functional disability of 75% came to be Rs.54,000/- per annum. After applying the multiplier of 18, loss of future earning came to be Rs.9,72,000/-.

Ultimately, the claim petition was allowed and claimant was found entitled to compensation of Rs.10,43,666/- along with interest at the rate of 7.5% per annum from the date of injuries till its realization.

Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that claimant-appellant has received injuries as a result of the

accident. Parties are not in dispute with respect to finding given by the Tribunal on issue No.1 that that the accident had taken place on account of rash and negligent driving of both the trucks by respondent Nos.1 and 4 respectively.

On the question of liability to pay compensation, the Tribunal has observed that respondent No.1-Jagtar Singh and respondent No.4-Diwakar Dubey (drivers of the offending trucks) were not holding valid and effective driving licences at the time of accident. Sunil Kumar, Licencing Clerk from ARTO Office, Mathura, UP (RW-2) had deposed that driving licences Mark A and Mark B had not been issued in the name of respondent Nos. 1 and 4 by their office, rather those had been issued in the name of some other persons. After referring to the judgments given in **Sardari and others vs. Sushil Kumar and others**, 2008 ACJ 1307 (SC) and **New India Assurance Company Limited vs. Kusum and others**, 2010 (3) Punjab Law Reporter 174 (SC), the Tribunal has held that only respondent Nos. 1, 2, 4 and 5 being drivers and owners of the offending vehicle, were jointly and severally liable to pay the compensation. The insurance company was absolved of making the payment of compensation.

This finding of the Tribunal is required to be modified in view of the judgment passed by Hon'ble the Supreme Court in **National Insurance Company Limited vs. Swaran Singh**, 2004 (2) RCR (Civil) 114, wherein it has been held that initially the insurance company has to make payment of compensation and then it can be given recovery rights to recover the same from driver and owner. Accordingly, finding given by the Tribunal on issue No.2 is modified to this extent and it is held that firstly, the insurance company will make payment of compensation and thereafter,

it can recover the same from the drivers and owners of the offending vehicles.

As regards the quantum of compensation, pursuant to the order dated 11.07.2017 passed by this Court, claimant-appellant had approached the Civil Surgeon, Government Hospital, Sector 6, Panchkula, who had issued the disability certificate dated 09.08.2017, which has been placed on record as Annexure A-1. Relevant extract of the disability certificate is reproduced as under:-

“This is to certify that Mr. Parminder Singh son of Shri Satnam Singh, Age 32 years old, Male, Registration No.918, resident of # 308, Sector-12, Panchkula, is a case of Operated case of head injury with hemiplegia left. He is physically Disabled/Visual Disabled/Speech & Hearing Disabled and has 75% (seventy-five percent) permanent/temporary (physical impairment/Visual impairment/Speech & Hearing impairment) in relation to his/her Body.

Patient is reassessed by Medical Board with the Orders of Court.”

A perusal of the above shows that the claimant has suffered 75% permanent physical impairment/visual impairment/speech & hearing impairment. In para no.10 of the impugned Award, it has been observed that the claimant had suffered head injury with traumatic SAH with right MCA (B) aneurysm developed (R) MCA infarce and on 14.04.2009, hemicraniotomy was done. It means, the frontal bone got fractured and the same has been removed from head. It has been further observed that four teeth of his lower jaw and four teeth of upper jaw were uprooted and lower jaw bone had been displaced to left side causing disfiguration of his face. Due to hemiplegia, left part of his body i.e. limbs have become paralytic. Further, he remained admitted in PGI for about four months and had been on liquid diet through pipe for nine months. He had undergone three

After going through the nature of injuries suffered by the claimant and disability certificate (Annexure A-1), this Court is of the view that claimant-appellant had suffered disability to the extent of 100% as far as his earning capacity is concerned. He is 100% dependent upon his family for survival. Being a driver, income of claimant-appellant has been rightly taken by the Tribunal as Rs.6000/- per month. In the given circumstances, 50% of the income is required to be added as future prospects, which comes to Rs.9000/- per month (6000 + 3000). Accordingly, in the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Compensation on account of loss of income	Rs.12,000/-
(ii)	Compensation on account of special diet and transportation	Rs.50,000/-
(iii)	Compensation on account of pain and sufferings, hospitalization etc.	Rs.1,00,000/-
(iv)	Compensation on account of loss of future earnings due to disability	Rs.9000/- x 12 x 18 (multiplier) = Rs. 19,44,000/-
(v)	TOTAL COMPENSATION AWARDED	Rs.21,06,000/-
(vi)	Enhanced amount of compensation	Rs.21,06,000 – 10,43,666 = Rs.10,62,334/-

The enhanced amount of compensation of **Rs.10,62,334/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “*Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others*”, 2015(1) SCC 539. It is further directed that firstly, the insurance company will make payment of compensation to claimant-

appellant and thereafter, it can recover the same from the drivers and owners of the offending vehicles.

Accordingly, the impugned award stands modified to the above extent and the present appeal is allowed.

(RITU BAHRI)
JUDGE

20.09.2017
ajp

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No