

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

FAO No. 2389 of 2014

Date of Decision: May 15, 2017

HARPAL SINGH

....APPELLANT...

VERSUS

ASHOK KUMAR AND OTHERS

...RESPONDENTS..

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. H.K. Brinda, Advocate,
for the appellant.

Mr. Rajbir Singh, Advocate,
for respondent No.3-Insurance Company.

JASPAL SINGH, J.

CM-8579-8580-CII-2014

For the reasons mentioned in the application, delay of 101 days
in refiling and 115 days in filing the appeal is condoned.

CMs stand disposed of.

Main case

The appeal has been filed by the claimant(injured) feeling
dissatisfied with the compensation awarded by the Motor Accident Claims
Tribunal, Rupnagar (for Short, "Tribunal") vide award dated 27.10.2012
passed in MACT case No. 60 dated 29.04.2011. Through the instant appeal,
the claimant-appellant has prayed for enhancement of compensation.

2. Briefly stated, the facts of the case are that on
15.11.2010 Harpal Singh-claimant was returning to his village Resran from

Nurpur Bedi on his motor cycle bearing Registration No.PB-12-L-2871 and when he reached ahead of Kalwan Bus stand, a Tata 407 bearing Registration No.PB-10-AV-3766 being driven by respondent No.1 in a rash and negligent manner came from behind at a high speed and after crossing the claimant, he suddenly applied brakes without giving any signal. The motor cycle of the claimant struck into Tata 407. As an impact of accident he fell down on the road and received multiple grievous injuries on his body. His right leg was also got fracture. He was taken to Civil Hospital, Anandpur Sahib by one Gurmit Singh, resident of village Resran with the help of passerby. Thereafter, on 21.11.2010, he was referred to Bharaj Life Care Hospital and Trauma Centre, Hoshiarpur and was discharged on 27.11.2010. Seeking compensation, injured-claimant preferred a petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act'), which was hotly contested by the respondents.

3. After hearing learned counsel for the parties and perusing the evidence available on file, claim petition was partly allowed and claimant was awarded compensation to the tune of ₹2,00,000/-, out of which 50% deducted towards contributory negligence, which makes the remaining amount of compensation as ₹1,00,000/-.

4. Aggrieved qua the quantum of compensation so awarded, appellant-claimant directed the instant appeal, seeking enhancement thereof.

5. Challenging the impugned award, it has been contended by learned counsel for the appellant that injured was 23 years of age at the time of accident. The compensation awarded by the Id. Tribunal is on lower side.

Though, appellant-claimant suffered permanent disability to the extent of

10%, he has been awarded a meagre amount of ₹2,00,000/- out of which 50% has been ordered to be deducted towards contributory negligence.

6. Undoubtedly, in the accident, the right leg of the appellant-claimant got fractured, he remained admitted in the hospital for about 6 days. As per certificate Ex.PW-5/A, there is permanent disability to the extent of 10% and only a sum of ₹25,000/- has been awarded on account of permanent disability. A sum of ₹75,000/- has been awarded on account of treatment etc. and ₹10,000/- on account of special diet. Besides it, a sum of ₹90,000/- has also been awarded on account of future prospects, mental agony, pain and sufferings etc. As such, the compensation so awarded cannot be said to be just and adequate in view of the facts and circumstances of the case. This Court is of the considered view that ends of justice would meet in case, the amount of compensation on all accounts is enhanced from ₹2,00,000/- to ₹2,50,000/-. Thus, appellant-claimant shall be entitled to a sum of ₹50,000/- in addition to the amount of compensation of ₹1,00,000/-(after deducting 50% on account of contributory negligence) already awarded by the Id. Tribunal. Since, it is a case of contributory negligence, therefore the appellant-claimant shall be entitled to 50% of the enhanced amount of ₹50,000/-only, which comes to ₹25,000/-. Accordingly, the impugned award stands modified.

7. In the light of what has been discussed above, appeal is partly allowed and the amount of compensation is enhanced to ₹2,50,000/- from ₹2,00,000/- i.e. by a sum of ₹50,000/- only. Appellant-claimant shall be entitled to a sum of ₹25,000/- after deducting 50% of the enhanced amount

i.e. ₹50,000/-, on account of contributory negligence. As per award, there is joint liability to pay the compensation upon respondents No. 1 to 3 yet the insurer i.e. insurance company-respondent No.3 is directed to pay the amount so enhanced within a period of two months from the date of receipt of certified copy of this order and on its failure to make the payment within stipulated period, it would entail interest @ 6% per annum from the date of filing of claim petition before the Tribunal till its actual realization.

8. No order as to costs.

(JASPAL SINGH)
JUDGE

May 15, 2017
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No