

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

FAO-702-2013 (O&M)
Date of decision: 24.10.2017

Rakesh Kumar

.... Appellant

Versus

Sher Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Pankaj Mehta, Advocate
for the appellant.

Mr.Rajat Garg, Advocate for
Mr.T.K.Joshi, Advocate
for respondent No.3.

Avneesh Jhingan, J.

The present appeal has been preferred against the award dated 04.12.2012 passed by Motor Accidents Claims Tribunal, Bhiwani (hereinafter referred to as the 'Tribunal') in claim petition No.21 of 2010.

On 14.07.2010, Rakesh Kumar, aged 35 years was a pillion rider on motorcycle bearing registration No.HR-16E/0904, which was being driven by Om Parkash. The said motorcycle was struck by a rashly and negligently driven Canter TATA 407 bearing registration No.RJ-10GA-0461 (for short, 'the offending vehicle'). As a result of the accident, Rakesh Kumar suffered various injuries. He was taken to General Hospital, Bhiwani and was referred to PGI, Rohtak but he was taken to Sir Ganga Ram Hospital, Delhi. FIR No.350 dated 15.07.2010 was registered at Police Station Sadar, Bhiwani.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed.

The Tribunal after considering the material produced before it, awarded a sum of Rs.2,01,931/- along with interest @ 6% per annum.

Aggrieved of the said order, the present appeal has been filed for enhancement of compensation.

I have heard the learned counsel for the parties and perused the paperbook.

Learned counsel for the appellant has argued that the appellant suffered compound comminuted fracture right femoral condyle+patella. He further argued that the said injuries resulted in permanent disability of 15% of the limb. The appellant suffered dislocation of right knee. Learned counsel for the appellant further submits that no amount has been separately awarded for the loss of income. He argued that the total amount of Rs.30,000/- has been awarded for transportation, special diet, attendant and loss of income which is on the lower side and the amount of Rs.15,000/- awarded for pain and suffering also needs to be enhanced.

Learned counsel for respondent No.3 has argued that the appellant was not able to prove his earning before the Tribunal. Further, he was not able to prove that how the disability suffered would affect his day to day working.

Learned counsel for the appellant fairly states that if he is awarded another sum of Rs.1 lakh over and above what has been awarded by the Tribunal, the appellant would be satisfied.

The offer made by learned counsel for the appellant appears to be very fair in the facts of the case. The appellant was hospitalised for 7 days. He had dislocated his knee and also suffered fracture. The Tribunal had awarded a

total sum of Rs.30,000/- for transportation, special diet, attendant and loss of income etc. In case, where injury is of dislocation of knee and fracture, the transportation is required during the period of treatment and thereafter also. The special diet as advised by the doctor has to be provided for speedy recovery. An attendant is needed during the period of hospitalisation and thereafter also as dislocation of knee would restrict the movement. The appellant has suffered 15% permanent disability as per the disability certificate Ex.PW7/A.

Keeping in view the facts and circumstances of the case, it is deemed appropriate that a sum of Rs.1 lacs is awarded over and above, the amount already awarded by the Tribunal.

The award dated 04.12.2012 is modified to the extent that the amount awarded by the Tribunal of Rs.2,01,931/- is enhanced to Rs.3,01,931/-.

The appellant shall be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

24.10.2017

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1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes