

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.7233 of 2015 (O&M)
Date of Decision: 28.09.2017

Gurmeet Singh

.....Appellant

Vs.

Kashmir Singh and others

.....Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Ashwani Arora, Advocate, for the appellant.

Mr.R.C.Gupta, Advocate, for respondent/insurance Company.

RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the claimant-appellant (for short 'the appellants'), against award dated 22.12.2014, passed by the learned Motor Accident Claims Tribunal, Ludhiana (for short, 'the Tribunal') vide which compensation to the tune of Rs.9,28,243/- was awarded to the claimant on account of injuries suffered by him.

FACTS NOT IN DISPUTE

On 29.01.2009, at about 10.10 AM, the claimant was going from Malwa Factory, Harhian to his village Kotla Shamaspur while sitting on the front seat of Bus No.PB10-BW-0246 which was being driven by Jaswinder Singh at slow speed and on the left side of the road. Supinder Singh was also sitting in the said bus. When they reached in front of gate of S.T.Cotex Factory, LRAK, at that time a truck bearing registration No.RJ-31-G-4737 came at fast speed from the opposite side and while coming on the wrong side of the road, it struck against their bus. The aforesaid truck was being driven at fast speed and in a rash and negligent manner by Kashmir Singh-respondent No.1. As a result, the claimant and others suffered serious injuries and were removed to the hospital immediately from where the claimant was referred to the PGI, Chandigarh where his leg was amputated on 30.01.2009. A

formal FIR No.14 dated 29.01.2009 for the offence under Sections 279/337/338/427 IPC was registered.

On notice, respondent No.4 contested the petition by filing written statement taking preliminary objections that answering respondent is not liable for any compensation since the driver of Truck had not effective and valid driving licence at the time of alleged accident and that owner and driver of the said truck had not complied with the terms and conditions of the insurance policy nor they had valid registration certificate, fitness certificate, route permit and the truck was being driven against the provisions of the Motor Vehicles Act.

On the pleadings of the parties, following issues were framed:

- “1. Whether on 29.01.2009 at 10:10 a.m. Claimant met with an accident due to rash or negligent driving of respondent No.1 Kashmir Singh ? OPP.
2. Whether the claimant is entitled to compensation from the respondents. If so, to what extent? OPP.
3. Whether at time of accident, respondent No.1 was not having valid driving licence, Registration Certificate and permit? OPR-4.
4. Relief”

An FIR No.14 dated 29.01.2009 was registered against the driver i.e. Kashmir Singh/respondent No.1 and challan under Section 173 of Cr.P.C. (Ex.R5) and accident report Ex.R6 and R7 have been presented against him. Copy of charge-sheet (Ex.R1) was also placed on record. The driving licence of Kashmir Singh in its copy as Ex.P64 and a copy of FIR was Ex.P62 had been placed on record against the driver. On the basis of the same, accident had taken place on the rash and negligent driving of driver Kashmir Singh respondent No.1.

With regard to compensation, the disability certificate of the claimant was produced as Ex.P6. Since the period of validity of the insurance of the vehicle was w.e.f. 22.04.2008 to midnight of 21.04.2009, the accident took place on 29.01.2009 within the validity period of the insurance policy.

COMPENSATION ASSESSED BY MACT

The Tribunal held that the appellant/claimant was 38 years old and

he had deposed that he was a driver with the Malwa Factory, Harhian and

was earning Rs.6,000/- p.m. but he had not produced any proof with regard to this fact so the learned Tribunal had taken the income of the appellant as Rs.4,000/- p.m.. The factum of accident had been proved and the offending vehicle was insured with respondent No.3-Insurance Company.

Sr.No.	Heads of compensation	Amount
1	Income	Rs.4000/- X 12= Rs.48,000/- p.a.
2.	Total loss of income after applying the multiplier	Rs.48,000/- X 15= Rs.7,20,000/-
3.	Medical Bills Exp8 to Ex.61	Rs.38,243/-
4.	Artificial limb	Rs.1,00,000/-
5.	Pain and suffering, transportation and loss of amenities	Rs.70,000/-
	Total	Rs.09,28,243/-

Learned counsel for the claimant/appellant contends that since the claimant has suffered 80% disability on account of amputation of his leg, taking his income of Rs.4000/- is on the lower side. Since the leg of the appellant has been amputated, therefore the disability should be taken to be 100% as he would unable to drive the vehicle.

Learned counsel for the Insurance Company has opposed the 100% disability of the appellant and submits that disability is required to be reassessed.

After going through the contents of the Award, Jaswinder Singh who appeared as Pw-2 had deposed that Gurmeet Singh was going from Malwa and was sitting on the front seat of Mini Bus and he was driving the bus at slow speed on the left side of the road. When they reached in from of gate of ST Cottex Factory, the offending truck at a high speed struck against the bus. Dr.Puneet Sidhu was the member of the Board of Doctor. While he appearing as PW3, she had proved the copy of disability certificate Ex.PX/A where Gurmeet Singh was having 80% bodily disability. Since, the appellant was working as driver in Malwa Factory, his income has been rightly assessed as Rs.4,000/- p.m. and his disability is assessed as 80 % qua whole body. A reference at this stage is made of the Supreme Court case i.e.

Dinesh Singh vs. Bajaj Allianz General Insurance Co.Ltd. 2014(2) ACC(SC) 427 where his left leg was amputated and disability was take as 60% and the compensation has been increased under the conventional heads.

On the other hand, the learned counsel for the respondents have vehemently opposed the present appeal.

RE-ASSESSED COMPENSATION

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

It is not in dispute that the offending vehicle was fully insured with the Insurance company. Following the ratio of law laid down by Hon'ble the Supreme Court in the above mentioned judgments, the compensation has to be re-assessed as follows:-

Sr.No.	Heads of compensation	Amount
1	Income	Rs.4000/- X 12= Rs.48,000/- p.a.
2.	Total loss of income after applying the multiplier	Rs.48,000/- X 15= Rs.7,20,000/-
3.	Future prospect	Rs.7,20,000/- X 80% = Rs.5,76,000/-
4.	Medical Bills ExP8 to Ex.61	Rs.38,243/-
5.	Future medical expenses and Artificial limb	Rs.3,00,000/-
6.	Pain and suffering, special diet, agony	Rs.1,00,000/-
7.	Loss of amenities	Rs.2,00,000/-
8.	Loss of marriage prospect	Rs.1,00,000/-
9.	Loss of income during treatment and hospitalization	Rs.2,00,000/-
	Total	Rs.22,34,243/-
	Enhanced amount of compensation	Rs.22,34,243/- - Rs.9,28,243/- =Rs.13,06,000/-

Resultantly, the enhanced amount of compensation of Rs.13,06,000/- shall be payable within a period of forty five days 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 a case of **Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539**. Remaining conditions of disbursal of amount shall remain unaltered. With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

(RITU BAHRI)
JUDGE

28.09.2017

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No