

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1488 of 2017 (O&M)

Date of Decision: 19.12.2017

Rakesh Kumar

.....Appellant

Versus

Sudha Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Pawan Kumar Suri, Advocate for
Mr. R. S. Chauhan, Advocate
for the appellant.

Mr. Vinod Gupta, Advocate
for Insurance Company-respondent No.3.

AVNEESH JHINGAN, J.

The present appeal is against the award dated 19.1.2016 passed by the Motor Accidents Claims Tribunal, Pathankot (for short 'the Tribunal').

On 30.1.2014, Rakesh Kumar was going on his motor cycle when a rashly and negligently driven truck bearing registration No.HR-38-G-6350 (for short 'the offending vehicle') struck his motor cycle. As a result he fell down and both his legs were crushed under front wheel of the truck.

He filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') and the Tribunal awarded a sum of Rs. 18,00,000/- but no interest was awarded. The interest was to be paid if the amount was not paid within a specified period.

I have heard learned counsel for the parties and perused the paper book and the relevant document produced.

The parties have not disputed the facts regarding involvement of the offending vehicle, rash and negligent driving of the offending vehicle and percentage of disability qua limb.

Learned counsel for the appellant argued that the appellant had suffered 80% permanent disability qua the lower limb. His left leg was amputated below the knee. The appellant had to remain in hospital for a long time and was operated upon. His grievance is that the Tribunal has not awarded any amount for transportation, attendant, special diet and for pain and suffering. He further argued that the amount awarded for non-pecuniary damages in lump-sum, is on the lower side. He argued that the Tribunal erred in not awarding statutory interest.

Learned counsel for the Insurance Company argued that though it was proved that the permanent disability was qua limb only but no positive evidence was adduced that what is the functional disability. He further contended that the Tribunal has awarded just and equitable compensation by considering each and every possible head for compensation. He argued that it is not in every case that interest is to be awarded, it is rather the discretion of the Tribunal.

The issue to be considered while awarding the compensation in the injury cases is that the injured has suffered not because of any wrong done by him but because of the act done by a wrong doer. It is further to be kept in mind that entire endeavour of compensation is to put the sufferer back in the original position so far as money can.

In the present case, the injuries are such that one leg has been amputated and other was crushed, meaning thereby that mobility has been effected for rest of his life. This ensures need of an attendant during the period of treatment and thereafter also, as the appellant would not be able to do various odd jobs with the artificial limb and injury effected second leg.

With the artificial limb and the other leg also being crushed, the

appellant would not be able to drive two wheeler for the rest of his life and he would need transportation, which was also required during the period of treatment. In case of surgery and fracture in order to have speedy recovery special diet is recommended by the Doctor and the compensation for the same has to be awarded.

The Tribunal has awarded a sum of Rs.1,20,000/- for non-pecuniary damages, which is on the lower side, as apart from the physical pain, the claimant has lost amenities of life. There are chances of shortening of the longevity of the life. Apart from that, he also suffered social stigma.

The contention of learned counsel for the appellant of not awarding of interest by the Tribunal, deserves acceptance.

Hon'ble the Supreme Court in **Dharampal and others Versus U.P. State Road Transport Corpn.** 2008 (12)SCC 208 has held as under:

"8.As per Section 171 of the Motor Vehicle Act, 1988 (hereinafter referred as 'Act') where the claim for compensation made under the act is allowed by the Claims Tribunal, the tribunal may direct that in addition to the amount of compensation simple interest shall also be paid *at such rate* from such date not earlier than the date of making claim.

9. In **National Insurance Company Ltd. Vs. Keshav Bahadur, reported in 2004(2) RCR (Civil) 99 : (2004) 2 SCC 370** this court has held that the provisions require payment of interest in addition to compensation already determined. Even though the expression "may" is used, a duty is laid on the Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case. It was clearly held in the said decision that the provision of payment of interest is

discretionary and is not and cannot be bound by rules.

10. Interest is compensation for forbearance or detention of money, which ought to have been paid to the claimant. No rate of interest is fixed under Section 171 of the Act and the duty has been bestowed upon the court to determine such rate of interest."

As per the said decision, interest to be awarded is statutory interest. Minimum what was required was that the Tribunal should have dealt with the issue of awarding of interest separately. Even if, 'may' is mentioned in Section 171 of the Act, it is to be considered that the interest is to compensate the withholding of the money which was due to the claimants. In the present case, the Tribunal has not mentioned even a single reason for not awarding interest to the claimants.

As per the decision of the Hon'ble Apex Court, cited above and in the facts and circumstances of the case, the claimants are entitled to interest.

For the reasons mentioned above, the compensation is enhanced and awarded under various heads as per the Table given below:

<i>Particulars</i>	<i>Amounts earlier awarded by Tribunal</i>	<i>Amount now awarded</i>
* Expenses on treatment and transportation	Rs.5,90,000/-	Rs.5,90,000/-
* Loss of income during treatment	Rs.1,20,000/-	Rs.1,20,000/-
* Loss of future income	Rs.4,70,000/-	Rs.4,70,000/-
* Future medical expenses	Rs.5,00,000/-	Rs.5,00,000/-
* Non-pecunniary damages	Rs.1,20,000/-	Rs.2,00,000/-
*Transportation	----	Rs. 30,000/-
* Attendant	----	Rs.20,000/-
* Special diet	----	Rs.10,000/-
Total	Rs.18,00,000/-	Rs.19,40,000/-.

the extent that the amount awarded of Rs.18,00,000/- is enhanced to Rs.19,40,000/-.

The claimants would be entitled to interest at the rate of 6% per annum on the amount awarded by the Tribunal as well as on the enhanced amount. The interest will be payable from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the aforesaid terms.

19.12.2017

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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No