

and grievous injuries besides damages to the scooty. The accident was witnessed by Rajpal son of Phool Chand who with the help of Sant Lal managed to shift her to General Hospital, Mahindergarh where from she was referred to PGIMS, Rohtak due to her serious condition. However, later the family member shifted her to Medanta Hospital wherein she was operated with insertion of the nails, screws and plates. The plastic surgery was also conducted. Since, the police authorities did not take prompt action on the *ruqua* sent by the Medical Officer, therefore, the FIR was lodged on 28.12.2014 by Rajpal after returning from Medanta Hospital. It was further pleaded that the claimant injured is a B.A.M.S. Doctor, who was working at Shanti Hospital, Narnaul as well as Rao Ram Chander Memorial Senior Secondary School, Kanina and thereby, earning Rs. 18,000/- per month and Rs. 15,000/- per month respectively, and therefore, a total income of Rs. 33,000/- per month plus perks; were claimed by the claimants. It was also claimed that at the time of accident, the age of the claimant was 26 years. It was further pleaded that Rs. 35,00,000/- was already spent on the treatment and the treatment was still going on. This petition was clubbed with another claim petition in which Ravinder, Sepoy of Indian Army, who was also injured, had also claimed compensation, however, the present appeal is concerned with the claim petition filed by respondent No. 1 only.

3. Respondents No. 1 and 2 in their joint written statement submitted that no accident took place with the motorcycle in question. But it was admitted that the criminal case was registered against them. It

was further pleaded that if the vehicle is found involved in the accident then the vehicle was insured with respondent No. 3 and it would be respondent No. 3 who would be liable to pay the compensation. Respondent No. 3 filed separate written statement and besides usual preliminary objections had also claimed that respondent-driver did not have the valid driving license and he violated the terms and conditions of the policy.

4. In order to prove her claim the claimant examined ten witnesses.

Record Keeper of Medanta Hospital was examined by summoning Sandeep Singh as PW-1. Likewise, witness Manoj Kumar was examined as PW-2 from Shanti Hospital, Narnaul. Besides this, other witnesses, doctor and author of FIR were also examined. The medical evidence was also proved on record by leading evidence.

5. On the other hand Insurance policy of the offending vehicle as Ex. R1; Driving licence of Vijay Kumar was also put in evidence as Ex.R2; Copy of the registration certificate was put in evidence as Ex.R3. No evidence was led by the Insurance Company to rebut the other pleadings of the claimants.

6. After appreciating the evidence and hearing the parties, the Tribunal recorded the findings that the accident took place due to rash and negligent driving of the driver of the offending motorcycle. It was further held that the offending motorcycle was insured and the driving license of the driver was found to be valid. Therefore, the Insurance Company was held liable to pay the compensation.

7. While assessing the amount of compensation, the Tribunal held

that the income of the claimant from Hospital and the school; as claimed by her; has not been proved by cogent evidence. However, the Tribunal took the notional income of the claimant at Rs. 12,300/- per month, in view of the minimum wages payable at the relevant time in the State of Haryana to a person engaged in Ayurvedic and Unani Pharmaceuticals; being highly skilled person. The Tribunal further held that as per the birth certificate placed on record the claimant at the time of accident was 27 years of age. Further, the Tribunal held that as per the disability certificate produced and proved on record, the claimant suffered 89% permanent physical disability as is clear from the disability certificate, Ex.PW7/A and she cannot perform any function. Therefore, the Tribunal took the functional disability of the claimant to be 100%. Hence, the total loss of income to the claimant was assessed to be Rs. 12300 X 12 X 17 = Rs. 25,09,200/-. This was rounded off by the Tribunal to Rs. 25,10,000/-. Accordingly, this amount was awarded to the claimant towards loss of income/future loss of income.

8. While dealing with the medical expenses and future expenses, the Tribunal awarded an amount of Rs. 20,89,000/- on the basis of medical bills produced and proved on the file. The Tribunal also awarded an amount of Rs. 3,00,000/- to the claimant on account of pain and sufferings and loss of enjoyment of life. Besides this, an amount of Rs. 30,000/- was also awarded towards special diet already given and for future and Rs. 60,000/- towards the expenditure on conveyance already incurred and towards future

conveyance. While dealing with the attendant charges, the Tribunal held that she would need full time attendant for her whole life, because of her vegetative stage. Therefore, she was awarded an amount of Rs. 9,00,000/-; treating to be Rs. 3,000/- per month for 25 years. In the last Rs. 1,00,000/- was awarded to the claimants towards loss of amenities. Hence a total of Rs. 59,89,000/-, as mentioned above, was awarded to the claimants.

9. While arguing his case, the learned counsel for the appellant submits that the notional income of the claimant; assessed by the Tribunal; is on higher side. Income was not proved on record. Still the income of the claimant has been taken at more than Rs. 12,000/- per month. It is further argued that although the proved disability is 89%, still it has been taken as 100% by the Tribunal. Further, learned counsel argued that compensation on account of pain and sufferings amounting to Rs. 3,00,000/- and the attendant charges at Rs. 9,00,000/- are on higher side. Learned counsel has also questioned the grant of interest at the rate of 9%.

10. After hearing the learned counsel for the appellant, this Court does not find any merit in the arguments raised by him. Since, the income has not been proved as per the standards required by the laws, therefore, the Tribunal has taken the income of the claimant at Rs. 12,300/- per month; only as per the minimum wages notification prevalent in the State of Haryana for an Ayurvedic doctor. There is nothing wrong, illegal or perverse in the findings. Since the claimant is highly skilled and medical graduate, therefore, by no standards it can be presumed that she would not

earn even this much amount on the date of accident. Therefore, the notional income has rightly been taken by the Tribunal. So far as the argument of the learned counsel for the appellant that the proved physical disability is 89% but it has been wrongly taken as 100% by the Tribunal, is also liable to be rejected. The proved disability of 89% is the medical and physical disability. However, as has been held by the Tribunal, the claimant is in a vegetative stage; not even able to move, therefore, the functional disability of the claimant has rightly been taken as 100%. In view of the fact that the claimant had to be operated upon through multiple procedures and had suffered multiple injuries, this Court does not find any substance in the argument of the learned counsel for the appellant that Rs. 3,00,000/- awarded on account of pain and sufferings is on higher side. Likewise, the attendant charges incurred and to be incurred in future by the claimant has rightly been assessed by the Tribunal and the same are duly supported by the judgment of the Hon'ble Supreme Court rendered in the case of **Kavita Versus Deepak and others, 2012(4) RCR (Civil) 273**. Hence, there is nothing wrong with the finding of the Tribunal on this count as well. Regarding grant of interest, learned counsel could not point out any evidence or any material to show that the interest awarded at the rate of 9% per annum is illegal or even unjustified. Therefore, this Court does not find any reason to interfere with the findings of the Tribunal in this regard.

11.No other point was argued.

12.In view of the above, there is nothing wrong, illegal, irregular or perverse in the findings recorded by the Tribunal. Therefore, the Award passed by the Tribunal is upheld.

13.In view of the above, the present appeal fails and the same is dismissed being devoid of any merit.

30th August, 2017
shabha

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes