

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

FAO-5642-2002(O&M)

Date of decision:-18.12.2018

Pal Singh

...Appellant

Versus

Kulwinder Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

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

Ms.Shamsher Kaur, Advocate
for respondents No.1 and 2.

Mr.Raman Mahajan, Advocate
for respondent No.3.

H.S. MADAAN, J.

Briefly stated, facts of the case as per the version of the petitioner/claimant Pal Singh are that on 18.4.1999 at about 11:30 a.m., he was going on his scooter from Phase-X, Mohali to village Baidwan at a slow speed and when he reached in front of parking place of the cricket stadium then a tiper bearing registration No.MP-26-D-0609 (hereinafter referred to as the offending vehicle) came from behind being driven at a very fast speed and hit the scooter of claimant from back side, as a result the petitioner/claimant fell down and suffered injury on his leg; he was taken to hospital, where his leg was amputated; that the accident had taken place due to rash and negligent driving of the offending vehicle by

respondent No.1 – Kulwinder Singh.

The petitioner/claimant has brought a petition under Section 166 of the Motor Vehicles Act for grant of compensation to the tune of Rs.10 lacs on account of suffering injuries in the road side accident against respondent No.1 – Kulwinder Singh – driver, respondent No.2 - Bhag Singh – owner and respondent No.3 – Oriental Insurance Co. Ltd. Ropar – insurer of the offending vehicle.

Notice of the claim petition was given to respondents, who put in appearance. Respondents No.1 and 2 filed a joint written reply stating that respondent No.1 was driving the offending vehicle at a very slow speed and on correct side of the road, whereas the claimant was overtaking the vehicle in question and in the meanwhile another truck came from the opposite side and on seeing that truck, the claimant got perplexed and could not control the scooter and in that process, he struck against the offending vehicle, as such the accident took place due to rash and negligent driving of the claimant. Remaining assertions in the claim petition were denied.

In the written reply filed on behalf of respondent No.3 – insurance company, it has raised a plea that respondent No.1 was not holding a legal and valid driving licence at the time of accident; that the Tribunal has got no territorial jurisdiction to try the petition since the accident took place in District Ropar and the claimant and respondents are resident/carrying on their business at Chandigarh. On merits, the assertions of the claim petition were denied.

In the end, the respondents prayed for dismissal of the

petition.

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

1. Whether the claimant sustained injuries in a road side accident which took place on 18.4.99 near Cricket Stadium, Mohali on account of rash or negligent driving of Tiper No.MP-26-D-0609 by respondent No.1, owned by respondent No.2 and insured by respondent No.3 as alleged? OPP.
2. If issue No.1 is proved, whether the claimant is entitled to any amount as compensation if so to what amount and from whom? OPP.
3. Whether the respondent No.2 has violated the terms and conditions of the insurance policy, if so, to what effect? OPR.
4. Whether the respondent NO.1 was without a valid driving licence at the time of the accident, if so to what effect? OPR.3
5. Relief.

Both the parties led evidence in support of their respective claims.

In support of his case, the claimant has examined himself as PW2 and further examined Dr.Narinder Kumar Arora as PW1, , Dr.VJS Vohra as PW3 and Zora Singh as PW4.

On the other hand, respondents No.1 and 2 tendered into evidence policy Ex.R1, copies of registration certificate Ex.R2 and driving licence as Ex.R3, whereas respondent No.3 tendered into evidence insurance policy Ex.R4 and report of the Licensing Authority, Sambalpur

Mark A and another report Mark B.

After hearing arguments, the Tribunal vide award dated 4.10.2002 granted compensation of Rs.4 lacs with proportionate costs with interest @ 9% per annum to the claimant on account of injuries sustained by him in the accident for which all the three respondents were jointly and severally liable.

Feeling that the compensation awarded to him was on lower side, the claimant has filed the present appeal, notice of which was given to respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

While awarding compensation, the Tribunal has taken note of the fact that the claimant is a Government employee and as admitted by him in his cross-examination while appearing as PW2 that he is drawing the same salary, which was being paid to him before the accident, in that way he has not suffered any monetary loss on account of amputation of his leg in the road side accident. He had further stated that he was being attended by his wife and children and expenses incurred by him on artificial leg to the tune of Rs.7,400/- had been reimbursed to him. Though he had stated that he had obtained an estimate from Dr.Vohra for replacement of the leg by Indolite Computerised imported leg, which would cost around Rs.1,86,000/- but since he had not led any evidence that he had actually got it fixed, therefore amount of Rs.1,86,000/- was not awarded to him.

The Tribunal keeping in mind the fact that artificial leg is

required to be replaced after some time has awarded a sum of Rs.50,000/- to claimant on that count.

Furthermore, Dr.Narinder Kumar Arora, SMO General Hospital, Sector 16, Chandigarh had proved the disability certificate as Ex.P1 mentioning the disability to be 75% in respect of left lower limb noticing that the claimant has lost enjoyment of his future and would not be walk freely and he must have undergone pain and suffering, which cannot be compensated in terms of money. A lump sum of Rs.2,60,000/- has been awarded to him which I found to be adequate.

The claimant has been awarded a sum of Rs.90,000/- as transportation charges making total to Rs.4,00,000/-.

Learned counsel for the appellant has argued that the Tribunal has not awarded any amount to the claimant on account of loss of income after retirement, which should have been awarded as held in authority *Naresh Chandra Mytle Versus Haryana State, 1995 ACJ 987* by Division Bench of this Court.

However, learned counsel for the respondents has argued that claimant happened to be a Government servant, who continued drawing his usual salary despite suffering amputation of leg in the accident and would also be entitled to pension and other retiral benefits. Therefore, no compensation on account of loss of income of retirement needs to be given. As regards the authority, he has contended that as per facts of the authority, the claimant was an Orthopaedic Surgeon, who had suffered compound fracture of arm resulting in 30% disability. A surgeon is required to perform operations and with such injury and it would certainly

difficult for the claimant there to perform surgeries and for that reason compensation on account of loss of income after retirement assessed at Rs.1,500/- per month for seven years was given to him.

After hearing learned counsel for the parties, I find that the Tribunal rightly did not give any compensation under this head. The claimant in this case being a Government servant, who would retire on attaining the age of superannuation entitled to get pension and other retiral benefits. In ordinary course, he is not required to do any such job requiring running or moving at fast pace. With artificial leg, he can easily move about. There is nothing on record to show that the claimant wants to do some job after retirement in which brisk walking or running is involved, which he would be unable to do so resulting in his suffering loss of income. Therefore, the argument of learned counsel for the claimant is rejected observing that authority referred to him is not applicable.

With regard to the other authority referred to by learned counsel for the appellant/claimant **Ankur Kapoor Versus Oriental Insurance Co. Ltd., 2017(11) JT 252** by the Supreme Court of India, the observations had been made in view of peculiar facts and circumstances of the case and do not help the claimant much in this case.

However, it is noticed that claimant has not been awarded any compensation under head special diet. A person suffering such type of magnitude of injuries do require special diet for early recovery. I find it proper and appropriate to award a sum of Rs.25,000/- to the appellant/claimant under that head.

Considering the fact that on account of suffering injuries in

the accident, the claimant would not be to live as a normal human being; the artificial leg may provide some support to the claimant in walking but it cannot take place of a normal leg, the claimant needs to be compensated for loss of amenities. A sum of Rs.25,000/- is awarded to the appellant/claimant under that head and under head of expectation of life, another sum of Rs.25,000/- is awarded to him.

It has to be taken note of that the Tribunal has not awarded any compensation to the claimant under the head of services of attendant. The claimant after suffering injuries in the road side accident get hospitalized with one of his leg amputated must have required assistance of an attendant. Even though his family members might have helped him but their efforts are also to be taken into consideration while awarding compensation to the claimant. I award a sum of Rs.25,000/- under this head.

Therefore, total compensation awarded to the claimant comes out to be Rs.5,00,000/-. In that way, the enhanced amount of compensation comes to Rs.1,00,000/-. The appellant/claimant shall be entitled to recover the enhanced amount from respondents No.1 to 3 jointly and severally with interest @ 7.5% per annum from the date of filing appeal till actual payment.

With such modification, the appeal is allowed partly.

18.12.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No