

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1122 of 2001 (O&M)
Date of decision: 07.09.2018

Prem Kumar
.....Appellant

Versus

Ajay alias Bobby and others
.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Rakesh Nagpal, Advocate for the appellant.

None for respondent Nos.1 to 3.

Mr. Rohit Goswami, Advocate for
Mr. D.P. Gupta, Advocate for respondent No.4/Insurance Co.

None for respondent No.5.

Mr. Manoj Kumar Sangwan, Deputy Advocate General, Haryana
for respondent Nos.6 and 7.

MAHABIR SINGH SINDHU, J.

Poor labourer, 35 years of age, who had to cost the removal of his spleen on account of motor vehicle accident, has filed the present appeal under Section 173 of the Motor Vehicles Act (*for short 'Act'*) for enhancement of compensation on account of injuries suffered by him on 28.01.1999.

(2) Vide impugned Award dated 11.12.2000, learned Motor Accident Claims Tribunal, Kaithal (*for short 'Tribunal'*) granted the amount of compensation to the tune of ₹ 95,000/- along with interest @ 12% per annum to the appellant on account of any injury, which resulted into removal of Spleen, under the following heads: -

Heads	Compensation Amount
On account of medical expenses for purchase of medicines etc.	₹ 25,000/-

Heads	Compensation Amount
Pain and suffering and loss of amenities of life	₹ 20,000/-
Loss of work and consequent loss of earnings	₹ 50,000/-
Total compensation	₹ 95,000/-

(3) The claim petition under Section 166 of the Act was filed by the appellant before learned Tribunal with the averments that on 28.01.1999, he was travelling in a Haryana Roadways Bus bearing registration No.HR-45-1748, driven by respondent No.5-Roshan Lal. When it reached at Karnal Bye-Pass Chowk, Kaithal, a truck bearing registration No.UMU-4551 (*for short 'offending vehicle'*), being driven by respondent No.1-Ajay @ Bobby in a rash and negligent manner on high speed, came from Narwana side and hit against the bus from the conductor side. Thereafter, the offending vehicle also hit the Maruti Van bearing registration No.HR-08-5222, which was going from Kaithal to Pundri side. On account of impact of the offending vehicle, the bus struck against *Spheda* (Eucalyptus) trees and as a result thereof, appellant received serious multiple injuries on abdomen and other parts of the body. The driver of the offending vehicle ran away from the spot and appellant was admitted in the Shah Hospital, Kaithal by the passengers of the bus. FIR No.38 dated 28.01.1999, under Sections 279 and 337, IPC was also registered at Police Station City, Kaithal against respondent No.1. Appellant became permanent disabled due to the injuries sustained by him in the above accident and he spent ₹ 30,000/- on his treatment and he is unable to do his daily work of *palledari* (labourer).

(4) It transpires that despite service, respondent Nos.1 to 3 did not file any reply and only produced the copy of Registration Certificate (Ex.R-1);

Route Permit (Ex.R-2) and Fitness Certificate (Ex.R-3) of the offending vehicle.

Respondent No.4-Insurance Company filed reply and, *inter alia*, raised the preliminary objections regarding connivance of the appellant with respondents No.5 to 7. Further submitted that accident in question did not happen on account of the negligence of respondent No.1; rather the bus was driven in a rash and negligent manner by its driver (respondent No.5), he could not control the same and bus struck against the tree. Also submitted that respondent No.1 was not holding any valid and effective driving licence at the time of alleged accident and the offending vehicle was being plied in violation of the terms and conditions of the Insurance Policy. The factums of age, income and occupation of the appellant were also denied and finally submitted that FIR is alleged to have been registered on the basis of false allegations.

Separate reply has been filed by respondent No.5 and submitted that accident had taken place due to rash and negligent driving of respondent No.1 and he also denied the age, income and occupation of the appellant.

Respondent Nos.6 and 7 have filed reply in the similar terms to respondent No.5 and admitted that the accident had taken place on 28.01.1999 due to rash and negligent driving of respondent No.1.

(5) On the basis of pleadings of both sides, learned Tribunal framed the following issues: -

- “1. *Whether the accident, resulting into injuries to petitioner Prem Kumar, took place on 28.1.1999 in the area of Kaithal, on account of rash and negligent driving of truck No.UMU-4551, driven by respondent No.1, Ajay Kumar? OPP*

2. *If issue No.1 is proved, whether petitioner is entitled to any compensation? If so to what amount and from whom? OPP*
3. *Whether driver of offending truck was not holding a valid and effective driving licence at the time of accident? OPR-4*
4. *Relief. ”*

(6) In order to prove the claim petition, appellant-Prem Kumar himself appeared as PW-2 and examined Dr. Rajesh Goel, Shah Hospital, Kaithal as PW-1 and produced documentary evidence in support of his claim.

(7) Learned Tribunal, while deciding Issue No.1, came to the conclusion that accident in question had taken place due to rash and negligent driving of the offending vehicle, driven by respondent No.1.

Learned Tribunal, while deciding Issue Nos.2 and 3, came to the conclusion that Spleen of the appellant has been ruptured and the same had been removed on the same day i.e. 28.01.1999 and he remained admitted as indoor patient up to 05.02.1999. After taking into consideration the bills, which are on record, regarding purchase of medicines etc. of ₹ 17,000/- and taking into consideration the testimony of PW-1 to the effect that chances of infection in the whole body may increase with the removal of Spleen, awarded an amount of ₹ 25,000/- towards medical expenses for purchase of medicines etc.

(8) It is argued on behalf of the appellant that keeping in view the age, income and nature of injuries suffered by the appellant, the compensation, awarded by learned Tribunal, is insufficient and on lower side and the same deserves to be enhanced. Also argued that learned Tribunal has

not awarded any compensation on account of future prospects and other heads.

On the other hand, learned Counsel for the Insurance Company has argued that the compensation, awarded by learned Tribunal, is justified and no interference is required by this Court.

(9) Heard learned Counsel for the parties and perused the record.

(10) PW 1-Dr. Rajesh Goel, Shah Hospital, Kaithal, *inter alia*, deposed that appellant was admitted in their hospital on 28.01.1999 having blunt injuries in abdomen with splenic injury and operated on the same day. Also deposed that appellant remained in the Hospital up to 05.02.1999 as indoor patient and his spleen was removed. Further deposed that as result of removal of spleen, the chances of infection in the whole body may increase. He specifically deposed that Pneumococcal infection may increase in the body on account of removal of spleen. The patient also attended the Hospital on 12.02.1999 for follow-up treatment and Discharge Card is Ex.P-1. Also deposed that he charged ₹ 9,000/- from the appellant, vide Receipt (Ex.P-2), which bears his signatures and Receipt (Ex.P-3) is also stated to be issued by his hospital regarding the tests of blood group and sugar etc.

During cross-examination, he denied the suggestion that he is deposing falsely.

Appellant-Prem Kumar appeared as PW-2 and supported the version of the claim petition and, *inter alia*, deposed that he spent ₹ 50,000/- on his treatment including medicines and charges of doctors. Also deposed that he remained on bed for next four months and continuously undertaken follow-up treatment. Further deposed that his Spleen had been removed

on account of the accident and he has become disabled and cannot work properly. He feel fever after every 3-4 days. Further deposed that he used to earn ₹ 3000-4000 per month from labour work and now he cannot earn anything.

During cross-examination, he stated that he has not maintained any account for the expenses incurred in the accident, but he had collected some bills, which have been produced in the Court. Further stated that he had borrowed some money for his treatment and some amount was already with him. He denied the suggestion that he was not earning ₹ 3000/- or ₹ 4000/- per month. Also denied the suggestion that he has not become disabled or that he is doing his routine work in a normal way. Also denied the suggestion that he has not spent ₹ 50,000/- on his treatment or that he is deposing falsely.

Although neither there is any Disability Certificate; nor doctor deposed specifically regarding the extent of disability, but one thing is clearly proved that on account of the injuries, Spleen of the appellant was damaged and resultantly, the same had been removed. The doctor has also stated that on account of the removal of the spleen, there are chances of infection in the whole body and particular reference is made to Pneumococcal infection.

Evidently, the claimant-appellant (PW2) has specifically deposed as under: -

“ I spent Rs.50,000/- on my treatment, including expenses on medicines and charges of Doctors. I remained on bed for next four months. I continued for follow up treatment for the said four months. My spleen had been removed from the body as it had become defective on account of the accident. I have become disabled and cannot work properly. I feel tired whenever I starts work. I feel fever after every 3-4 days. I used

to earn Rs.3000/- to Rs.4000/- per month from labour work.

Now I cannot earn anything. ”

During cross-examination, he specifically denied the suggestions in the following terms:-

“ It is incorrect that I was not earning Rs.3000/- or Rs.4000/- per month. It is incorrect that I am not disabled now and that I am doing my routine works normally. It is incorrect that I had not spent Rs.50,000/- on my treatment. It is incorrect that I have deposed falsely. ”

As per **Taber’s Cyclopedic Medical Dictionary (20th Edition)** “

The spleen is part of the mononuclear phagocytic system and its removal (splenectomy), though compensated for by the lymph nodes and liver, decreases immune function and may place the patient at increased risk for infection, esp. from Streptococcus pneumoniae and Haemophilus influenzae.”

(11) Although the permanent disability of appellant has not been expressed by the doctor and particular reference to the removal of spleen. However, in view of the totality of the facts and circumstances of the case, this Court comes to the conclusion that on account of removal of Spleen, the appellant, being a labourer, would not in a position to do job with the same capacity; rather there are chances of infection and he can perform the job where only labour work of mild nature is to be performed in comparison with the hard. But since the appellant is a poor illiterate person and now it is very difficult to obtain employment for one choice being such a precarious situation and he has very limited option to earn his livelihood to run the family.

(12) In view of above, it will be just and appropriate that monthly income of the appellant is assessed ₹ 3,000/- as labourer and coupled with

the injuries, this Court deems it appropriate to grant the compensation of Rs.1.5 Lakh on account of removal of Spleen and total compensation is re-assessed as under: -

Head	Compensation Amount
Pain and suffering, mental and physical shock, hardship, inconvenience, loss of amenities in life on account of permanent disability	₹ 60,000/-
Loss of future earnings on account of removal of Spleen	₹ 1,50,000/-
On account of expenses on medicines and treatment etc.	₹ 25,000/
Future medical expenses	₹ 25,000/-
Loss of earning during the period of treatment	₹ 10,000/-
On account of loss of future enjoyment of life, special diet, transportation and attendant charges etc.	₹ 50,000/-
Total compensation	₹ 3,20,000/-
Enhanced amount of compensation	₹ 3,20,000 - ₹ 95,000 = ₹ 2,25,000/-

Resultantly, the enhanced amount of compensation of ₹ 2,25,000/- shall be payable within a period of sixty days from the date of receipt of certified copy of this order. Remaining conditions of disbursal of amount shall remain unaltered.

With the aforesaid modification in the impugned award, the present appeal is allowed in the above terms.

September 07, 2018

(MAHABIR SINGH SINDHU)
JUDGE

naresh.k/Gagan

Whether speaking/reasoned	Yes
Whether Reportable	Yes