

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.2752 of 2001
Date of decision:20.11.2018.

Prabhakar

...Appellant

Versus

M/s Ajay General Finance Company and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sandeep Jasuja, Advocate for the appellant.

Mr. Ram Avtar, Advocate for respondent No.3/Insurance
Company.

LISA GILL, J.

This appeal has been filed by the claimant seeking enhancement of the compensation awarded to him by the learned Motor Accident Claims Tribunal, Gurgaon ('Tribunal' for short) vide award dated 08.05.2001 on account of injuries and disability suffered by him in a motor vehicle accident on 07.02.1998.

Brief facts necessary for adjudication of the case are that a petition under Section 166 of Motor Vehicles Act, was preferred by the appellant seeking compensation on account of the injuries and disability suffered by him. The appellant was involved in a motor vehicle accident on 07.02.1998 when he was standing on the unmettled (Kachha) portion of the road at Ambedkar Chowk, Ferozepur Jhirka, waiting for a bus to go to Alwar. Meanwhile, a truck bearing No.RJ-02-G-4779, being driven by respondent No.2-Rakmudin in a rash and negligent manner, came from towards Badkali and struck against the appellant. Tyre of the offending truck ran over the left leg of the appellant. Rakmuddin, driver of the offending vehicle fled from the spot along with his truck. Formal FIR Ex.P11 was registered against respondent No.2 on 06.03.1998 as the appellant was not able to move earlier. The appellant was taken to PHC Ferozepur Jhirka and thereafter,

shifted to Threja Nursing Home and Banga Bone, Hospital, Alwar, where he remained admitted from 07.02.1998 to 18.02.1998. He was treated for his fracture as reflected in the documents Ex.P1 to Ex.P4.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of the offending vehicle by its driver. There is no dispute regarding the above said finding of the learned Tribunal on this issue, which has attained finality.

Learned Tribunal concluded that the appellant spent a total sum of Rs.3550/- on his medical treatment. Loss of income of the appellant was assessed as Rs.1450/-. Another sum of Rs.3000/- was awarded on account of pain and suffering. Thus, the appellant was held entitled to a total compensation of Rs.8000/- along with interest @ 9% per annum from the date of filing of the petition till its realization.

Learned counsel for the appellant submits that the appellant remained admitted in hospital from 07.02.1998 to 18.02.1998. The appellant was first taken to the Primary Health Care, Ferozepur Jhirka and then admitted to another hospital, namely, Threja Nursing Home and Banga Bone, Hospital, Alwar. Learned counsel submits that meagre compensation of Rs.8000/- has been awarded by the learned Tribunal. It is, thus, prayed that compensation awarded to the appellant be enhanced.

Learned counsel for the Insurance Company, however, refutes the said arguments while submitting that just and reasonable compensation has been awarded by the learned Tribunal and that there is no evidence to justify any enhancement. It is, thus, prayed that the impugned award be upheld.

I have heard learned counsel for the parties and have gone through the file.

It is noticed at the outset that the present appeal along with the record was burnt in the fire incident which occurred on the High Court premises in 2011. Learned counsel for the parties have been unable to reconstruct the record of the case and the Court is left with the copy of the award for the purpose of decision of this case. It is not in dispute that the accident in question took place on 07.02.1998. The claimant after being initially taken to PHC, Ferozepur Jhirka was admitted in Threja Nursing Home on 07.02.1998 and he remained admitted there till 18.02.1998. Ex.P1 to Ex.P4 are the copies of the medical documents. Ex.P5 is the copy of medical bill of Rs.3550/- paid by the claimant to the aforesaid hospital. Remaining bills were not proved by the appellant. The appellant received injuries on his left leg which was run over by the offending truck. Period of admission in the hospital reveals that it cannot be a simple fracture which the appellant had sustained on his left leg. At the same time, there is no evidence to indicate any permanent disability suffered by the appellant.

From the factual matrix of the case it is apparent that some amount would necessarily have been spent upon medication etc. There is merit in the arguments raised by learned counsel for the appellant that bills pertaining to all medicines etc. may not necessarily have been retained by the claimant. Rs.3550/- is only the amount paid to Threja Nursing Home. Therefore, some more expenses must necessarily have been incurred on medical treatment, medicines etc. Keeping in view the facts and circumstances of the case, it is considered just and appropriate to award a total sum of Rs.10,000/- on account of medical expenses incurred by the claimant on his treatment, which includes the sum of Rs.3550/- given to Threja Nursing Home. The appellant is entitled to a sum of Rs.20,000/- on account of pain and sufferings instead of Rs.3000/-. He is also entitled to a sum of Rs.5000/- each on account of transportation and special diet. Keeping

in view the nature of injury on the left leg, it is apparent that the appellant could not have been able to carry out his vocation for at least 3 months. Even if the claimant is taken to be a daily wager, his income cannot be assessed to be less than Rs.1000/- per month. Therefore, Rs.3000/- on account of loss of income is awarded.

Thus, the claimant is entitled to compensation as detailed hereunder: -

Sr.No.	Heads of Claim	Rupee
1.	Loss of income	Rs.3,000/-
2.	Pain and sufferings	Rs.20,000/-
3.	Special diet	Rs.5,000/-
4.	Transportation and attendant charges	Rs.5,000/-
5.	Medical expenses	Rs.10,000/-
Grand Total		Rs.43,000/-

The amount of compensation already awarded to the appellant, needless to say, shall stand deducted from the amount calculated as above. Appellant shall be entitled to interest at the rate of 7.5% per annum on the enhanced compensation amount from the date of filing of the petition till realization.

With the abovesaid modification in the award dated 08.05.2001, present appeal is disposed of.

(LISA GILL)
JUDGE

November 20, 2018
Ishwar

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No