

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

**F.A.O No. 5554 of 2002
Date of decision:- 28.02.2018**

Pawan Kumar ...Appellant

Versus

Rajesh Kumar and Others ...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sunil Panwar, Advocate,
for the appellant.

Mr. Ravinder Arora, Advocate,
for National Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Yamunanagar (hereinafter referred to as 'the Tribunal') vide award dated 23.08.2002, on account of injuries sustained by the claimant-Pawan Kumar in a motor vehicular accident which took place on 14.10.1991.

FACTS NOT IN DISPUTE

Brief facts of the case are that, on 14.10.1999, when claimant alongwith his wife Anu and his son was coming from Amritsar to Yamunanagar in a jeep bearing registration No. HR51TB-6650 driven by respondent No.1-Rajesh Kumar in rash and negligent manner and when the said offending jeep reached near village Kalpi, he and 2/3rd other passenger objected and requested the driver of the jeep to drive the same at a slow speed and, however, he did not pay any heed to

their request. In the meantime, Maruti Van came from the opposite direction and that, however, the driver of the jeep could not control and had taken the same towards wrong side of the road and hit against the van. As a result of which, accident caused and claimant sustained injuries on the other parts of the body. In this regard, an FIR Ex. P1 under Section 279 and 338 of IPC was registered against respondent No.1.

Consequently, claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused on account of negligent driving of offending vehicle by respondent No.1. Appellant/claimant suffered fracture in both legs and right hand injury, admitted in Hospital and suffered permanent disability to the extent of 20% on account of fracture subtronic right femur. On the basis of documents placed on record, Tribunal awarded compensation of Rs.60,000/- including Rs.10,000/- towards medical treatment, Rs.10,000/- towards pain and suffering and Rs.40,000/- on account of permanent disability suffered by the claimant.

Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

I have heard learned counsel for the parties and perused the case file.

REASSESSED COMPENSATION

The fact of accident is admitted and proved. A perusal of

the Award shows that Claimant has suffered permanent disability to the extent of 20% . In order to prove the disability, claimant has examined Dr. Sandeep Gupta as PW5, who deposed that claimant was examined by medical board and found suffering 20% permanent disability on account of fracture subtrachateric right femur. In his cross examination he also deposed that said disability upto 4 of 5% may improve with constant physiotherapy. No evidence led by the claimant to show that to disability he could not do any work. Hence, an amount of Rs.40,000/- has rightly been awarded by the Tribunal.

Keeping in view the facts and circumstances, compensation assessed by the Tribunal requires to be reassessed after considering the undergoing treatment of the claimant due to accident.

In the peculiar facts and circumstances of the case, to meet the ends of justice and compensation awarded by the Tribunal requires to be reassessed. Claimant was 26 years of old at the time of the accident and no proof has been found with regard to his income. Hence, this court reassessed compensation amount as under:

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Compensation towards permanent disability	Rs.40,000/-
(ii)	Compensation towards medial bills	Rs.20,000/-
(iii)	Compensation towards pain and suffering.	Rs.30,000/-
(iv)	Compensation towards loss of income	Rs.5,000/-
	Total Compensation	Rs.95,000/-
	Enhanced amount of compensation	Rs.95,000-60,000=35,000/-

The enhanced amount of compensation of Rs.35,000/- shall

be payable within a period of two months from the date of receipt of certified copy of this order. As per the judgment of Hon'ble Supreme Court in case *Shri Nagar Mal and Ors versus The Oriental Insurance Company Ltd. And Ors decided on 19.01.2018* the enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

28.02.2018
Riya Grover

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>