

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

FAO-3704-2005(O&M)

Date of decision:-18.12.2018

Sanjeev Kumar

...Appellant

Versus

Pala Ram and another

...Respondents

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

Present: Ms.Rahish Pahwa Dudeja, Advocate
for the appellant.

Mr.Arvind Bansal, Advocate
for respondent No.1.

Mr.R.C. Kapoor, Advocate
for respondent No.2 – Insurance company.

H.S. MADAAN, J.

This appeal is directed against Award dated 17.2.2005 passed by Motor Accidents Claims Tribunal, Kaithal vide which petitioner/claimant Sanjeev Kumar (minor) was awarded compensation to the tune of Rs.30,000/- on account of suffering injuries in a road side accident.

Petitioner/claimant Sanjeev Kumar (minor) through his father Ram Lal had filed a claim petition under the Motor Vehicles Act against respondents i.e. respondent No.1 - Pala Ram – driver-cum-owner of truck bearing registration No.HR-36/5465 (hereinafter referred to as the offending vehicle) and respondent No.2 - National Insurance Company

Limited – insurer of the offending vehicle claiming compensation to the tune of Rs.5 lacs on account of suffering injuries in the road side accident.

Briefly stated, facts of the case are that on 11.1.2004 at about 1:30 p.m., petitioner/claimant Sanjeev Kumar aged about six years at the time of filing of claim petition along with his mother and other persons was standing on the road side on the *kacha* portion for crossing the road; in the meanwhile truck bearing registration No.HR-36/5465 (hereinafter referred to as the offending vehicle) being driven by Pala Ram – respondent No.1 in a rash and negligent manner without blowing horn came from Pundri side and hit against the petitioner/claimant as a result of which the claimant fell down and his left foot was crushed; he suffered injuries on other parts of the body also; that after the accident, he was taken to Civil Hospital, Sector 32, Chandigarh from where keeping in view his serious condition, he was referred to PGI, Chandigarh; the matter was reported to the police and formal FIR was registered against respondent No.1 – Pala Ram. According to the case of the claimant, Rs.1 lac was spent on his treatment, transportation and special diet etc and he has become permanent disabled and his education career has also been spoiled, therefore, he be awarded compensation.

Notice of the claim petition was given to the respondents, who put in appearance. Respondent No.1 in the written statement challenged the maintainability of the claim petition and locus standi of the claimant to file the same. On merits, he denied the material assertions in the claim petition with regard to he being author of the accident by his rash and negligent driving of the offending truck resulting in causing hurt

to the petitioner/claimant, rather coming up with a plea that his truck has been wrongly involved in this case.

In the written statement filed by respondent No.2 – insurance company, it also raked up preliminary objections with regard to maintainability of the claim petition and locus standi of the claimant to file the same, further contending that the claimant had filed the claim petition in collusion of respondent No.1 and respondent No.1 was not having a valid driving licence at the time of alleged accident. He (respondent No.1) had violated the terms and conditions of insurance policy thereby absolving the insurance company of its liability to pay compensation. However, such respondent conceded that the truck in question was insured with it. On merits, such respondent refuted the assertions in the claim petition.

In the end, the respondents prayed for dismissal of the petition.

On the pleadings of the parties, following issues were framed vide order dated 9.8.2004:

1. Whether the accident resulting into injuries to claimant Sanjeev Kumar took place due to rash and negligent driving of truck No.HR-46-5465 on the part of Pala Ram, respondent No.1 as alleged.? OPP.
2. If issue No.1 is proved then what amount of compensation is the claimant entitled to? OPP.
3. Whether the claim petition is not maintainable? OPRs.
4. Whether the claimant has no locus standi to file the present claim

petition? OPRs.

5. Whether the driver of the alleged offending vehicle did not possess a valid and effective driving licence at the time of alleged accidents? OPR2.

6. Relief.

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

In order to prove his case, the petitioner/claimant has examined PW1 Ram Lal, PW2 Vinod Kumar, PW3 Dr.S.K. Jain. He also tendered in evidence documents Ex.P1 to Ex.P16.

On the other hand, respondents have examined respondent No.1 Pala Ram as RW1. They tendered into evidence documents Ex.R1 to Ex.R4.

After hearing arguments, the Tribunal decided issue No.1 in favour of claimant, issue No.2 in favour of the claimant and against the respondents, issues No.3 and 4 against the respondents and in favour of the claimant, issue No.5 against the respondent – insurance company, resultantly while allowing the petition vide award dated 17.2.2005, the Tribunal granted compensation of Rs.30,000/- along with interest @ 9% per annum from the date of filing of the petition till realization, for which both the respondents were jointly and severally liable, further observing that since the claimant was minor, so the amount of compensation awarded to him shall be deposited in his name in fixed deposit account, through his guardian, in any of the Nationalized Bank so as to mature on attaining majority.

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.

In this case at the time of accident, the petitioner/claimant was aged less than 6 years. It has come on record that he had suffered 15% disability permanent in nature. In view of the ratio of authority **Ram Kiran Goyal Versus Sub Divisional Engineer, Mechanical and others, 2008(2) RCR(Civil)103**, Rs.2,000/- should be awarded for 1% of permanent disability but the Tribunal awarded Rs.1,000/- only per 1% of disability. The same needs to be enhanced and accordingly a sum of Rs.30,000/- is awarded to the claimant in place of Rs.15,000/- originally awarded.

The Tribunal has awarded a sum of Rs.11,000/- to the claimant towards medical expenses and transportation on the basis of bills proved on record. However, it is not possible to keep all the bills and receipts for purchase of medicines and other articles necessary for treatment of an injured. One cannot possibly collect receipts from three-wheeler/auto rickshaw drivers or cycle rickshaw drivers. Therefore, this figure calls for enhancement and is enhanced to Rs.15,000/-.

The Tribunal has awarded a very small amount for pain and suffering clubbing it with special diet. A young boy having been rendered permanently disabled on account of injury on his left limb inasmuch as his left foot is stated to have been crushed under the wheel of the truck and

badly damaged. The young boy must have undergone nightmarish experience also affecting his matrimonial prospect and pain and suffering undergone by him on that account and subsequently that is very difficult to quantify. The Tribunal fell in error in clubbing the compensation for pain and suffering and special diet and awarded a meagre amount of Rs.4,000/- on that account. The compensation should have been awarded separately. For pain and suffering, I award a sum of Rs.25,000/-.

A person suffering such type of injury involving hospitalization and recovery period extending to a considerable time does require special diet to facilitate the recovery and a sum of Rs.10,000/- ought to be awarded to the claimant on that account.

In **Vinod Kumar Bangar Vs. Azad alias Mohammad Azad & Ors 2013(5) Law Herald (P&H) 4505**, by this Court it was observed that in case of road side accident for proving the medical expenses, at least some amount should have been added in the name of expenses incurred on the treatment of the claimant without obtaining bills.

In **Mrs. Ritika Vs. Ravi Satija and Anr., 2011(4) Law Herald (P&H) 3721** by this Court, it was observed that initially the bills for expenses on treatment are sometimes not collected, so some amount may naturally be allowed as compensation besides the amount proved to have been spent for the said purpose.

The Apex Court in **B. Kothandapani Versus Tamil Nadu State Transport Corpn. Ltd., 2011(6) SCC 420** had observed that it cannot be disputed that apart from the fact that the permanent disability affects the earning capacity of the person concerned, undoubtedly, one has

to forego other personal comforts.

The claimant, a minor child having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. No amount has been awarded to him under that head. A sum of Rs.10,000/- is accordingly awarded to the appellant/claimant on that score.

The claimant on account of injuries suffered by him would not be able to walk, run or sit as he could prior to the accident. A sum of Rs.25,000/- is awarded to him on that account.

Under the head 'damages for loss of expectation of life' on account of injuries resulting in shortening of normal longevity, inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life, a sum of Rs.25,000/- more is awarded to him.

The Tribunal has awarded a total sum of Rs.30,000/- as compensation along with interest @ 9% per annum from the date of filing of the claim petition till realization.

In that way, the enhanced amount comes to Rs.1,10,000/-. The appellant/claimant shall be entitled to recover the enhanced amount from respondents No.1 and 2 jointly and severally with interest at the rate of 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