

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

FAO-4642-2005(O&M)

Date of decision : 22.01.2018

Rambir

..... Appellant

versus

Laxman Singh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sushil Sheoran, Advocate
for Mr.R.A.Sheoran, Advocate for the appellant.

Mr.Gopal Mittal, Advocate
for respondent No.3-insurance company.

HARI PAL VERMA, J. (Oral)

Appellant-claimant has filed the present appeal seeking enhancement of compensation as awarded by the Motor Accidents Claims Tribunal, Bhiwani vide award dated 29.07.20005.

The claim petition was filed by the claimant-appellant on account of injuries and permanent disability sustained by him in a motor vehicular accident which took place on 01.12.2002. Learned Tribunal has awarded a compensation of ₹ 50,000/- along with interest to the claimant-appellant. Being not satisfied with the award, the claimant has preferred the present appeal for enhancement of the compensation.

Learned counsel for the appellant has argued that the accident took place due to rash and negligent driving on the part of the respondent-

driver who could not control his vehicle and struck against the claimant-appellant as a result of which the claimant-appellant suffered various injuries on his body. With regard to the said accident, FIR No. 475 dated 2.12.2002 under Sections 279 and 337 of the Indian Penal Code was registered with Police Station Sadar, Bhiwani. The injured was a young man of 25 years of age at the time of accident and was getting ₹ 6000/- per month from his milk business and agriculture. The claimant was treated in Anand Nursing Home from 01.12.2002 and continued with the treatment. Learned counsel has further argued that in the said accident the claimant suffered amputation of arm but no compensation has been awarded for the said injury. While negating this claim, the Tribunal has observed that claimant has not suffered an amputation and there was no pleading to that effect. No medical papers confirm that there was any amputation of arm. Learned counsel has further argued that the claimant has placed on file the permanent disability certificate and has specifically pleaded in his claim petition that in the said accident he has suffered amputation of his right elbow. He has further argued that the claimant was treated in Anand Nursing Home, Bhiwani which refers to the injury on the right elbow.

On the other hand, learned counsel for the respondent-insurance company has argued that since the claimant has failed to lead any evidence as regards his amputation, therefore, the Tribunal has rightly negated his claim for the said injury.

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

The claim of the claimant towards amputation of his right arm has been negated by the Tribunal on the short ground that neither there are

pleadings to that effect, nor any medical papers to confirm the amputation of arm. However, during the course of arguments learned counsel for the claimant-appellant has produced a copy of the claim petition wherein, in para 11, there is a reference of injuries sustained by the claimant which resulted in loss of his arm. Therefore, this Court finds that the Tribunal has not taken into consideration the permanent disability certificate Ex.Z-48 on the premise that the same has not been proved by a doctor.

In view of the fact that the Tribunal has not taken into consideration the pleadings of the claimant. The impugned award dated 29.07.2005 is set aside to the extent of its finding towards the injury regarding amputation of arm. The case is remanded back to the Tribunal to pass a fresh speaking award while taking into consideration the pleadings in the claim petition and permanent disability certificate, which the claimant is required to prove in accordance with law. Parties are directed to appear before the Tribunal on 23.02.2018.

Appeal stands disposed of accordingly.

The Tribunal shall not be influenced by any observation and shall pass a fresh and independent award regarding the injury / amputation of arm, if any.

(HARI PAL VERMA)
JUDGE

January 22, 2018
sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No