

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2796 of 2007 (O&M)
Date of decision: 31.08.2018

Manglesh Kumar
.....Appellant
Versus
Suresh and others
.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Suryakant Gautam, Advocate for the appellant.

Service of respondent Nos.1 and 2 stands exempted,
vide order dated 25.04.2014.

Ms. Vandana Malhotra, Advocate for respondent No.3-Insurance Co.

MAHABIR SINGH SINDHU, J.

Claimant/appellant (*for short 'appellant'*), who was in the business of Readymade Garments, suffered 12% permanent disability in a motor-vehicular accident, has filed the present appeal under Section 173 of the Motor Vehicles Act (*for short 'the Act'*) for enhancement of compensation.

(2) Learned Motor Accident Claims Tribunal, Panipat (*for short 'Tribunal'*) awarded the total compensation of ₹ 65,000/- under the following heads: -

Medical and other expenses	₹ 30,000/-
Loss of income	₹ 25,000/-
Pain and suffering	₹ 10,000/-
Total compensation	₹ 65,000/-

(3) A claim petition was filed under Section 166 of the Act by the appellant before learned Tribunal with the averments that on 18.07.2005, he was going from Safidon to Panipat while driving his Car bearing registration No.DL-

4CA-2920 at a moderate speed. At about 7:00 PM, when he reached just ahead of Village Untla, a Car bearing registration No.DL-4CS-2226 (*for short 'offending vehicle'*), driven by Suresh (respondent No.1) in a rash and negligent manner, came from the opposite side and hit the Car of the appellant and consequently, he received multiple injuries including fracture of right femur. Thereafter, he was taken to Gandhi Hospital, Panipat and remained hospitalized up to 25.07.2005 and was operated for union of fracture. He spent ₹ 1.2 Lakh on his treatment including expenditure incurred on transportation as well as special diet and he was getting treatment at the time of filing the petition. It is claimed that on account of the injuries, the appellant has become permanently disabled and which has impaired his capability to work. An FIR No.195 dated 21.07.2005, under Sections 279 and 337, IPC (Section 338, IPC added later on) was registered against respondent No.1 at Police Station Madlauda, District Panipat.

(4) Respondent No.1/driver of the offending vehicle admitted the factum of accident and involvement of both the aforesaid vehicles, but claimed that he was not at fault, rather it was the appellant who is responsible for the accident.

Respondent No.2/owner of the offending vehicle initially appeared through his Counsel, but later on, absented from the proceedings and consequently, proceeded *ex parte* by learned Tribunal, vide order dated 20.02.2006.

Respondent No.3/Insurer of the offending vehicle denied its liability on the ground that respondent No.1 was not holding a valid and effective driving licence at the relevant time and as such, there is a violation of

the terms and conditions of the Insurance Policy.

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

- “1. Whether the accident in question taken place due to rash and negligent driving of car bearing No.DL-2CS-2226 driven by respondent no.1 and in the said accident claimant sustained injuries as alleged?OPP.*
- 2. If issue no.1 is proved, whether the claimant is entitled to any compensation as alleged?OPP.*
- 3. Whether the petition is not maintainable in the present form?OPR*
- 4. Relief.*

(6) In order to prove his case, claimant examined three witnesses i.e. PW 1-Dr. P.N.Gandhi, Gandhi Hospital, Panipat; appellant-Manglesh Kumar as PW 2 and Sanjay Kumar, Addl. Ahlmad to the Court of learned JMIC, Panipat appeared as PW 3 as well as documentary evidence by way of Ex.P-1 to Ex.P-40.

Respondent No.1 tendered in his evidence copy of driving licence as Ex.R-1 and copy of Registration Certificate of the offending vehicle as Ex.R-2.

Respondent No.3 tendered in its evidence copy of Insurance Cover Note as Ex.R-3.

(7) Learned Tribunal, while deciding Issue No.1, came to the conclusion that appellant suffered injuries on account of rash and negligent driving of the offending vehicle by respondent No.1.

While deciding Issue No.2, learned Tribunal found that in view of the Disability Certificate (Ex.P-38) and as per the testimony of the doctor

(PW 1), the appellant has received comminuted fracture right femur in the accident and suffered a permanent disability to the extent of 12% on account of shortening of leg due to fracture of right femur. Consequently, learned Tribunal awarded an amount of ₹ 30,000/- on account of medical and other expenses, ₹ 25,000/- towards loss of income and ₹ 10,000/- for pain and suffering. Learned Tribunal, while deciding Issue No.2, found that appellant was 30 years of age at the time of accident.

Issue No.3 regarding maintainability of the claim petition was not pressed by the respondents.

Ultimately, learned Tribunal partly allowed the claim petition and all the respondents were held liable jointly as well as severally to make the payment of compensation of ₹ 65,000/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization. Hence, the present appeal.

(8) It is argued by learned Counsel for the appellant that keeping in view the age, income, nature of avocation and permanent disability of 12%, the amount of compensation, awarded by learned Tribunal, is insufficient and on lower side and the same deserves to be enhanced.

On the other hand, learned Counsel for the Insurance Company submitted that amount of compensation, awarded by learned Tribunal, is perfectly justified and does not require any interference by this Court.

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

(10) Since Issue No.1 has already been decided in favour of the appellant and learned Tribunal has held all the respondents liable jointly and severally. Even the permanent disability to the extent of 12% of the appellant as

well as age of 30 years are also not in dispute and the findings to that effect have neither been challenged by way of any substantive appeal; nor any cross-objections, therefore, the same are affirmed.

The only point for determination in the present appeal is '*as to what should be the just compensation for which the appellant is entitled?*'

PW 1-Dr. P. N. Gandhi, Gandhi Hospital, Panipat, deposed that appellant was admitted in their Hospital on 18.07.2005 at 8:00 PM with the diagnosis of comminuted fracture right femur and was operated on 19.07.2005 for union of said fracture. He further deposed that appellant was discharged on 25.07.2005 and ₹ 9800/- were charged for the treatment, vide Receipt (Ex.P-1) on account of hospital expenses. Ex.P-2 to P-14 are the original receipts, issued by their Hospital, on account of dressings, X-rays and Lab Investigations, whereas Ex.P-15 is the Injury Report, prepared by PW 1.

Disability Certificate of the appellant is produced as Ex.P-38, which shows that appellant has suffered permanent disability to the extent of 12%.

Income Tax Returns for the Assessment Year 2004-2005, shows the total annual income of the appellant as ₹ 49,140/- (Ex.P-40) and for the Assessment Year 2005-2006 as ₹ 96,150/- (Ex.P-39).

Since learned Tribunal has not awarded any compensation on account of 12% permanent disability and shortening of leg, therefore, in the opinion of this Court, it would be just and appropriate if an amount of ₹ 2 Lakh is awarded to the appellant keeping in view his age of 30 years, income and nature of business.

(11) In view the facts and circumstances, discussed hereinabove, the following amount of compensation would be 'just compensation', which should

be awarded to the appellant:-

Sr. No.	Heads	Calculation
1	Medical and other expenses	₹ 30,000/-
2	Loss of income	₹ 25,000/-
3	Pain and suffering	₹ 10,000/-
4	Compensation on account of 12 % Permanent Disability	₹ 2,00,000/-
	TOTAL COMPENSATION	₹ 2,65,000/-

In view of above, the instant appeal is allowed and the amount of compensation, assessed by learned Tribunal, is modified and enhanced from ₹ 65,000/- to ₹ 2,65,000/- for the injuries suffered by the appellant.

Needless to say that amount of compensation already paid to the appellant shall be adjusted and the balance amount of compensation shall be paid to the appellant within a period of six weeks from the date of receipt of certified copy of this order.

August 31, 2018
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes