

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

**FAO No. 2740 of 2011(O&M
Date of Decision: October 09, 2018.**

Sushil Uppal Appellant.
Versus

Mahipal Singh and others Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: None for the appellant.

Mr.Neeraj Khanna, Advocate
for respondent no.3.

LISA GILL, J.

This appeal has been preferred by the appellant for enhancement of compensation awarded to him vide award dated 06.09.2010, passed by the learned Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'Tribunal') on account of injuries and disability suffered by him in a motor vehicle accident.

None had appeared on behalf of the appellant.

Learned counsel for the appellant was directed to be notified of the date fixed in this case. However, despite being notified of the date fixed, there is no representation on behalf of the appellant today.

Keeping in view the fact that the present is an appeal filed by the claimant seeking enhancement of compensation on account of injuries received by him, it is considered just and expedient to decide this appeal, which is pending before this Court since 2011.

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 in a motor vehicle accident, which took place on 02.06.2007. It has been averred that the claimant along with other occupants-passengers was going from bus stand, Jind to Patiala Chowk, Jind, in an Auto Rickshaw. The same was driven by Krishan Kumar at a moderate speed on its correct side of the road. At about 02.45.p.m., when the said Auto Rickshaw reached near Senior Secondary School Boys, Jind, a Mahindra Max Jeep bearing registration no. HR-64-0073 came from the opposite side i.e. from Patiala Chowk side, driven by its driver-respondent no.1-Mahipal Singh at a very high speed and struck against their Auto Rickshaw. Resultantly, the claimant along with other occupants of the Auto Rickshaw suffered serious, grievous injuries on their person. The claimant was taken to General Hospital, Jind, from where he was referred to PGIMS, Rohtak. FIR no. 301 dated 02.06.2007 (Ex.P-1), under Sections 279, 337 IPC, was registered at Police Station Sadar Jind, was registered against respondent No.1 in this respect.

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 offending jeep bearing registration No.HR-64-2047 by respondent No.1-Mahipal Singh. This finding of the learned Tribunal has attained finality.

Learned Tribunal concluded that the appellant sustained injuries in this accident leading to 40% permanent disability. A sum of ₹80,000/- was awarded on account of 40% disability and a sum of ₹70,000/- was awarded on account of medical treatment etc. A total amount of ₹1,50,000/- was awarded by

the learned Tribunal as compensation. The present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for respondent No.3 – Insurance Company submits that the compensation awarded by the learned Tribunal is reasonable and as per the evidence on record.

I have gone through the file with the able assistance of learned counsel for respondent no.3-Insurance Company.

There is no dispute regarding the injuries received by the claimant-appellant in the Motor Vehicles Accident which took place on 02.06.2007 due to the rash and negligent driving of the offending vehicle by respondent no.1-Mahipal Singh. It is proved on record that the appellant was suffering from the injuries around knee and fracture of tibia. As per disability certificate Ex.P-86, the claimant-appellant suffered 40% permanent disability of the limb.

PW-3-Dr. Amarsari, B.L.Kapoor Hospital, Pusa Road, Delhi has testified that the claimant also remained admitted in BLP, Memorial Hospital, New Delhi subsequently w.e.f., 02.11.2009 till 04.11.2009 with a history of fracture/initial injury on his knee. Various discharge certificates including from PGIMS, Rohtak, where the appellant was initially taken on 02.06.2007 and discharged on 27.06.2007 are available on record. PW-3 stated that the claimant approached the said hospital on account of complication of fracture/initial injury on the knee. It is further stated that the patient would require another operation as his knee had undergone damage and would have to be replaced. The claimant was 30 years old at the time of accident. As per the claim petition, occupation of the claimant is mentioned as a wholesaler in medicines. A perusal of the record reveals that there is no documentary evidence regarding the income of the

appellant to be ₹8000/- per month as claimed except the statement of the claimant-PW-1. Even, if the claim of the appellant is accepted that he was engaged in the wholesale business of medicines, he would at best be entitled to loss of income for managerial skills. Even, the minimum wages of an unskilled labourer in the State of Haryana at the time of the accident was ₹3914/- p.m. therefore, it is considered just and expedient to assess the income of the appellant-claimant to be ₹4000/- per month.

PW-2-Dr. Amit Batra, Sr. Resident, Department of Orthopedics, PGIMS Rohtak, has proved the disability certificate Ex.P-86. PW-2 specifically stated that disability of 40% of the claimant-appellant was assessed on account of septic secondary arthritis right knee with malunited fracture tibial condyle with discharging sinuses, swelling, scarring, pain, inability to bear with and wasting of muscles of thigh. The claimant was stated to be suffering from secondary septic arthritis of the right knee. In the facts and circumstances of the case, it is considered just and appropriate to assess the functional disability of the appellant to be 20%. Increase in income on account of future prospects at the rate of 40% is required to be awarded keeping in view the judgement of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil) 1009**. In terms of the judgement of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Anr. 2009 (3) R.C.R. (Civil) 77**, multiplier of 17 is to be applied as the injured-appellant was 30 years old at the relevant time.

A perusal of the impugned award dated 06.09.2010, reveals that a sum of ₹70,000/- has been awarded on account of medical expenses, whereas bills amounting ₹1,30,038/- have been proved on record. Complete compensation

has not been awarded merely on the ground that there is nothing on record to suggest that admission of the claimant in the hospital in the year 2009 was due to the injury received by him in the motor vehicle accident. The said finding is clearly against the evidence on record. The claimant-appellant is thus entitled to a sum of ₹1,30,038/- instead of ₹70,000/- on account of medical expenses incurred on his treatment.

Keeping in view the parameters referred to hereinbefore and in view of the decision of the Hon'ble Supreme Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765**, compensation towards the claimant on account of injuries received by him is thus re-worked as under:-

1.	Loss of income	₹4000/- p.m
2.	Functional Disability 20%	4000 x 20% = 800
3.	Total income after addition of future prospects at the rate of 40%	₹800 + (800 x 40%) i.e. ₹1120/-
4.	Loss of earnings	₹1120x 12 x 17= ₹2,28,480/-
5.	Loss of pain and suffering	₹50,000/-
6.	Loss of amenities	₹50,000/-
7.	Special diet and Transportation charges	₹15,000/-
8.	Attendant charges	₹15,000/-
9.	Medical expenses	₹1,30,038/-
	Total Compensation =	₹4,88,518/-

Claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petition till realization.

Needless to say the amount, if any, already disbursed to the claimant shall be deducted.

Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimant, shall enure.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

A copy of this order be conveyed to the appellant at the address available on record. In case of any grievance, the appellant shall be at liberty to file an appropriate application within two months of receipt of a copy of this order.

October 09, 2018.
's khan'

(LISA GILL)
JUDGE

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