

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

FAO No.4818 of 2011 (O&M)

Date of Decision: 08.08.2018

Mahender Singh

..... Appellant

Versus

Dev Dutt and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Ms. Bhavna Grewal, Advocate for
Mr. Sandeep Kumar Yadav, Advocate for the appellant.

Ms. Vandana Malhotra, Advocate and
Ms. Monika Jangra, Advocate for respondent No.3/Insurance Co.

MAHABIR SINGH SINDHU, J.

Present appeal has been filed against the impugned Award dated 16.03.2011, passed by learned Motor Accident Claims Tribunal, Narnaul (*for short 'the Tribunal'*), for enhancement of compensation under the provisions of Section 173 of the Motor Vehicles Act, 1988 (*for short 'the Act'*) on account of 4% Permanent Disability suffered by the appellant.

(2) Brief facts of the case are that on 18.01.2009, appellant-Mahender Singh, age 48 years, who was working as Chowkidar-cum-Motor Operator in the Public Health Department and getting monthly salary of ₹ 12,000/-, going on bicycle from Village Bhushan Kalan to Village Kadipuri for attending his duties. When he reached at the outer area of Village Bhushan Kalan, a Pick-Up vehicle bearing registration No. RJ-02-IG-0412 (*for short 'the offending vehicle'*), being driven by respondent No.1-Dev Dutt in a very rash and negligent manner at a high speed, came from the opposite side. On

seeing the offending vehicle, appellant turned his bicycle towards *katcha* path (berm) of the road, but offending vehicle hit him. As a result thereof, appellant suffered serious injuries on various parts of his body including head, forehead, eyes, face & chin and five of his ribs were got fractured as detailed in the MLR/X-rays report/Medical Record. Thereafter, he was taken to General Hospital, Narnaul and from where, referred to Kailash Hospital, Behror, District Alwar (Rajasthan) and remained admitted there w.e.f. 18.01.2009 to 30.01.2009. His treatment continued as an outdoor patient and he had undergone various operations on account of the injuries suffered by him. As a result thereof, appellant remained without pay, who was the only earning member in the family and his future has become dark. An amount of ₹ 1,50,000/- is alleged to have spent for treatment and which is still going on.

(3) In response to the claim petition, respondent Nos.1 and 2 (driver and owner respectively) filed their joint reply and denied the claim of the appellant and submitted that no accident had taken place with the offending vehicle. Further submitted that respondent No.1-driver was having a valid driving license and the offending vehicle was duly insured with respondent No.3/Insurance Company and as such, respondent Nos.1 and 2 are not liable for any compensation.

Respondent No.3/Insurance Company filed separate reply and, *inter alia*, submitted that respondent No.1-driver was not having a valid driving license at the time of alleged accident and as such, he has violated the terms and conditions of the Insurance Policy. The factum of age, occupation and monthly income of the appellant was also denied.

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

1. *Whether petitioner Mahender Singh sustained injuries in road side accident which took place on 18.1.2009 at about 9:15 p.m. in the area of village Bhushan Kalan (PS Sadar Narnaul), due to rash and negligent driving of Pick Up No.RJ-2/G/0412 being driven by respondent No.1, owned by respondent No.2 and insured with respondent No.3, as alleged? OPP.*
2. *Whether petitioner is entitled to any compensation, if yes, amount of compensation, the petitioner is entitled to and from whom? OPP.*
3. *Relief.*

In order to prove his case, claimant/appellant examined PW 1- Govind Singh, Criminal Ahlmad to the Court of learned ACJM, Narnaul; PW 2-Mahender Singh (appellant); PW 3-Umesh Kumar, Record Keeper, Kailash Hospital, Behror; PW 4-Satbir, Sales Executive, Uma Medicare Ltd.; PW 5- Dr. Dinesh Poddar, Deputy Civil Surgeon, Narnaul; PW 6- Jitender Kumar and tendered in evidence documents Ex.P-1 to Ex.P-112.

On the other hand, respondents examined RW 1-Devdutt and learned Counsel for respondent Nos.1 and 2 tendered copies of driving license, Registration Certificate and Insurance as Ex.R-1 to Ex.R-3 respectively.

(5) While deciding Issue Nos.1 and 2, in para 11 of the impugned award, learned Tribunal came to the following conclusion:-

“ Resultantly, it is established beyond any shadow of doubt that the accident in question did occur due to the rash and negligent driving of the respondent No.1 on account of which the claimant-injured did suffer multiple grievous injuries on

his person. As such, the pleas taken by the respondents to the effect that no alleged accident had taken place or that the injured had not suffered any injuries etc. therein thus stands shattered completely and conclusively. ”

Learned Tribunal further came to the conclusion that objection of the Insurance Company to the effect that the offending vehicle was registered in Rajasthan and the same was being plied in Haryana, in violation of the terms and conditions of the Insurance Policy, was also rejected in view of the provisions of Section 66(1)(i) of the Act as according to which, if the gross weight of the vehicle does not exceed 3000 Kgs., there was no necessity for permit in respect thereof. Learned Tribunal also found that according to the Registration Certificate (R.C.) of the offending vehicle, its weight has been mentioned as 1650 Kgs. without goods and 2756 Kgs. with goods. Thus, learned Tribunal found that Insurance Company is liable to pay the compensation.

It is necessary to mention here that above findings on Issue Nos.1 and 2 have not been challenged by the Insurance Company either by way of substantive appeal or cross-objections, therefore, the findings to that extent deserve to be affirmed.

Still further, while deciding quantum of compensation under Issue No.2, learned Tribunal found that Disability Certificate (Ex.PW5/A), issued by the Medical Board, Civil Surgeon, Narnaul has been duly proved and according to which, the appellant has suffered permanent disability to the extent of 4% on account of malunion ribs right side (3rd to 8th ribs) and distal phalynx little finger right. Consequently, awarded compensation to the tune of ₹ 8000/- i.e. ₹ 2000 per percent. Learned Tribunal also awarded the

compensation of ₹ 52,535/- in lieu of Medical Bills (Ex.P-13 to Ex.P-110). In addition, an amount of ₹ 6000/- was awarded for Special Diet, ₹ 8000/- for loss of income as well as ₹ 50,000/- for non-pecuniary factors i.e. pain & suffering, physical and mental trauma etc. Thus, total compensation of ₹ 1,24,535/- was awarded along with interest @ 12% per annum from the date of accident till its realization.

(6) It is argued by learned Counsel for the appellant that claimant/appellant was 48 years of age at the time of accident and he was having a monthly income of ₹ 12,581/- and reference is made to the Certificate (Ex.P-111), issued by the Executive Engineer, Public Health, Engineering Division, Narnaul. Further argued that appellant had suffered various injuries on different parts of his body including head, forehead, eyes, face and chin and five of his ribs got fractured and was repeatedly operated and hospitalized for 13 days and thereafter continued his treatment as outdoor patient. The Medical Board assessed his permanent disability as 4% and learned Tribunal has not taken into consideration the bills of medicines (Ex.P-35 to Ex.P-110), while awarding compensation of ₹ 1,24,535/-. It is further argued that the compensation awarded by learned Tribunal is on the lower side and insufficient.

On the other hand, learned Counsel for respondent No.3/Insurance Company submitted that the bills of medical expenses of appellant were for an amount of ₹ 52,535/- and learned Tribunal, after taking into consideration the entire material available on record, has rightly awarded compensation of ₹ 1,24,535/-, hence, prayed for dismissal of the present appeal.

(7) Heard arguments from both sides and perused the record.

(8) The only point to be decided in the present appeal is:-

*as to what should be the “just compensation” in
view of the facts and circumstances of the present case?*

(9) It is duly proved that at the time of accident, appellant was 48 years of age and perusal of Certificate (Ex.P-111), issued by the Executive Engineer, Public Health, Engineering Division, Narnaul, clearly reveals that appellant was working as Chowkidar under Public Health, Engineering Division, Narnaul and he was drawing a total salary of ₹ 12,581/-. Appellant appeared as PW-2, filed his affidavit Ex.PW-2/A and reiterated the contents of the claim petition. During cross-examination, he has denied the suggestion that he did not spend an amount of ₹ 1,50,000/- on his treatment and that is not earning anything being an idle person.

Despite the above factual position, learned Tribunal, in para 17 of the impugned award, wrongly recorded the finding that appellant has not placed on record any proof regarding his income and thus, said finding deserves to be interfered. Accordingly, it is held that appellant was working as Chowkidar and getting monthly salary of ₹ 12,581/-. Learned Tribunal has awarded an amount of ₹ 8000/- while taking into consideration the monthly income of the appellant @ ₹ 4000/- as an unskilled labourer for eight weeks, therefore, the same deserves to be enhanced to ₹ 24,000/-.

(10) PW-3 Umesh Kumar, Record-Keeper, Kailash Hospital, Behror brought the original record regarding the treatment of the appellant and deposed he remained admitted in their hospital from 18.01.2009 to 30.01.2009 and record of treatment was produced as Ex.P-10. Payment of

₹ 52,535/- was made towards medical bills (Ex.P-11 to Ex.P-34) and this witness specifically stated that medical bills do not include the medicine charges.

PW-4 Satbir, Sales Executive, Uma Medicare Ltd., C/o Kailash Hospital, Behror brought the summoned record pertaining to the medicine bills (Ex.P-35 to Ex.P-110) of the appellant and deposed that these were issued from their Medical Store. Although, during cross-examination, this witness has stated that in these bills, address of appellant has not been mentioned, but that is not sufficient to discard the claim of the appellant towards the medicine charges in lieu of Ex.P-35 to Ex.P-110. Even otherwise, a close scrutiny of the same clearly reveals that name of the appellant has been duly mentioned on each and every bill and the same are duly stamped and signed by the Medical Store-Keeper. Therefore, learned Tribunal has wrongly not taken into consideration the medicine bills (Ex.P-35 to Ex.P-110) for an amount of ₹ 19,000/- (approximately).

It seems that learned Tribunal, in Para 14 of the impugned award, has intermingled the medical bills (Ex.P-13 to Ex.P-34) with medicine bills (Ex.P-35 to Ex.P-110) and only awarded compensation of ₹ 52,535/-, but ignored the medicine bills worth ₹ 19,000/-.

(11) Keeping in view the facts and circumstances, discussed hereinabove, the following amount of compensation would be the 'just compensation' for which the appellant/claimant is entitled:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation (in ₹)</i>
<i>1</i>	<i>Compensation for Medical Bills</i>	52535
<i>2</i>	<i>Compensation for Medicine Charges</i>	19000

Sr. No.	Heads	Calculation (in ₹)
3	Compensation for Disability	8000
4	Compensation for loss of earning during treatment for 13 days	24000
5	Compensation for Special Diet	6000
6	Compensation towards attendant charges	5000
7	Non Pecuniary Expenses	60000
	TOTAL	1,74,535

(12) In view of above, the instant appeal is allowed and the award, passed by learned Tribunal, is modified. The amount of compensation is enhanced from ₹ 1,24,535/- to ₹ 1,74,535/- for the injuries suffered by the appellant/claimant. The interest awarded by learned Tribunal from the date of accident is *dehors* the provisions of Section 171 of the Act and, therefore, the same is modified from the date of filing of the claim petition. Needless to say that the amount of compensation, already paid to the appellant/claimant, shall be adjusted and respondent No.3-Insurance Company is directed to pay the aforesaid enhanced amount to the appellant/claimant within a period of one month from the date of receipt of certified copy of this order.

Disposed off in the above terms.

August 08, 2018

(MAHABIR SINGH SINDHU)
JUDGE

Gagan

Whether speaking/reasoned	Yes
Whether Reportable	Yes