

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

FAO No.5243 of 2011 (O&M)

Date of decision: 31.08.2018

Deenu

....Appellant

Versus

Sharwan Kumar Bishnoi and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Sanjeev Kumar Bawa, Advocate for the appellant.

None for respondent Nos.1 and 2.

Mr. Eklavya Darshi, Advocate for respondent No.3-Insurance Co.

MAHABIR SINGH SINDHU, J.

Appellant-claimant (*for short 'appellant'*) has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 (*for short 'Act'*) against the impugned Award dated 13.04.2010, passed by learned Motor Accident Claims Tribunal, FTC, Nuh (*for short 'Tribunal'*) for enhancement of compensation on the basis of 75% permanent disability consequent upon amputation of his left leg.

(2) Brief facts of the case are that on 23.01.2009 at about 11.30 AM, when petitioner-Deenu was standing near Pinangwan Bus Stand along with his motor-cycle, a Tanker bearing registration No.RJ-19-GA-1011 (*for short 'offending vehicle'*) came from Badkali side, driven by Sharwan Kumar Bishnoi (respondent No.1) in a very rash and negligent manner and hit the petitioner from back side. As a result of which, he suffered injuries. The driver of the offending vehicle stopped the same at a distance of 20 feet, who (driver) disclosed his name and then ran away from there. Appellant was taken to the Government Hospital Mandikhera and then to Bakshi Hospital at Nuh. His leg was amputated and he remained admitted about five days. At the time of filing of

the claim petition, the appellant was undergoing the treatment as outdoor patient. It has also been submitted that he has spent ₹ 1.5 Lakh on his treatment and he has become disabled and cannot continue with his work. The above-said offending vehicle was driven by respondent No.1 in the course of his employment with Khiya Ram (respondent No.2), who is owner thereof and which was insured with New India Assurance Company (respondent No.3) at the time of accident. Appellant, while narrating the accident, disclosed his occupation as Mason, aged 28 years and earning ₹ 6,000/- per month.

(3) Appellant filed a claim petition seeking compensation of ₹ 10,00,000/- (Ten Lakh) along with costs and interest at the rate of 18% per annum from the date of filing of the petition till its realization.

(4) Upon notice, respondent Nos.1 and 2 filed a joint written statement and while raising the preliminary objections as well as on merits denied the assertions made in the claim petition. It is also submitted that a false FIR has been registered against them by the appellant. Respondent Nos.1 and 2 also denied the income of the appellant. It is also denied that the petitioner has spent an amount of ₹ 1.5 Lakh on his treatment and he has become disabled.

No written statement was filed by respondent No.3 and the impugned Award reveals that respondent No.3 remained *ex parte* on 18.05.2009.

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

- “1. Whether the accident in question took place due to rash and negligent driving of offending vehicle bearing registration No.RJ-19-GA-1011 by respondent No.1 resulting into injuries to Deenu as alleged? OPP

2. *If issue no.1 is proved, whether the petitioner is entitled to compensation. If so to what amount and from whom? OPP*
3. *Whether the respondent No.1 was not holding a valid and effective driving license at the time of accident and insured violated the terms and conditions of Insurance Policy as alleged? If so to what effect? OPR*
4. *Relief. ”*

(6) Appellant-Deenu, in order to prove his case, examined himself as PW-1; Dr. S.K. Batta, Orthosurgeon, G.H., Mandi Khera as PW-2 & Dr. Mohd. Farooq, Medical Officer, Bakshi Memorial Hospital, Nuh as PW-3 and produced the documents (Ex.P-1 to Ex.P-16).

Respondents did not lead any evidence on their behalf to rebut the evidence of the appellant.

(7) Learned Tribunal, while deciding Issue No.1 in favour of the appellant, came to the conclusion that appellant has duly proved that the accident in question took place due to rash and negligent driving of the offending vehicle by respondent No.1 and on account of that, he suffered serious injuries. Learned Tribunal also recorded the finding that an FIR No.33 dated 24.01.2009, under Sections 279 and 338 IPC, has been registered at Police Station Punhana in the matter and after completion of investigation, report under Section 173 Cr.P.C. was presented against respondent No.1 before learned Illaqa Magistrate.

Learned Tribunal, while deciding Issue No.3 in favour of the appellant, came to the conclusion that offending vehicle was insured with respondent No.3 on the date of accident and respondent No.1 was having a valid driving licence (Ex.P-10) to drive the transport vehicle.

Learned Tribunal, while deciding Issue No.2, which is material for the present appeal, came to the conclusion that the appellant has become 75% permanent disabled and at the same time recorded that he has not produced any medical bills, but since he received serious injuries and on account of that, his left leg was amputated, so he must have spent some amount on medicines. Learned Tribunal, after taking into consideration the facts, granted the compensation of ₹ 1,50,000/- on account of 75% permanent disability received by the appellant and ₹ 1,00,000/- on account of medicines, transportation, pain & suffering and loss of earning capacity in future. Learned Tribunal also granted interest @ 6% per annum and all the respondents were held jointly and severally liable to pay the amount of compensation. However, the first liability to pay the amount of compensation is of respondent No.3 being insurer of the offending vehicle.

(8) It is argued by learned counsel for the appellant that learned Tribunal has granted the compensation on lesser side and the same is insufficient in view of the age, income and injuries suffered by the appellant. It has also been submitted that left leg of the appellant has been amputated on account of the accident and, therefore, he is not able to do Mason work in future and he cannot even move on one leg. It is further submitted that interest @ 6% per annum, awarded by learned Tribunal, is also on the lower side.

On the other hand, it is argued by learned counsel for respondent No.3/Insurance Company that the compensation, awarded by learned Tribunal, is sufficient and does not require any interference by this Court and the present appeal deserves to be dismissed.

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

(10) So far as the factums of accident and suffering of injuries by the appellant in a rash and negligent driving of respondent No.1 by the offending vehicle, which was insured with respondent No.3, were duly proved and the same have attained finality as there is no challenge to those findings.

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

“ what should be the 'just compensation' for which the appellant is entitled in view of the facts and circumstances of the present case. ”

Appellant, while appearing as PW-1, tendered his affidavit Ex.PW/A and, *inter alia*, deposed that he has become disabled and spent ₹ 1.5 Lakh on his treatment and used to do work of Mason and earned ₹ 6,000/- per month.

During cross-examination by respondent No.1 and 2, he denied the suggestion that he did not spend ₹ 1.5 Lakh on his treatment or that he was not working as Mistri/Mason and earning ₹ 200/- per day.

PW 2-Dr. S.K. Batta, Ortho Surgeon, G.H. Mandi Khera deposed that on 06.02.2010, being Member of the Medical Board, he examined the appellant, aged about 28 years and after examination, assessed the disability as 75% on account of amputation of upper third of the left leg with wasting of muscles and limitation of knee movements and produced the Disability Certificate of the appellant as Ex.P-1, signed by him and other Members of the Board.

During cross-examination, this witness stated that the disability pertains to one limb and not of the whole body and it is permanent disability as it is a case of amputation upper third of the left leg. He denied the suggestion

that he has given wrong Certificate.

PW 3-Dr. Mohd. Farooq, Medical Officer, Bakshi Memorial Hospital, Nuh deposed that appellant, aged 28 years, was admitted in his Hospital on 23.01.2009 with crush injury of left leg below knee and the same was amputated on the same day i.e. 23.01.2009 and he brought the complete treatment record pertaining to the appellant and produced the Discharge Card (Ex.P-2), which was signed by him.

During cross-examination, this witness stated that “*the patient can be mobile with the help of artificial limb up to some extent*” and he denied the suggestion that he deposed falsely.

(12) In the present case, appellant was working as a Mason, thereby earning ₹ 6,000/- per month and the Insurance Company, despite due service, neither appeared; nor filed any reply and thus, proceeded *ex parte* before learned Tribunal. Even the suggestion put by respondent Nos.1 and 2 during cross-examination of the appellant that he is not earning ₹ 6,000/- per month was specifically denied by him.

In view of the above, this Court is fully convinced that the monthly income of the appellant should be taken into consideration as ₹ 6,000/- and age as 28 years being not in dispute by the respondents. Therefore, the amount of compensation awarded by learned Tribunal is on the lower side and same deserves to be enhanced in view of the judgment of the Hon'ble Supreme Court in '**Raj Kumar Versus Ajay Kumar and another, (2011) 1 SCC 343.**

In the opinion of this Court, the following amount of compensation would be the 'just compensation' for which the appellant/claimant is entitled:-

Sr. No.	Heads	Calculation
1	Monthly income of appellant	₹ 6000
2	50% deduction for personal expenses	₹ 3000
3	Compensation for permanent disability of 75%	₹ 3000 x 75 ÷ 100 = ₹ 2250
4	Annual loss of future earning	₹ 2250 x 12 ₹ 27,000
5	Multiplier	17
6	After applying multiplier, total loss of future earning of the appellant	₹ 27,000 x 17 = ₹ 4,59,000
7	Compensation for Pain and suffering	₹ 50,000
8	Compensation for medical expenses and hospitalization	₹ 50,000
9	Compensation for loss of future enjoyment of life, special diet, transportation and attendant charges etc.	₹ 75,000
	TOTAL	₹ 6,34,000

In view of above, the instant appeal is allowed and the amount of compensation, assessed by learned Tribunal, is modified and enhanced from ₹ 2,50,000/- to ₹ 6,34,000/- for the injuries suffered by the appellant/claimant. In view of the injuries suffered by appellant, the enhanced amount of compensation shall carry interest @ 7.5% per annum instead of 6%.

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

Disposed off in the above terms.

August 31, 2018
naresh.k/Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes