

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

FAO No.5513 of 2011 (O&M)

Date of decision: 31.08.2018

Sunil Kumar

.....Appellant

Versus

Ram Pal and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Chiranshu Bansal, Advocate for the appellant.

None for respondent Nos.1 and 2.

Mr. Vishal Aggarwal, 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 'the Act'*) against the impugned Award dated 10.05.2011, passed by learned Motor Accident Claims Tribunal, Karnal (*for short 'Tribunal'*) for enhancement of compensation on account of 52% permanent disability (26% qua whole body), suffered by him.

(2) Brief facts of the case are that appellant filed a claim petition under Section 166 of the Act on 19.03.2010 before learned Tribunal with the averments that on 11.02.2010, he along with his friend-Sanjay Kumar proceeded from Village Sikri to Nigdhu, District Karnal for attending a marriage. The appellant was driving his Pulsar motorcycle bearing registration No.HR-05W-3211 at a slow and moderate speed on left side of the road and his friend was a pillion rider. At about 6.30 PM, when they reached ahead of old Nilokheri near a *Pulia* (small bridge), then a swift Car bearing registration No.HR-07L-8105 (*for short 'offending vehicle'*), driven by Ram Pal-respondent No.1, in a very rash

and negligent manner, came and hit the motorcycle. As a result thereof, both fell down on the road and appellant suffered injuries on his leg, whereas Sanjay Kumar suffered various injuries on his body. After causing the accident, driver of the offending vehicle fled away from the spot. Many peoples gathered there and they shifted the appellant to Virk Hospital, Karnal and FIR No.47 dated 12.02.2010 was also registered against unknown person in Police Station Butana for the offences, punishable under Sections 279, 337 and 338 of the Indian Penal Code (*for short 'IPC'*). During investigation, it surfaced that respondent No.1- Ram Pal was driving the offending vehicle at the time of accident and same was owned by respondent No.2-Sandeep Malan, which was insured with respondent No.3-Bajaj Allianz General Insurance Company Limited, thus, the appellant filed a claim petition against all three respondents being liable jointly and severally.

Further averred in the claim petition that at the time of accident, appellant was 23 years of age and working as Engineer in Indian Oil Refinery, Panipat, getting monthly salary of ₹ 15,000/-. But on account of the accident in question, he suffered multiple grievous injuries including fractures on his right leg as well as right hand and remained admitted in the hospital. Several tests and operations were conducted, which resulted into insertion of an iron rod in his right leg. He spent an amount of ₹ 1,00,000/- on his treatment, attendant, special diet, transportation etc., which was continuing at the time of filing of the claim petition. Since his leg was fractured, therefore, neither able to move; nor he can sit or walk properly and that has resulted into termination of his job also. The appellant suffered great mental agony, pain and harassment as well as financial loss and he has permanently become disabled.

(3) Upon notice, respondent Nos.1 and 2 filed their joint written statement and, *inter alia*, pleaded that neither any accident had taken place with the offending vehicle; nor respondent No.1 was driving the same in a rash and negligent manner and a false case has been registered by the police. It is also pleaded that the offending vehicle was insured with respondent No.3 at the time of accident and the claim made in the petition is highly exaggerated.

Respondent No.3-Insurance Company filed separate reply and denied the claim petition while submitting that no accident had taken place with the offending vehicle and the same has falsely been involved by the appellant in collusion with respondent Nos.1 and 2 just to grab the compensation from the Insurance Company. Plea has also been raised that respondent No.1 was not holding a valid and effective driving licence at the time of accident and the offending vehicle was being used for the purpose other than specified in the Insurance Policy and even if learned Tribunal comes to the conclusion that driver of the offending vehicle has also contributed in the alleged accident, then it is a case of contributory negligence.

Appellant has also filed the replications and reiterated the averments made in the claim petition.

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

- “1 Whether the accident took place due to sole rash and negligent driving of respondent No.1 as alleged? OPP
2. Whether the claim petition is bad for misjoinder and non-joinder of necessary parties? OPR
3. Whether the claimant has have no locus-standi and cause of action to file and maintain the present petition? OPR
4. Whether driving licence of respondent No.1 was not valid and effective at the time of accident? If so its effect? OPR3

5. *Whether the vehicle in question was being driven in violation of the terms and conditions of the insurance policy as alleged, if so its effect?OPR*
6. *Whether the claimant is entitled to compensation, if so, how much and from whom?OPP*
7. *Relief.”*

(5) Appellant, in order to prove his case, examined Jawahar Lal, Ahlmad of the Court of Special Judicial Magistrate, Karnal as PW-1; Dr. Vinod Kumar, Medical Officer, General Hospital, Karnal as PW-2; Dr. Balbir Singh Virk as PW-3 and he himself appeared as PW-4 and also produced the documentary evidence i.e. certified copy of FIR (Ex.P-1); certified copy of Site Plan (Ex.P-2), prepared by the Investigating Officer; certified copy of Report under Section 173 Cr.P.C. (Ex.P-3); certified copy of Charge-sheet against respondent No.1 by learned trial Court (Ex.P-4); Disability Certificate (Ex.P-5); Discharge Cards of Virk Hospital, Karnal (Ex.P-6, Ex.P-8 and Ex.P11), Receipts of ₹ 36,000/-, ₹ 9000/- and ₹ 4500/- respectively of Virk Hospital (Ex.P-7, Ex.P-10 and Ex.P-12); copy of his Matriculation Certificate (Ex.P-13); copy of Character Certificate (Ex.P-14); copy of the Gate Pass (Ex.P-15); Medical Bills/Receipts (Ex.P-16 to Ex.P-64); letter of his appointment in VRC Construction (India) Pvt. Ltd. (Mark 'A'); photocopy of his Driving Licence (Mark 'B'); statement of bank account (Mark 'C') and copy of Cheque (Mark 'D').

On the other hand, respondents examined Sandeep Malan, owner of the offending vehicle as RW-1 and produced the documentary evidence i.e. driving licence of respondent No.1 (Ex.R-1) and copy of Insurance Policy (Ex.R-2).

Learned Tribunal, after taking into consideration the material available on record, decided Issue No.1 in favour of the appellant and came to

the conclusion that accident in question had taken place on account of rash and negligent driving of the offending vehicle by respondent No.1.

While deciding Issue Nos.2 and 3, learned Tribunal found that onus to prove these Issues was upon the respondents, but during the course of arguments, neither these Issues were pressed; nor any evidence was led by the respondents, therefore, decided the same against the respondents and in favour of the appellant.

While deciding Issue Nos.4 and 5 with regard to validity of driving licence, learned Tribunal came to the conclusion that respondent No.1 was having a valid driving licence at the time of accident and there was no violation of any terms and conditions of the Insurance Policy.

While deciding Issue No.6, learned Tribunal found that in view of the Disability Certificate (Ex.P-5), the appellant has suffered a permanent disability up to the extent of 52% and as per the testimony of the doctor, the whole body disability is approximately 26%. Learned Tribunal further recorded that at the time of accident, appellant was 23 years of age and consequently, awarded a sum of ₹ 1,00,000/- towards disability, pain and suffering (without giving any finding regarding the monthly income of appellant).

Learned Tribunal awarded a sum of ₹ 15,000/- for hospitalization, special diet, attendant and transportation etc. Further an amount of ₹ 1,72,185/- was awarded towards medical bills/receipts. Consequently, all the respondents were held liable jointly as well as severally to make the payment of total compensation amount of ₹ 2,87,185/- 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.

(6) It is argued by learned counsel for the appellant that compensation, awarded by learned Tribunal, is insufficient and on lower side and no findings have been recorded regarding the monthly income of appellant and thus, the same deserves to be enhanced in view of the age, income, permanent disability and other expenses incurred by the appellant for his treatment.

None appeared on behalf of respondent Nos.1 and 2.

Learned counsel for respondent No.3 has opposed the contentions of the appellant and submitted that compensation, awarded by learned Tribunal, is sufficient and does not require any interference by this Court and the appeal deserves to be dismissed.

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

(8) There is no dispute that accident in question had taken place on account of rash and negligent driving of respondent No.1 and at the time of accident, the offending vehicle was duly insured with respondent No.3. Even the age and disability of the appellant are duly proved and the Insurance Company has neither filed any substantive appeal; nor cross-objections against these findings and as such, the same are affirmed to that effect.

The only point to be considered and decided in the present appeal is:-

“ as to what should be the just compensation that may be awarded to the appellant in view of the facts and circumstances of the present case? ”

It is specifically pleaded by the appellant that at the time of accident, he was working as an Engineer in Indian Oil Refinery, Panipat and getting monthly salary of ₹ 15,000/-, but on account of fracture on his right leg, he was neither able to move; nor walk properly and that resulted into termination

of his job by the employer.

While appearing as PW 4, appellant produced his affidavit (Ex.PA) and supported the contents of his claim petition and, *inter alia*, deposed that he has spent ₹ 3,00,000/- on his treatment and he has become permanent disabled and is not able to do any work. He has been suffering from mental pain, agony and harassment.

During cross-examination, stated that he was working with VRC Construction India Pvt. Ltd., IOCL, Panipat and denied the suggestion that he was not working with the said Company or with IOCL. Also denied that he was not earning the amount as claimed in the affidavit (Ex.PA) or that he was earning the same amount while working in the earlier capacity as he was doing before the accident. Further denied that he has not suffered any loss of kind and has filed the claim petition just to grab the compensation.

There is no evidence brought on record by the respondents to contradict the claim of the appellant regarding his working with VRS Construction India Pvt. Ltd. as a Civil Engineer and earning monthly salary of ₹ 15,000/-. Therefore, this Court has no option, but to accept the plea of the appellant that on the date of accident, he was working as Civil Engineer with VRS Construction India Pvt. Ltd. and getting a monthly salary of ₹ 15,000/-.

The appellant has successfully proved that he has suffered the permanent disability up to the extent of 52% and reference in this regard can be made to the Disability Certificate (Ex.P-5).

PW 2-Dr. Vinod Kumar, Medical Officer, General Hospital, Karnal deposed that for assessing the disability of appellant, Medical Board was constituted and which found that it was an operated case of right femur, right leg

bones, right ankle, right foot metatarsal with amputation of distal part of third toe right foot with contracture of right ankle and right foot with restrictions of movements of right ankle with deformity of right foot and ankle. Further deposed that the disability was assessed as 52% i.e. 10% for right femur; 10% for right leg; 5% for right ankle; 10% for right foot metatarsal and amputation of third toe; 2% for the contracture of right ankle & foot as well as 15% for restrictions of movement of right ankle. He specifically stated that Disability Certificate (Ex.P-5) is correct as per record and the same bears his signatures as well as that of other Members of the Board, whose signatures, he duly identified.

During cross-examination, he stated that Medical Board assessed the disability on the basis of Guidelines, issued by the Government of Haryana and appellant suffered the disability of 52% qua particular limb and if calculated for whole body, then it will come to approximately 26%. He has denied the suggestion that disability assessed by the Medical Board can be reduced with passage of time or that disability has been assessed on higher side at the instance of the appellant or he deposed falsely.

PW-3 Dr. Balbir Singh Virk, Virk Hospital also supported the claim of the appellant while deposing that as per record, appellant was admitted in the hospital on 11.02.2010 with history of road side accident and he had suffered compound fracture both bones right leg, fracture femur right compound, fracture dislocation right ankle joint compound, fracture right foot metatarsal compound. Under spinal anesthesia operation was done for fracture both bones leg, fracture femur and fracture foot. Also deposed that appellant was discharged from the hospital on 20.02.2010 and he charged Rs.36,000/- from the appellant on account of treatment exclusive of medicines and cost of implant. Ex.P6 is discharge card and Ex.P7 is receipt of the amount charged by him. Further

deposed that appellant again admitted in his hospital on 08.03.2010 with wound of right leg and debridement was done under ketamine and discharged on 09.03.2010. Ex.P8 is a discharge card which was in his hand and bears his signatures. He also deposed that appellant again admitted in his hospital on 18.03.2010 with removal of external fixator of right femur. The same was removed and interlocking nail was done. Appellant was discharged from the hospital on 20.03.2010. Ex.P9 is a discharge card which was in his hand and bears his signatures. He had charged Rs.9,000/- as operation and hospitalization charges vide receipt Ex.P10. Also deposed that again the appellant was admitted in their hospital on 23.03.2010 with wound right foot, skin grafting was done and discharged from the hospital on 25.03.2010. Ex.P11 is a discharge card which was in his hand and bears his signatures. He had charged Rs.4,500/- as operation and hospitalization charges.

In view of the facts and circumstances, it is apparently clear that the appellant was a young boy, aged about 23 years at the time of accident and he has suffered permanent disability to the extent of 52% and qua whole body, the disability has been assessed as 26%. At the same time, it deserves to be mentioned that there is no material on record to substantiate that appellant is unable to perform any alternative job on the basis of his qualification despite his disability. Therefore, keeping in view the age, income and disability of the appellant, 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	₹ 15000
2	50% deduction for personal expenses	₹ 7500
3	Compensation for permanent disability of 26% qua whole body	₹ 7500 x 26 ÷ 100 = ₹ 1950
4	Annual loss of future earning	₹ 1950 x 12 ₹ 23,400
5	Multiplier	18
6	After applying multiplier, total loss of future earning of the appellant	₹ 23,400 x 18 = ₹ 4, 21,200
7	Compensation for Pain and suffering	₹ 50,000
8	Compensation for medical expenses and hospitalization	₹ 1,72,185
9	Compensation for loss of future enjoyment of life, special diet, transportation and attendant charges etc.	₹ 1,00,000
	TOTAL	₹ 7,43,385

In view of above, the instant appeal is allowed and the amount of compensation, assessed by learned Tribunal, is modified and enhanced from ₹ 2,87,185/- to ₹ 7,43,385/- 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 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