

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

XOBJC-137-CII-2016 in/and
FAO No. 2423 of 2012 (O&M)
Date of decision :November 13, 2018

Ravi DuttAppellant
Versus

Rattan Singh and anotherRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Randhir Singh Hooda, Advocate
for the appellant.

Mr. Adarsh Jain, Advocate and
Ms. Nisha Puri, Advocate
for respondent No. 1 – cross objector.

Mr. Shubham Jain, Advocate for
Mr. Suman Jain, Advocate
for respondent No. 2.

LISA GILL, J.

Notice of the cross objections.

Mr. Randhir Singh Hooda, Advocate accepts notice on behalf
of the non-applicant/appellant and Mr. Shubham Jain, Advocate accepts
notice on behalf of respondent No. 2.

This judgment shall decide FAO No. 2423 of 2012 as well as
cross objection No. 137-CII-2016 filed by respondent No. 1.

This appeal has been preferred by the appellant – Ravi Dutt for
enhancement of compensation awarded to him vide award dated 22.10.2011
passed by the learned Motor Accident Claims Tribunal, Palwal (hereinafter
referred to as 'Tribunal') on account of injuries suffered by him in the motor
vehicle accident, which took place on 22.10.2011.

Cross objections have been filed by respondent No. 1/driver-
cum-owner of the offending vehicle challenging recovery rights afforded to

the insurance company/respondent No. 2.

Brief facts necessary for adjudication of the case are that the appellant aged about sixteen (16) years, was involved in a motor vehicle accident on 01.02.2009 when he alongwith his father was on his way from village Bamnikhera to village Manpur on a motorcycle driven by his father. The appellant was a pillion rider. When they reached near village Gehib turn, G.T. Road and turned towards village Manpur, offending three wheeler bearing registration No. HR-99-CQ-2488 (Temporary) came from back side and hit the motorcycle. The appellant and his father fell on the road. The appellant sustained injuries on his mouth, left leg, right ribs and other parts of the body. Claim petition under Section 166/140 of Motor Vehicles Act was preferred by the appellant seeking compensation on account of the injuries suffered by him.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to rash and negligent driving of three wheeler bearing registration No. HR-99-CQ-2488 driven by respondent No. 1. This finding of the learned Tribunal has attained finality. A sum of ₹52,000/- was awarded on account of treatment and medicine, ₹10,000/- for special diet and transportation and a sum of ₹5,000/- towards pain and suffering. A total amount of ₹67,000/- was awarded by the learned Tribunal as compensation.

Present appeal has been filed seeking enhancement of the compensation awarded.

Learned counsel for the appellant submits that meagre compensation has been afforded to the claimant on account of injuries admittedly suffered by him in a motor accident which took place on

01.02.2009. He prays for enhancement of the same.

Learned counsel for the cross objector – respondent No. 1 submits that the learned Tribunal has wrongly afforded recovery rights to respondent No. 2 while observing that the cross objector was having a driving licence only qua light motor vehicles particularly motorcycle, scooter, car, jeep, therefore, he was not authorised to drive an Auto rickshaw (three wheeler).

Learned counsel for the respondent - insurance company while refuting the arguments raised submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. It is submitted that the compensation has been rightly assessed and recovery rights correctly afforded, therefore, the impugned award dated 22.10.2011 be upheld.

Heard learned counsel for the parties.

It is not in dispute that the claimant – appellant suffered serious injuries in the accident which took place on 01.02.2009 due to rash and negligent driving of the auto rickshaw by respondent No. 1. PW1 Dr. A.P. Sharma, City Hospital, Palwal proved that the appellant suffered a fracture of femur (shaft) with punctured wound; fracture of left clavicle; fracture of left scapula alongwith fracture of mandible with lacerated wound; avulsion of scalp on the right fronto temporal parietal region as well as multiple reddish abrasion on the body. It is, however, not in dispute that no permanent disability was suffered by the appellant, who was a student aged 16 years at the time of the accident. Compensation on account of medical expenses has been rightly afforded as per the medical bills proved on record. There is no evidence on record to indicate any other expenses incurred by the appellant. However, in the facts and circumstances of the

case, it is considered just and expedient to award compensation to the tune of ₹20,000 (instead of ₹10,000) on account of special diet and ₹5,000/- for transportation. Keeping in view the nature of injuries, the appellant would necessarily have required the services of an attendant. Thus, ₹5,000/- is awarded on account of attendant charges. The appellant is also held entitled to a sum of ₹75,000/- on account of pain and suffering instead of ₹5,000/-. The appellant is, thus, entitled to ₹1,05,000/- as compensation.

The amount of compensation already awarded to the appellant, needless to say, shall stand deducted from the amount calculated as above. Appellant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

There is merit in the argument raised by learned counsel for the cross objector. Learned counsel for the insurance company is unable to deny that respondent No. 1 was indeed holding a valid driving licence Ex.R1 in respect to the motorcycle, scooter, car, jeep i.e. light motor vehicle. The matter is clearly covered by the judgment of the Hon'ble Supreme Court in **Mukand Dewangan versus Oriental Insurance Company Limited 2017 (4) RCR (Civil) 111**. The insurance company is not entitled to recover the said amount from respondent No. 1 – cross objector in this case. Finding of the learned Tribunal on this issue is, accordingly, set aside.

Cross objections are, accordingly, allowed.

As it is brought to my notice that the amount in question already stands recovered by the insurance company, it is directed that the same be refunded to the cross objector in four weeks. In case the said amount is not deposited by the insurance company within four weeks of receipt of certified copy of this decision, the cross objector – respondent No.

1 shall be entitled to interest at the rate of 7.5% per annum for the period of delay till realisation.

With the abovesaid modification in the amount of compensation, the appeal is disposed of and cross objections are allowed.

November 13, 2018
rts

(Lisa Gill)
Judge

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