

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

**F.A.O No. 6991 of 2011 &
Cross Objection No. 182-CII of 2017 (O&M)
Date of decision:- 22.05.2018**

Rakesh

...Appellant

Versus

Parkash Chand and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vikas Lochhab, Advocate
for the appellant.

Mr. Ashwani Gaur, Advocate
for respondent No. 1.

Mr. Atul Aggarwal, Advocate
for cross objector/respondent No. 2

Mr. Suvir Dewan, Advocate
for respondent No. 4

RITU BAHRI J. (Oral)

1. Appeal and cross objection, as noticed above, are being disposed of by this common judgment, having arisen out of the impugned award dated 30.08.2011 passed by the learned Motor Accident Claims Tribunal, Sonipat.

Facts not in dispute

2. The facts which are not in dispute are that on 09.10.2009, the appellant-Rakesh was going back to his house on his motorcycle bearing No. DL-8SAG-6257. When he reached across petrol pump, in the meantime, a santro car bearing No. DL-4CJ-3592 came Bahalgarh side and struck against the motorcycle of the appellant. The said car also struck a three wheeler boarded with the passengers. The car was being driven by

respondent No. 2-driver of the offending vehicle. In this accident, the appellant suffered multiple and grievous injuries. The appellant was shifted to Maharaj Aggarsain Hospital. F.I.R No. 392 dated 10.10.2009 under Sections 279/337/338 IPC at P.S. Rai, Sonapat.

3. As per the Tribunal, the injured-appellant in the present case remained in hospital w.e.f 09.10.2009 to 25.10.2009, 25.10.2009 to 28.11.2009, 03.12.2009 to 10.12.2009 and from 10.12.2009 to 31.12.2009 and he had spent Rs.11,40,989/- on his medical treatment. Rs.11250/- were awarded on account of temporary disability to the extent of 45%. Further Rs.18000/- were awarded towards loss of income for 05 months. Rs.60,000/- towards pain and suffering were also awarded. Rs.5000/- were awarded towards transportation, Rs.5000/- were awarded towards special diet and Rs.7500/- towards attendant charges. The total compensation of Rs.12,47,739/- were awarded. However, the learned Tribunal fastened the liability of respondent Nos. 2 and 3 to pay the compensation jointly and severally.

4. The learned counsel for the appellant contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced.

5. On the other hand, the learned counsel for the cross objector-respondent No. 2/driver submits that the liability to pay compensation should not be fastened upon the driver, as firstly he was not the driver of the offending vehicle which was involved in the accident nor he was driver of respondent No. 3. In his affidavit also, he stated that he has no concern with the alleged accident and in his cross examination, he has denied that he was driving the alleged offending vehicle. Further cross objector has been

acquitted by the learned Court vide judgment dated 29.04.2016 in the criminal trial as the eye witness has failed to identify the accused i.e respondent No. 2. This proves the version of the cross objector that he was not driving the alleged vehicle.

6. I have heard learned counsel for the parties and perused the record.

7. With regard to the cross objection filed by the driver, it is liable to be allowed as firstly he was acquitted by the learned trial Court vide judgment dated 29.04.2016 as he was not identified by the eye witness and further learned counsel for the cross objector has informed this Court that his name was not there in the F.I.R. It is the registered owner i.e respondent No. 1 who is liable to pay the compensation, in view of the law laid down by Hon'ble the Supreme Court in a case of ***Naveen Kumar vs. Vijay Kumar and others, 2018 (3) SCC 1***. Learned counsel for the appellant-driver has further submitted that in the written statement before the Tribunal, the subsequent purchaser i.e respondent No. 3 has denied that she had ever employed Nitin Kumar-respondent No. 2 as driver of the car

8. With regard to the appeal filed by the injured-appellant, the compensation is being reassessed as per the judgments mentioned above:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Medical Bills	Rs.11,40,989/-
(ii)	Transportation	Rs.25000/-
(iii)	Special Diet	Rs.25000/-
(iv)	Attendant Charges	Rs.25000/-
(v)	Physiotherapy for 06 months	Rs.30,000/-
(vi)	For stay in hospital for approximately 80 days	Rs.80,000/-
(vii)	Pain and suffering	Rs.60,000/-
	Total Compensation	Rs.13,85,989/-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
	Enhanced amount of compensation	Rs.13,85,989-Rs.12,47,739=Rs.1,38,250/- (rounded off to Rs.1,38,000/-)

09. The enhanced amount of compensation of Rs.1,38,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 7.5% per annum from the date of filing of the claim petition, in view of the judgment of Hon'ble the Supreme Court in a case of *Shri Nagar Mal and ors vs. The Oriental Insurance Co. Ltd and others, passed in Civil Appeal No. 448-2018., decided on 19.01.2018.* However, cross objector/respondent is not liable to pay the compensation amount.

10. Accordingly, the award stands modified to the above extent and the appeal filed by the appellant stands partly allowed to the above extent and the cross objections filed by cross objectors/respondent Nos. 2 is also allowed to the extent that he is not liable to pay the compensation. It is hereby directed that the amount of Rs.25,000/- deposited by the cross objectors, vide draft No. 486273 dated 06.09.2017, at the time of filing of appeal in the Registry of this Court be returned to him.

22.05.2018
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No