

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

**FAO No.3618 of 2012 (O&M)
Date of decision: 30.04.2018**

Brahma Nand alias Billu

....Appellant

Versus

Ranbir Yadav and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashok Arora, Advocate,
for the appellant.

Mr. Rajbir Singh, Advocate,
for respondent No.3-National Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') vide award dated 01.02.2012, on account of injuries received by him in a motor vehicular accident which took place on 02.10.2008.

Brief facts of the case are that Joginder Singh son of Bharat Singh was a transporter and he had employed one Rajesh Kumar as driver on his vehicle TATA-407 bearing registration No. HR-39-A-7975. On 02.10.2008, at about 12.15 A.M., Joginder Singh along with Vijay and two labourers (one of them was Brahma Nand @ Billu-appellant) started in the said TATA-407 from Delhi for Panipat. At about 4.30 A.M., when they reached near village Patti Kalyana, one container bearing registration No. HR-38-C-1249 being driven by respondent No.1-Ranbir Yadav in a rash

and negligent manner, came from behind and overtook their vehicle without

blowing any horn. After overtaking, the said driver immediately applied brakes in front of TATA-407, as a result of which, TATA-407 struck behind the container and accident took place. Joginder Singh and Brahma Nand-claimant (appellant) received injuries in the said accident. Driver of the container ran away from the spot after the accident. Claimant was shifted to General Hospital, Smalkha and thereafter, to Panipat. As his condition was serious, he was referred to PGIMS, Rohtak, where he remained admitted from 02.10.2008 to 13.11.2008. On account of the injuries sustained in the accident, he was unable to sit, stand and walk. With regard to the accident, FIR No.337 dated 04.10.2008, under Sections 279/337/338/427 IPC was registered at Police Station, Smalkha against respondent No.1. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of offending vehicle by its driver-respondent No.1 and thus, returned finding on issue no.1 in favour of the claimant(s). This finding was rightly given on the basis of deposition of claimant-appellant(s) Brahma Nand and Joignder Singh (PW-6 and PW-7 respectively). Moreover, claimant(s) had also proved on record FIR No.337 dated 04.10.2008, under Sections 279/337/338/427 IPC and charge sheet Ex.P190. While assessing compensation, income of injured-claimant was taken as Rs.4500/- per month, out of which 1/3rd amount was deducted towards his personal expenses. After deduction, the amount came to Rs.3000/- per month i.e. Rs.36,000/- per annum. He was 22 years of age at the time of accident, therefore, multiplier of 17 was applied. After applying

the multiplier of 17, compensation on account of disability came to Rs.6,12,000/- (36,000 x 17). The compensation was awarded as under:-

Sr. No.	Heads	Amount
1.	Mental pain and sufferings	Rs.25,000/-
2.	Treatment expenses i.e. bills etc.	Rs.6990/-
3	Compensation on account of disability	Rs.6,12,000/-
	Total	Rs.6,43,990/-

Ultimately, the claimant was found entitled to a total compensation of Rs.6,43,990/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. Parties are not in dispute with regard to finding given by the Tribunal on issue No.1 to the effect that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver.

As per deposition of Dr. Pardeep Kamboj, Assistant Professor, Department of Orthopedic, PGIMS, Rohtak (PW-12), injured claimant Brahmanand was admitted in the hospital on 02.10.2008 with the history of roadside accident, in which he sustained chest injury with fracture 7th and 8th dorsal vertebrae with paraplegia with bowel bladder involvement. Chest injury was managed with inter costal drainage and fracture of vertebrae were managed conservatively and the patient was discharged in stable condition on 13.11.2008. He further deposed that this patient needs attendant throughout his life, if the recovery from such injury does not

member of the board constituted for the purpose of assessing the disability of injured-claimant Brahmanand. The board had examined the patient on 29.04.2009 and he was found having disability to the extent of 100%. Disability certificate, in this regard, was proved as Ex.P187. The claimant-appellant was 22 years of age at the time of accident. Because of this disability, he cannot do any work. Therefore, keeping in view the nature of disabilities suffered by the appellant, the functional loss of future earning capacity of appellant is being estimated at 100%. Compensation, in this case, has to be awarded by applying the method of income criteria. The accident had taken place on 02.10.2008. Minimum wages vary from Rs.3664 to 4314. Accordingly, income of injured-appellant is assessed as Rs.4500/- per month. In this amount, 40% is added towards future prospects. Total income comes to Rs.6300/- per month. After applying the multiplier of 18, loss of income due to disability comes to Rs.6300 x 12 x 18 = Rs.13,60,800/-. Hence, keeping in view the peculiar circumstances, in which the injured-claimant had been put, the compensation is hereby re-assessed as under:-

Sr. No.	Heads	Amount (Rs.)
1	Mental pain and sufferings	Rs.1,00,000/-
2	Treatment expenses i.e. bills etc.	Rs.6990/-
3	Compensation on account of loss of income due to disability	Rs.13,60,800/-
4	Transportation, special diet and attendant charges	Rs.1,50,000/-
5	TOTAL COMPENSATION AWARDED	Rs.16,17,790/-
	Enhanced amount of compensation	Rs.16,17,790 – 6,43,990 = Rs.9,73,800/-

The enhanced amount of compensation of **Rs.9,73,800/-** shall be payable within a period of two months from the date of receipt of

certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “**Shri Nagar Mal and others vs. The Oriental Insurance Company Ltd. and others**, Civil Appeal No.448 of 2018 (decided on 19.01.2018). Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is allowed.

(RITU BAHRI)
JUDGE

30.04.2018
ajp

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