

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

**FAO No.3621 of 2012 (O&M)
Date of decision: 30.04.2018**

Joginder Singh

....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 (claimant-appellant) 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) 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

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. Claimant-appellant Joginder Singh and Brahma Nand-claimant received injuries in the said accident. Driver of the container ran away from the spot after the accident. Claimant was taken to General Hospital, Panipat, from where he was referred to PGIMS, Rohtak. Thereafter, he was taken to CMC, Hisar. He remained admitted in CMC, Hisar w.e.f. 03.10.2008 to 06.11.2008, 11.11.2008 to 14.11.2008 and 24.11.2008 to 26.11.2008. His knee joint was broken and liver was also damaged. 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. The compensation was awarded as under:-

Sr. No.	Heads	Amount
1.	For disability to the extent of 28%	Rs.56,000/-
2.	Mental pain and sufferings	Rs.40,000/-
3	Treatment expenses	Rs.2,49,000/-

4	Special diet	Rs.5000/-
5	Transportation	Rs.10,000/-
	Total	Rs.3,60,000/-

Ultimately, the claimant was found entitled to a total compensation of Rs.3,60,000/- 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.

Learned counsel for the appellant has referred to the disability certificate Ex.P106 and contended that he (claimant) had suffered permanent disability of right lower limb to the tune of 28%. He further argued that compensation for disability should have been granted after applying the method of income criteria.

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.

Hon'ble the Supreme Court in **Sayed Mehaboob vs. New India Assurance Co. Ltd.**, 2012 (8) RCR (Civil) 721 had examined a case, where the claimant had suffered 86% disability on account of shortening of leg by 2.5 inches. In that case, the appellant was unable to use both his legs for driving. The Tribunal had assessed the functional loss of future earning capacity of the appellant to the extent of 100% and awarded compensation accordingly. On appeal, the High assessed the total bodily disability at 30% and reduced the compensation, which was awarded by the Tribunal. Hon'ble

upheld the award passed by the Tribunal and set aside the judgment of the High Court being arbitrary in nature.

In the present case, as per deposition of Dr. Lalit Mohan Bansal (PW-2), injured claimant Joginder was operated for open reduction internal fixation with locking plate and he proved the discharge slip Ex.P99 and Ex.P100. Dr. Reena Jain (PW-4) was a member of the board constituted for the purpose of assessing the disability of injured-claimant Joginder. The board had examined the patient on 06.01.2010 and his permanent physical disability was assessed to the extent of 28% in relation to his right lower limb. Disability certificate, in this regard, was proved as Ex.P106. Keeping in view the nature of disabilities suffered by the appellant, the functional loss of future earning capacity of appellant is being estimated at 50%. 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 $Rs.6300 \times 50/100 \times 12 \times 18 = Rs.6,80,400/-$. 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	Compensation on account of loss of income due to disability	Rs.6,80,400/-
2	Mental pain and sufferings	Rs.80,000/-
3	Treatment expenses	Rs.2,49,000/-
4	Special diet	Rs.15,000/-
5	Transportation	Rs.15,000/-

6	TOTAL AWARDED	COMPENSATION Rs.10,39,400/-
	Enhanced amount of compensation	Rs.10,39,400 – 3,60,000 = Rs.6,79,400/-

The enhanced amount of compensation of **Rs.6,79,400/-** 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