IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 3645 of 2012 (O&M)
Date of Decision : 30.10.2018

Sunder ....Appellant

Versus

Jagbir and another .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Inderjit Sharma, Advocate
for Mr. Chanderhas Yadav, Advocate
for the appellant.

Mr. D.K. Dogra, Advocate
for respondent no. 2-Insurance Company.

Surinder Gupta, J.

Claimant-Sunder (appellant) filed petition under Section 166 of the Motor Vehicles Act claiming compensation for the injuries suffered by him in a motor vehicle accident with TATA Magic bearing no. HR-56-7909 (later referred to as 'the offending vehicle'), due to its rash and negligent driving by respondent no. 1-Jasbir son of Jai Singh (wrongly mentioned as Jagbir in the memo of parties).

2. Claimant described the manner of accident in para 24 of the claim petition, as follows:-

"24 That on 01.03.2011 the petitioner alongwith his wife and children in his Maruti Van no. CH-03U-7024 went to village Ladhot to meet his relative, and at about 08.00 p.m., he was coming back with his wife and children to Rohtak in his Maruti Van in (sic at) normal speed and in (sic on) his correct hand side and was following the traffic rules. When the petitioner reached near railway phatak Ladhot then a TATA Magic No. HR-56-7909 came from the Rohtak side which was driven by respondent no. 1 rashly, negligently and in zigzag manner and struck against the Maruti Van. The petitioner received multiple

grievous injuries and his right leg has been completely damaged. The petitioner received injuries on his chest. The wife of the petitioner called Suresh the husband of her sister and he came at the spot and took the petitioner in PGIMS by arranging some other vehicle. The driver of the offending vehicle ran away from the spot after leaving the TATA Magic No. HR-56-7909. The accident has been (sic was) caused due to sole negligence of respondent no. 1, who was driving the vehicle in rashly, negligently and in zigzag manner and the same was not in his control. The petitioner was admitted on 01.03.2011 in PGIMS Rohtak and discharged on 25.03.2011. The petitioner is confined to bed since the day of accident and (is) not in a position to perform his routine work. The operation of the petitioner was conducted. The petitioner is suffering a great pain even today itself."

3. Motor Accident Claims Tribunal, Rohtak (later referred to as 'the Tribunal') while allowing the petition awarded compensation to claimant-appellant in following terms:-

(i)	Compensation for mental and physical agony	₹15000
(ii)	Compensation for 43% permanent and 15% temporary disability	₹115000
(iii)	Medical bills	₹33718 (rounded off to ₹33700)
(iv)	Special diet and transportation	₹7000
	Total	**₹170700**

4. Learned counsel for the appellant has argued that the Tribunal has not allowed any compensation for loss of income during the period the appellant remained under treatment and thereafter on bed, loss of his future income due to permanent disability of 43% and 15% temporary disability, expenses of attendant in the hospital, future medical expenses. The appellant was earning ₹15,000/- per month but the same was not taken into account while computing the amount of compensation.

5. Claimant-appellant examined Dr. Raj Singh, Assistant Professor, Department of Orthopaedics, PGIMS, Rohtak as PW-4, who proved disability certificate of the appellant (Ex. P9) and stated as follows:-

> *"………….The board had assessed his disability to the extent of 43% to be permanent in nature and to the extent of 15% to be temporary in nature on account of the deformed and damaged ankle joint right side with shortening of right lower limb by two inches with scarring right foot and ankle with surgical scar mark right thigh and hip with stiffness right knee with radiological changes of AVN right hip with stiff and painful, deformed right foot with delayed/non-union right thigh (femur)……………"*

6. PW-4 Dr. Raj Singh has stated that temporary disability as mentioned in the disability certificate could be cured/decreased with physiotherapy and passage of time.

7. Appellant while appearing as PW-1 has stated that after the accident, his wife called his brother-in-law, namely, Suresh and took him to PGIMS, Rohtak by arranging another vehicle. He remained admitted there from 01.03.2011 to 25.03.2011. Thereafter, he remained confined to bed and even on the day his statement was recorded i.e. on 30.11.2011, he was confined to bed and was not in a position to perform his duty and routine work. After his discharge from PGIMS, Rohtak, he was getting his treatment from private doctors and had spent more than ₹1 lakh on the medicines, transportation, attendant, operation, special diet etc. At the time of accident he was earning ₹15,000/- per month and now he will not be able to do any work in the coming years. He has, however, admitted that his treatment in PGIMS, Rohtak was free of cost and he had only to spend on medicines, which were not available in the medical store of PGIMS, Rohtak.

8. From the statement of appellant, it is apparent that he had

suffered loss of income during the period he remained admitted in hospital and thereafter on bed. He had suffered fracture injury and usually injury with fracture takes 8 to 12 weeks to join, followed by physiotherapy for long period. In this case, the appellant had remained admitted in PGIMS, Rohtak for about 25 days i.e. from 01.03.2011 to 25.03.2011. As per discharge card (Ex. P-2), he again remained admitted in PGIMS, Rohtak from 30.09.2011 to 08.10.2011 for his surgery. The medical record on file suggests that the appellant was not in a position to attend to his work for a period of about ten months. Though, the appellant has not stated about his vocation and there is no evidence to prove his income as ₹15,000/- per month but even if he be taken as an unskilled worker, his income can be safely assessed as ₹4500/- per month and he is entitled to compensation towards loss of his income during the period he remained under treatment from the month of January 2011 to November, 2011 as (₹4500 X 11) **₹49500/-**.

9. As per opinion of the doctor, the appellant required continuous medical check up and physiotherapy for his temporary disability but the Tribunal has not allowed any compensation on this score. The claimant is allowed a lump sum of **₹25,000/-** on this score. For the disability, the Tribunal has allowed compensation of ₹1,15,000/-, which is on lower side. Claimant was 35 years of age at the time of accident. By applying multiplier method with 40% addition in his income towards loss of future prospects by taking his physical disability as 20%, the amount of compensation on this score works out to be (4500+40%x12x16x20%) ₹2,40,000/- (rounded off figure). During the period he remained admitted in the hospital and thereafter, he required services of attendant and also had to spend on transportation. The Tribunal though has allowed compensation of ₹7000/-

towards special diet and transportation, the same is inadequate and is enhanced to **₹25,000/-.** Compensation under the other heads as awarded by the Tribunal calls for no interference.

10. In view of above, the amount of compensation, as awarded by the Tribunal in this case, is reassessed as follows:-

(i)	Compensation for 43% permanent disability and loss of future income	₹240000
(ii)	Compensation for future medical expenses and physiotherapy	₹25000
(iii)	Special diet and transportation	₹25000
(iv)	Compensation for loss of income for 11 months @ ₹4500/- per month	₹49500
(iv)	Compensation for mental and physical agony as assessed by the Tribunal	₹15000
(v)	Medical bills as assessed by the Tribunal	₹33700
	Total	**₹388200**

11. As a sequel of my discussion above, the instant appeal has merit and the same is accepted. Award of the Tribunal is modified and the compensation allowed to claimant-appellant for the injuries suffered by him is enhanced from ₹1,70,700/- to ₹3,88,200/-. Liability to pay the amount of compensation shall be as per award. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of instant appeal till actual realization. Respondent no. 2-Insurance Company being insurer of the offending vehicle will deposit the enhanced amount of compensation in the bank account of claimant-appellant or pay the same through demand drafts.

October 30, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*