

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

F.A.O No. 4782 of 2012

DATE OF DECISION :- December 18, 2018

Sukha Singh

...Appellant

Versus

Kuldeep Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAN

Present:- Mr. Ashish Gupta, Advocate for the appellant.

Sukha Singh, appellant/claimant, aged about 50 years, an agriculturist by evocation having agricultural land and running milk dairy of 20 cattle had filed a claim petition under Section 166 of the Motor Vehicles Act against respondents Kuldeep Singh-driver, Sonu Rohilla-owner and National Insurance Company Limited, Karnal-insurer of Motor Cycle bearing registration No. HR-40-B-9918 (hereinafter referred to the offending motorcycle) claiming compensation of Rs. 5 lacs on account of suffering injuries in a motor vehicular accident involving the offending motorcycle in which he suffered injuries.

Inter alia in the claim petition, the claimant, submitted that on 24.11.2010, he along with his wife Smt. Lakhwinder Kaur had gone to Dhawan Hospital, Jalmana for taking medicines on motor cycle bearing

registration No. HR-40-B-5026. At about 11 A.M., wife of claimant alighted from the motorcycle and claimant went to park his motorcycle in front of Dhawan Hospital, Jalmana. In the meanwhile, offending motorcycle bearing registration No. HR-40-B-9918 being driven by Kuldeep Singh-respondent no. 1 in a rash and negligent manner without following the traffic rules came there and hit the motorcycle of claimant from right side. Resultantly, claimant fell down on the road and his right leg was fractured at two places. He was moved to Sachdeva Nursing Home, Sector 12, Urban Estate, Karnal where he was treated.

Formal F.I.R. No. 609 dated 26.11.2010 was registered against Kuldeep Singh-respondent no. 1 at Police Station Assandh for offences under Section 279, 337 IPC.

The claimant submitted that he used to earn Rs. 1 lac per month, however, on account of the accident, he had suffered multiple serious and grievous injuries on various parts of his body including fracture on right leg with soft tissue, injury on right foot and fracture of 7th and 8th ribs on right side. He was operated upon to fix the fractures. He had to spend Rs.1,50,000/- on his treatment including medicines/operations etc., a sum of Rs.50,000/- on transportation and Rs.20,000/- on special diet. After the accident, he became disabled. He cannot walk normally and is unable to do his work in a proper manner. He had hired services of a person to look after agricultural fields and milk dairy business. After being discharged from the hospital, he had to undergo further treatment as follow up.

The claim petition had been contested by the respondents by filing written replies. Issues on merits were framed. The parties were

afforded opportunities to lead evidence. After hearing arguments, Motor Accident Claims Tribunal, Karnal vide Award dated 26.7.2012 allowed the petition with costs awarding a sum of Rs.30,915/- as compensation on account of injuries suffered by the claimant holding respondents no. 1 and 2 to be jointly and severally liable to pay the amount of compensation to the claimant. It was observed that respondent no. 3 shall pay the amount to the claimant who shall have the right to recover the same from respondent no. 2 and also held entitled to interest at the rate of 7.5% per annum which was awarded on the compensation amount from the date of filing claim petition till realization. The details of the compensation awarded are as follows :-

1. On account of expenditure incurred on purchase of medicines and treatment Rs.23,915/-.
2. On account of attendant, special diet, transportation and hospitalization Rs.2000/-.
3. For Mental pain and suffering Rs.5,000/-.

A total sum of Rs.30,915/- was awarded as compensation. The claimant felt aggrieved by less compensation awarded and has approached this Court by way of filing the appeal against the impugned Award.

Notice of the appeal was given to the respondents, who were duly served but have not turned up to offer a contest.

I have learned counsel for the appellant besides going through the record.

Learned counsel for the appellant has pointed out that though deciding issue No. 2 with respect to award of compensation, the contentions of the claimant claiming compensation under various heads giving the amounts actually spent by him on his treatment have been discussed but

then no specific finding in that regard has been given. As regards Tribunal awarding a sum of Rs.23,915/- on account of expenditure incurred by claimant on purchase of medicines and on his treatment, learned counsel has argued that it is not practical to get bills/receipts from the Chemists and Druggists for all the medicines purchased, more particularly for small amounts and some times such bills and receipts get misplaced and lost also. The claimant has not been awarded any compensation for medical expenses incurred by him or likely to be incurred by him after he led evidence before the Tribunal and after passing of award.

Learned counsel for the appellant has referred to authority Sanjay Verma versus Haryana Roadways 2014(3) SCC 210 wherein the Apex Court had observed that compensation under heads future treatment and pain and suffering are distinct and different and cannot be clubbed together.

I find force in his contentions, I am of the view that the compensation awarded under this head needs to be enhanced. Accordingly, that amount is increased to Rs.35,000/- from 23,915/-.

As regards the consolidated compensation awarded under the heads on account of attendant, special diet, transportation and hospitalization of Rs.2000/- to say the least, it is too meager. A person suffering such type of injuries does require assistance of a attendant during the period of his treatment, thereafter while going for follow up, medical check up and subsequently too till he is in a position to move about without assistance of attendant after getting recovered from the injuries suffered, a sum of Rs.10,000/- deserves to be awarded to the claimant under that head.

Similarly special diet is required to be taken for curing of fractures and recovering from the injuries suffered in the accident. Though Dr. M.K. Goyal had stated that he had advised the patient to take highly rich protein and calcium diet but that fact has not been given much attention by the Tribunal. According to the claimant, he had spent Rs.20,000/- on special diet, however, I find it proper and reasonable to award a sum of Rs.10,000/- to him on that account.

Further another sum of Rs.10,000/- deserve to be awarded for transportation i.e. going from residence of the injured to the hospital or clinic of doctors in connection with his treatment.

The Tribunal has not awarded any amount to the claimant on account of loss of income during the period he could not perform his normal work and job of agriculture and dairy farming. If he could not do it then some other person must have done it for him. Merely for the reason that he had not examined any person who could depose that he had been engaged by the claimant, compensation under that head has been denied to the claimant which in my view is improper. A sum of Rs.20,000/- is awarded to the claimant for getting service of others for doing his agricultural work and dairy work etc.

Similarly the amount of Rs.5,000/- awarded to the claimant under the head of pain and suffering is found to be inadequate and the same is raised to Rs.20,000/-. The claimant is found to be entitled to enhanced compensation of Rs.75,000/-. This is in addition to the compensation awarded by the Tribunal.

The appeal is accepted accordingly. The claimant would be

entitled to get interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the appeal till realization. The directions issued for the award regarding liability of respondents to pay compensation amount to the claimant and recovery rights granted to respondent no. 3 shall also apply with regard to enhanced compensation.

(H.S. MADAAN)
JUDGE

December 18, 2018
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No