

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

**FAO No.62 of 2012 (O&M)
Date of decision: 24.08.2018**

Sanjeeda

....Appellant

Versus

Mubarik and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Amit Jain, Advocate for the appellant.

Respondent No.1 proceeded *ex parte*,
vide order dated 24.07.2012.

None for respondent Nos.2 and 3.

Mr. Lalit Kumar, Advocate for
Mr. Ashwani Talwar, Advocate for respondent No.4.

MAHABIR SINGH SINDHU, J.

Eight year's old minor girl, who was studying in second standard at the relevant time, has preferred the present appeal through her father-Akbar as a natural guardian for enhancement of compensation under Section 173 of the Motor Vehicles Act, 1988 (*for short 'Act'*) against the impugned award dated 26.11.2010, passed by learned Motor Accident Claims Tribunal, Nuh (*for short 'Tribunal'*), on account of permanent disability.

(2) Respondents are driver, owner, superdar and insurer respectively of the offending vehicle.

(3) Brief facts of the case are that appellant along with her father had gone to attend the marriage of their relative in Village Nasirbass. On 05.06.2008 at about 6.00 PM, while returning back, they were waiting for a bus at Bus Stand of Village Nasirbass, then a Dumper bearing registration No.HR-55-8730 (*for short 'offending vehicle'*), loaded with stones came from Ferozepur Jhirka side,

which was being driven by respondent No.1-Mubarik in a very rash and negligent manner without blowing horn, hit the appellant. As a result thereof, she suffered multiple injuries on her head, hands, left leg and other parts of the body. Respondent No.1/driver fled from the spot leaving behind the offending vehicle and appellant was admitted to Government Hospital, Mandikhera, where she was medico-legally examined by Dr. Naseem Ahmed. The matter was reported to the police and an FIR No.114 dated 05.06.2008, under Sections 279 and 337, IPC was registered against respondent No.1 at Police Station Ferozepur Jhirka. Thereafter, she was shifted to Sania Hospital, Alwar, then to S.R. Soin Hospital, Banchari, Tehsil Hodal and lastly at Dr. Nayyar's Hospital, N.I.T., Faridabad. Further averred that a sum of ₹ 5,00,000/- (Five lakh) was spent on her treatment and she has become virtually crippled.

(4) Despite service, respondent Nos.1 and 2 did not appear to contest the claim petition, consequently, they were proceeded *ex parte* by learned Tribunal, vide orders dated 07.08.2009 and 26.02.2009, respectively.

(5) Respondent No.3/Supardar filed his reply and opposed the claim petition while raising the preliminary objections, *inter alia*, regarding *locus standi*, concealment of facts, false and frivolous claim petition. He denied that offending vehicle was being driven by respondent No.1 in rash and negligent manner at a high speed and without blowing horn. Also denied the injuries caused to the appellant by respondent No.1 while driving the offending vehicle. On merits also, he denied the averments made in the claim petition including the registration of the FIR

on the basis of false allegations.

Respondent No.4/Insurer filed separate reply and denied the contents of the claim petition. Also submitted that respondent No.1/driver of the offending vehicle was not holding a valid and effective driving licence. Further submitted that offending vehicle has been involved in the claim petition in collusion with driver & owner thereof and thus, Insurance Company is not liable to pay any compensation.

(6) On the basis of pleadings of the parties, learned Tribunal framed the following issues: -

- “1. Whether the accident in question resulting in injuries to petitioner took place on 5.6.2008 at about 6.00 P.M. at bus stand of village Nasirbass, Tehsil Ferozepur Jhirka, District Mewat because of rash and negligent driving of dumper bearing registration No.HR-55-8730 by its driver, respondent No.1? OPP*
- 2. If issue No.1 is proved, whether the petitioner is entitled to get compensation? If so to what amount and from whom? OPP.*
- 3. Whether the respondent No.1 was not holding valid and effective driving license to drive the offending vehicle at the time of accident: If so to what effect? OPR.*
- 4. Relief.”*

In order to prove the claim petition, appellant examined PW 1-Dr. S.K.Batta; PW 2-Bijender Singh; PW 3-Dinesh Kumar Goel; PW 4-Arvind; PW 5-Dr. Akshat Nayyar and PW 6-Akbar (father of the appellant) as well as produced documentary evidence.

On the other hand, respondents examined Dinesh Partap Singh, Clerk from R.T.O. Office, Agra as RW-1 and produced on record Ex.R-1 and Ex.R-2.

(7) Learned Tribunal, while deciding Issue No.1, came to the conclusion that on 05.06.2008, appellant along with her father was standing at Bus Stand, Nasirbass and she suffered injuries on account of the accident, caused by respondent No.1 while driving the offending vehicle in a rash and negligent manner.

While dealing with Issue Nos.2 and 3, learned Tribunal found that appellant has suffered 60% permanent disability on account of bony ankuylosis with swear 90% flexion deformity left knee with swear equines deformity and she was treated in different hospitals and consequently, awarded a total compensation of ₹ 3,85,000/-. Learned Tribunal also came to the conclusion that offending vehicle was insured with respondent No.4 as per Policy (Ex.PW2/M) and held respondent Nos.1, 2 and 4 liable jointly and severally. However, learned Tribunal found that respondent No.1 was not having valid and effective driving licence at the time of accident and, therefore, the recovery rights were granted to the Insurer/respondent No.4 from respondent Nos.1 and 2.

(8) It is argued by learned Counsel for the appellant that compensation, awarded by learned Tribunal, is on the lower side and insufficient and thus, the same deserves to be enhanced in view of the fact that the appellant has suffered 60% permanent disability and she has become virtually crippled for the entire life.

On the other hand, learned Counsel for respondent No.4-Insurance Company submitted that compensation, awarded by learned Tribunal, is perfectly legal and justified and as such, no interference is required by this Court.

(9) Heard learned Counsel for the parties and perused the record.

(10) Findings, recorded by learned Tribunal regarding the age of the appellant as eight years, injuries caused to her by the offending vehicle on account of rash and negligent driving of respondent No.1 and 60% permanent disability, have not been challenged by the respondents either by way of substantive appeal or cross-objections and even no arguments qua that have been raised by learned Counsel for the Insurance Company, therefore, findings to that effect deserve to be affirmed.

(11) The only point in the present appeal to be considered and decided is:-

“ As to what should be the “just compensation” to be awarded to the appellant in view of the facts and circumstances of the case? ”

PW1-Dr. S.K. Batta, *inter alia*, deposed that appellant has suffered 60% permanent disability on account of bony ankuylosis with swear 90% flexion deformity left knee with swear equines deformity.

During cross-examination, he stated that disability is almost permanent to the extent of 60%. He denied the suggestion that disability has been assessed to higher side to help the appellant. Also denied that disability may reduce with the passage of time and physiotherapy as well as treatment.

PW-2 Bijender Singh, DRK from Ferozepur Jhirka Court came and produced the record regarding the criminal case against the accused/respondent No.1 as well as other documents.

PW 3-Dinesh Kumar Goel, Proprietor, M/s Goel Medical Store, Faridabad, *inter alia*, deposed that the cash memos in the name of Sanjeeda from the period 14.7.2008 to 12.11.2008 are Ex.PW3/1 to Ex.PW3/50.

During cross-examination, he denied the suggestion that he prepared the false bills and ante-dated the same in order to help the appellant. Also denied the suggestion that no such medicine was purchased by the patient.

PW 4-Arvind, Record Keeper, S.R. Soin Hospital, Banchari, Hodal, District Palwal produced the record regarding the treatment of the appellant and stated that Bills (Ex.PW4/A to Ex.PW4/E) are correct as per their record. He further stated that date of admission of the appellant in their hospital is 09.06.2008 and she was discharged on 22.06.2008. He further stated that final bill is Ex.PW4/F and the out patient bills are Ex.PW4/G to Ex.PW4/Q.

PW-5 Dr. Akshat Nayyar, Nayyar Hospital, Ward No.2A, NIT, Faridabad deposed that appellant was admitted in their hospital on 11.07.2008 and discharged on 26.07.2008 with a case of old left leg injury and she was operated for the said injury in the form of wound coverage. Thereafter, she was treated on OPD basis and re-admitted on 05.08.2008 and discharged on 15.08.2008. He further deposed that as per record, the bills are Ex.PW5/1 to Ex.PW5/28 and all the bills bear his

signature, which are correct. As per record, Prescription Slips ('Mark A' to 'Mark ZP') were issued by their hospital and verified by him. Despite due opportunity granted to the respondents, this witness was not cross-examined for the reasons best known to them.

PW-6 Akabar (father of the appellant) tendered into evidence his affidavit Ex.PW6/A, wherein he stated that due to accident, the mobility of the appellant has been restricted and she is dependent on the mercy of others. Further deposed that she will not enjoy future life and her future prospects have been considerably affected. He also stated that an amount of ₹ 5,00,000/- (Five Lakh) has already been spent for her treatment on medical expenses, transportation, special diet and towards attendant as she is still under treatment.

During cross-examination, he supported the claim petition and denied the suggestion that an amount of ₹ 5,00,000/- (Five Lakh) has not been spent on treatment of the appellant.

RW 1-Dinesh Partap Singh, Junior Clerk, Regional Transport Office, Agra brought original record register pertaining to driving licence No.19390/AG/05, issued in the name of Shalender Kumar son of Vikram Singh, resident of Patholi, Agra and does not relate to respondent No.1.

(12) Perusal of the Disability Certificate (Ex.PW1/A) reveals that appellant had suffered permanent disability to the extent of 60% on account of bony ankuylosis with swear 90% flexion deformity left knee with swear equines deformity. Still further, as per the testimony of the doctor (PW-1), the permanent disability of appellant is almost to the extent of 60% and, therefore, will suffer through her entire life. The future

prospects of marriage of the appellant have also been badly affected on account of the permanent disability. The Hon'ble Supreme Court in **Master Mallikarjun Versus Divisional Manager, The National Insurance Company Limited and another**, (2014) 14 SCC 396, relating to compensation for permanent disability in such like cases has held as under:-

“ Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and up to 30% to the whole body, Rs.3 lakhs; up to 60%, Rs.4 lakhs; up to 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability up to 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take a different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents. ”

Therefore, in view of the law laid down by the Hon'ble Supreme Court in **Master Mallikarjun's case (supra)**, the following amount of compensation would be the “just compensation” in favour of the appellant keeping in view her permanent disability as 60%:-

Head	Compensation Amount
Pain and suffering, mental and physical shock, hardship, inconvenience, loss of amenities in life on account of permanent disability	₹ 4,00,000

Head	Compensation Amount
Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization	₹ 25,000
Future medical expenses	₹ 25,000
On account of expenses on medicines and treatment	₹ 65,000
On account of loss of future enjoyment of life, special diet, transportation and attendant etc.	₹ 1,00,000
On account of reduction of prospects of marriage	₹ 2,00,000
Enhanced amount of compensation	₹ 8,15,000 - ₹ 3,85,000 = ₹ 4,30,000/-

Resultantly, the enhanced amount of compensation of ₹ 4,30,000/- shall be payable within a period of six weeks from the date of receipt of certified copy of this order. In view of the tender age of the appellant and nature of suffering, the enhanced amount of compensation shall carry interest @ 7.5% per annum instead of 6%.

Remaining conditions of disbursal of amount shall remain unaltered.

Appeal allowed in the above terms.

August 24, 2018
naresh.k/Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes