

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

**FAO No.2638 of 2013 (O&M)
Date of decision: 16.05.2018**

Virender

....Appellant

Versus

Rajesh Kumar and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Yadav, Advocate,
for the appellant.

Mr. Vishwajit Bedi, Advocate,
for respondent No.2-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, Narnaul (hereinafter referred to as 'the Tribunal') vide award dated 07.02.2013, on account of injuries received by him in a motor vehicular accident which took place on 05.05.2011.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 05.05.2011, claimant-appellant (Virender) and his brother Ashok Kumar were returning to their village Khatoti Kalan from Narnaul on a motorcycle. In the way, they stopped their motorcycle ahead of Mahabir Chowk, Inghana Road near BDPO Office, Narnaul in order to purchase some vegetables. Ashok Kumar was purchasing vegetables, whereas the claimant (Virender) was sitting on

5409 being driven by respondent No.1-Rajesh Kumar in a rash and negligent manner, came and struck against the motorcycle of claimant, as a result of which, he (claimant) received multiple and grievous injuries. He was taken to the General Hospital, Narnaul, where he was medico-legally examined. Thereafter, he was shifted to PGIMS, Rohtak. With regard to the accident, FIR No.171 dated 08.05.2011, under Sections 279/337/338 IPC was registered against the driver of offending vehicle i.e. respondent No.1 at police station, City Narnaul. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

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 and thus, returned finding on issue no.1 in favour of the claimant. This finding was rightly given on the basis of deposition of Virender-claimant (PW-2) and Ashok Kumar (PW-9), who was eye witness of the accident. Further, the claimant has also proved on record FIR Ex.PW1/A and challan Ex.PW6/A. Ultimately, the claim petition was allowed and the claimant was found entitled to a total compensation of Rs.75,000/- along with interest at the rate of 7.5% per annum from the date of filing of the petitioner till its realization. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

REASSESSED COMPENSATION

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 respect to the finding given by

the Tribunal on issue No.1 that the accident took place on account of rash and negligent driving of offending vehicle. As per deposition of Dr. Devender Kumar Pandey (PW-5), claimant-Virender had got treatment on 22.03.2012, 20.03.2012, 20.02.2012, 08.10.2011 and 09.12.2011. He proved the prescription slip as Ex.PW5/E. As per disability certificate Ex.PW5/F, claimant-Virender has suffered disability to the extent of 20%. Tejpal Singh, Record Clerk, Swami Vivekanand Senior Secondary School, Mehrampur (PW-8) had proved the experience letter Ex.PW8/A, salary record of claimant Ex.PW8/B, recognition certificate Ex.PW8/D and driving licence Ex.PW8/B. He stated that after the accident, claimant-Virender had come in their school for rejoining on 15.03.2012 and was put on a driving test, but he could not qualify the same. Before the accident, he was an excellent driver.

Reference, at this stage, can be made to a judgment passed by this Court in **Kapoor Chand vs. Rajbir and others**, FAO No.749 of 2011 and a connected appeal (FAO No.751 of 2011) decided on 22.01.2014. In that case, the appellant-Naresh Kumar was a driver and had suffered 12% disability on account of duodenal perforation with fracture left side of patella with terminal restriction of movement of left knee with non-union of left penala. It was held that for all times to come, claimant-Naresh Kumar could not do the job of a driver. Hence, the compensation was assessed after applying the multiplier method and giving him the benefit of future prospects. Further, in **Narinder vs. Ram Parkash and others**, FAO No.6374 of 2012 (decided on 20.04.2018), claimant had suffered 25% permanent disability and he had become incapable to drive a vehicle. Even, in that case, the disability was taken to the extent of 100% and

compensation was re-assessed by applying the multiplier method and giving benefit of future prospects.

In the facts of the present case also, Dr. Devender Kumar Pandey (PW-5) had stated that the claimant has suffered disability to the extent of 20%. As per testimony of Tejpal Singh, Record Clerk, Swami Vivekanand Senior Secondary School, Mehrampur (PW-8), after the accident, claimant-appellant could not qualify the driving test. He further stated that before the accident, claimant was an excellent driver. In view of this, it can be safely concluded that after the accident, claimant-appellant has become incapable to do the job of a driver. Hence, the compensation has to be assessed by applying the multiplier method. In the given circumstances, income of the claimant-appellant is being taken as Rs.5000/- per month. In this income, 40% addition is made on account of future prospects, which comes to Rs.7000/- (5000 + 2000). After applying the multiplier of 17, compensation on account of disability comes to Rs.14,28,000/- (Rs.7000 x 12 x 17). So, keeping in view the peculiar circumstances of the case, compensation is hereby re-assessed as under:-

Sr. No.	HEADS	AMOUNT (In Rs.)
(i)	Treatment expenses as per bills Ex.P1 to Ex.P8	Rs.24104/-
(ii)	Charges for special diet	Rs.10,000/-
(iii)	Future loss of income on account of permanent disability	Rs.14,28,000/-
(iv)	Pain & sufferings	Rs.25,000/-
(v)	Special diet, attendant and transportation etc.	Rs.10,000/-
(vi)	TOTAL COMPENSATION AWARDED	Rs.14,97,104/-
(vii)	Enhanced amount of compensation	Rs.14,97,104 – 75,000 = Rs.14,22,104/-

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 (arising out of SLP (C) No.26853 of 2016) 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 partly allowed.

(RITU BAHRI)
JUDGE

16.05.2018

ajp

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