

are taken up together for decision as both of them arise out of the same impugned award dated 21.11.2013 passed by the learned Motor Accident Claims Tribunal, Narnaul (for short, the 'Tribunal').

FAO No.1382 of 2014 has been filed by the Insurance company for setting aside the impugned award passed by the learned Motor Accident Claims Tribunal, Narnaul and FAO No.1677 of 2014 has been filed by the injured/claimant for enhancement of the compensation awarded to him vide impugned award dated 21.11.2013.

Brief facts necessary for adjudication of the case are that a petition under Section 166 of Motor Vehicles Act was preferred by the claimant-Dharamveer seeking compensation on account of the injuries and disability suffered by him in a motor vehicle accident, which took place on 08.08.2012. It was averred that the claimant-Dharamveer was proceeding from his nursery towards his home on a motorcycle. When he reached near Jawala Parsad's nursery, a car bearing registration No.HR-66-T-3953, being driven by respondent -Ravi Kumar in a rash and negligent manner, came from Mohindergarh side and struck against the motorcycle of the claimant. As a result thereof, the claimant suffered grievous injuries. The injured was taken to Paras Hospital, Gurgaon for treatment. FIR (Ex.P1) was lodged at Police Station Mohindergarh on 03.09.2012 against the driver of the offending vehicle. The learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of offending car bearing registration No.HR-66-T-3953 by respondent-Ravi Kumar.

The learned Tribunal concluded that the claimant-Dharamveer sustained injuries in this accident leading to 100% disability. The claimant was

aged 38 years at the time of the accident. Functional disability was assessed to the extent of 50%. A total sum of ₹16,98,103/- was awarded to the injured/claimant-Dharamveer by the learned Tribunal as compensation, which is detailed as under:-

Medical expenses	:	Rs.2,34,303/-
Pain and suffering	:	Rs.50,000/-
Special diet	:	Rs.40,000/-
Transportation	:	Rs.35,000/-
Loss of future income	:	Rs.10,18,800/-
Loss of amenities	:	Rs.3,00,000/-
Loss of income	:	Rs.20,000/-

Aggrieved therefrom, the present appeals have been preferred by both the Insurance company as well as the claimant/injured.

Learned counsel for the appellant-Insurance company argues that the evidence in this case does not indicate that the injuries suffered by the claimant-Dharamveer were on account of the accident which took place due to the rash and negligent driving of the offending vehicle. It is contended that the accident allegedly took place on 08.08.2012 at 11.00 p.m. FIR in this case was registered after nearly a month on 03.09.2012. Moreover, the alleged eye-witness Rajpal (PW3), who took the injured to the hospital never informed the police neither was he present at the time of the accident. Moreover, the driver of the offending vehicle has been acquitted by the learned Judicial Magistrate First Class, Mohindergarh as PW3-Rajpal failed to identify the said driver. It is thus submitted that the appeal filed by the Insurance company be allowed and the impugned award be set aside.

Learned counsel for the claimant-Dharamveer, on the other hand, vehemently argues that PW3-Rajpal has specifically stated that the accident took place in his presence. Number of the vehicle was supplied by Rajpal. The fact that the registration number of the vehicle was mentioned to be HR-66-TA-3953 whereas registration of the offending vehicle was HR-66-T-3953 is of no help to the Insurance company as it is apparently a typographical error. Moreover, the evidence on record reveals that the accident in question had taken place due to the rash and negligent driving of the offending vehicle, which is admittedly insured by the claimant. Learned counsel for the appellant/claimant also prays for enhancement of the compensation awarded to the claimant.

I have heard learned counsel for the parties and have gone through the available record.

A perusal of the record reveals that the accident in question indeed took place on 08.08.2012. PW3 Rajpal specifically stated that the accident took place in front of his eyes. PW3 Rajpal further stated that the claimant was confused at that time and he revealed his identity as Dharamveer, former Sarpanch of village Sigra on which Rajpal called his family members, who took the claimant to the hospital. PW3-Rajpal is not related to the claimant. He did not even know the claimant-Dharamveer prior to the accident. It is a matter of record that the claimant/appellant was admittedly immediately to Paras Hospital, Gurgaon. It is mentioned in the MLR that the patient was admitted due to fall from the motorcycle. However, the same does not in any manner detract from the case of the claimant that the accident took place due to the rash and negligent driving of the offending vehicle on 08.08.2012. The claimant cannot be made to suffer on account of the said Rajpal (PW3) not informing the police immediately.

Moreover, a perusal of Ex.R2 i.e., statement of PW3 Rajpal under Section 161 Cr.P.C., charge-sheet (Ex.P2) and the police report (Ex.P3) on the application moved by the driver seeking release of the offending vehicle on Superdari, reveals that the registration number of the offending vehicle was indeed 'HR-66-T-3953' and mentioning of 'HR-66-TA-3953' is a mere typographical error. PW4-Kapil Chaudhary, Junior Executive, Medical Record, Paras Hospital, Gurgaon specifically stated that ruqa was sent to the concerned Police Station on the same day as per the hospital rules. The patient was admitted in the emergency ward on 08.08.2012 and discharged on 22.08.2012, re-admitted on 03.09.2012 and discharged on 14.09.2012 with an allegedly history of road-side accident.

It is a matter of record that the claimant suffered quadriplegia with bowel and bladder involvement. It is not in dispute that the condition of the claimant was far from satisfactory. The record indicates that he has suffered 100% disability. In this situation, it is natural and probable that the family members were more concerned about the treatment of the claimant rather than registration of the FIR immediately. Therefore, delay in registration of the FIR is not fatal to the claimant's case.

Similarly, acquittal of the driver of the offending vehicle does not detract from the claimant's case, especially keeping in view the evidence on record in these proceedings, wherein the claimant is to prove his case on the basis of preponderance of probabilities. It has been held by the Hon'ble Supreme Court in **Parmeshwari v. Amir Chand and others, 2011(2) RCR(Civil) 153** that in proceedings under this Act, matter has to be decided on preponderance of probabilities and court should not insist on proof beyond reasonable doubt as in

criminal proceedings.

PW1 Dr. Dinesh Podar, Deputy Civil Surgeon, Narnaul who has examined the claimant alongwith other members of the medical board stated that the patient is suffering from permanent disability to the extent of 100% on account of quadriparesis with bowel and bladder involvement. Disability certificate (Ex.PW1/A) has been proved by PW1 Dr. Dinesh Podar. Disability to the extent of 100% is in relation to the whole body. It is specifically stated by PW1 Dr. Dinesh Podar that the claimant cannot do any work due to this disability and the patient is not capable of a conjugal relation. It is further stated by PW1 that there is no possibility of any recovery in future regarding the disability. Income of the claimant was assessed by the learned Tribunal as ₹11,320/- per month on the basis of Income Tax Return for the assessment years 2012-13 and 2013-14 (Ex.P71 to Ex.P74). The appellant was running a nursery under the name and style of Yaduvanshi Nursing and Fruit Plant at Sagra. Nursery License issued by the Director General, Horticulture, Haryana has been placed on record as Ex.P77.

Compensation to the claimant-Dharamveer is required to be worked out in terms of the guidelines laid down by the Hon'ble Supreme Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765**. Disability suffered by the claimant is proved to be 100% in relation and the disability is permanent. Functional disability of the claimant-Dharamveer is, therefore, clearly 100%. Therefore, loss of income is assessed as ₹11,320/- per month.

In view of the guidelines laid by the Hon'ble Supreme Court in

National Insurance Company Limited v. Pranay Sethi and others, 2017(16)

SCC 680, an increase of 40% in income of the claimant on account of loss of future income is afforded taking the amount to $[(11,320 + (11,320 \times 40\%)] = ₹15,848/-$ per month i.e., ₹1,90,176/- per annum. Age of the injured/appellant was 38 years as on the date of the accident, therefore, multiplier of 15 is to be applied. Loss of earnings is, thus, assessed as ₹28,52,640/- $[1,90,176 \times 15]$.

The claimant-Dharamveer is held entitled to a sum of ₹1,00,000/- as attendant charges as he is admittedly, totally helpless and is not even able to attend his routine chores. Keeping in view the admitted medical condition of the claimant, he is also entitled to a sum of ₹1,00,000/- each for future medical expenses as well as pain and sufferings. ₹2,34,303/- towards actual medical expenses, ₹40,000/- towards special diet, ₹35,000/- on account of transportation, ₹3,00,000/- towards loss of amenities and ₹20,000/- towards loss of income as ordered by the learned Tribunal are maintained.

Claimant-Dharamveer is, thus, entitled to compensation detailed as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Loss of earnings	₹28,52,640
2.	Attendant charges	₹1,00,000
3.	Pain and sufferings	₹1,00,000
4.	Future medical expenses	₹1,00,000
5.	Loss of amenities	₹3,00,000
6.	Actual medical expenses	₹2,34,303
7.	Transportation	₹35,000
8.	Special diet	₹40,000
9.	Loss of income	₹20,000
Grand Total		₹37,81,943/-

Amount already awarded by the Tribunal to the claimant/appellant under various heads shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of petition till realization.

With the abovesaid modification in the amount of compensation, FAO No.1677 of 2014 filed by the claimant/injured is disposed of. FAO No.1382 of 2014 filed by the Insurance company is dismissed.

October 03 , 2018.
'om'

(LISA GILL)
JUDGE

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