

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

FAO No. 3144 of 2013 (O&M)

Date of Decision: 10.10.2018

Subhash

... Appellant

Versus

Balbir and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. R.S.Malik, Advocate,
for the appellant.

Mr. Pardeep Goyal, Advocate,
for respondent No.3.

TEJINDER SINGH DHINDSA, J.

This is a claimant's appeal seeking enhancement of compensation.

Brief facts are that Subhash/appellant herein filed a petition under Section 166 of the Motor Vehicles Act before the Motor Accident Claims Tribunal, Sonipat claiming compensation to the tune of Rs.20 lakhs on account of injuries sustained by him in a motor vehicle accident that took place on 13.02.2011.

In the claim petition, appellant had asserted that while he was going along with one Anup son of Rameshwar on a motorcycle, at 02.30 p.m. on the fateful day, a tractor bearing registration No. HR-12-K-5204 being driven at a high speed and in a rash and negligent manner suddenly came on the wrong side and on account of which the trolley struck against the appellant and he sustained serious injuries. After the accident, appellant

was shifted to PGIMS, Rohtak and wherefrom he was referred to Sir Ganga Ram Hospital, Delhi and where he remained admitted from 13.02.2011 to 14.03.2011. A huge amount was stated to have been spent on the treatment.

Upon notice having been issued respondent Nos.1 and 2 i.e. the driver and owner of the offending vehicle filed a joint written statement. Respondent No.3 i.e. Insurance Company also filed a separate written statement.

On the pleadings of the parties, the following issues were framed by the Tribunal:-

- 1. Whether the accident in question resulting in causing injuries to Subhash son of Hawa Singh due to rash and negligent driving of vehicle bearing registration No.HR-12K-5204 by respondent No.1? OPP***
- 2. If issue No.1 is proved in the affirmative, what compensation the claimant is entitled to and from whom? OPP***
- 3. Whether the vehicle in question was being plied against the terms and condition of the insurance policy and company is absolved its liability? OPR-3***
- 4. Relief."***

Insofar as issue No.1 is concerned, findings were returned in favour of the claimant/injured and it has been held that injuries were suffered by Subhash in the accident that took place on 13.02.2011 involving the offending/insured vehicle and on account of rash and negligent driving by respondent No.1, namely, Balbir son of Dalip Singh.

Insofar as quantum of compensation is concerned, the Tribunal vide award dated 26.03.2013 has awarded a total compensation amount of Rs.6,26,000/- i.e. Rs.6,11,000/- towards Medical Expenses, Rs.10,000/- towards Pain & Suffering and Special Diet and Rs.5000/- towards Attendant and Transportation.

The liability to pay the compensation amount was held to be joint and several amongst the respondents.

Since the only issue that arises for consideration in the instant appeal is with regard to quantum of compensation, I have heard counsel for the appellant/claimant as also learned counsel representing contesting respondent No.3-Insurance Company.

It is by now well settled that in cases of motor accidents leading to injuries and disablements, a person must not only be compensated for his physical injury, but also for non-pecuniary losses which he has suffered due to injury. The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident. The Apex Court in ***Yadav Kumar Vs. The Divisional Manager, National Insurance Company Limited (2010) 10 SCC 341*** made the following observations while explaining the term “just compensation”.

“It goes without saying that in matters of determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a 'just compensation'. It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept

of 'just compensation' obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field."

Adverting back to the facts and circumstances of the present case, it has gone uncontroverted that the claimant had examined PW-1 Dr. V.K.Jain, Sir Ganga Ram Hospital, Delhi and who had deposed that Subhash son of Hawa Singh was admitted in the hospital from 14.02.2011 to 14.03.2011 with a history of road side accident and was operated for a fractured skull on 15.02.2011. As per deposition of PW-1, appellant was again operated upon 22.02.2011 and 08.03.2011 by the Ortho Surgeon. PW-1 duly proved discharge summary Ex. P-1. Claimant/appellant examined PW-2 Alic Masih, Senior Medical Record Technician, Sir Ganga Ram Hospital, Delhi who proved on record the medical bills Exhibits P-2 and P-3 which were issued by the hospital pertaining to medical treatment of injured Subhash.

The Tribunal has awarded the amount of Rs.6,11,000/- under the Head of Medical Expenses/Medical Treatment spent by the injured on the basis of medical bills Ex.P-2 and Ex. P-3 as also Exhibits P-6 to P-10. On such count, no intervention/enhancement would be called for.

As regards Pain & Suffering and Special Diet is concerned, the Tribunal has awarded a paltry sum of Rs.10,000/- only. Against the backdrop of the appellant having suffered serious head injuries and having been operated upon thrice i.e.

15.02.2011, 22.02.2011 and 08.03.2011 and having remained admitted in hospital from the date of accident till 14.03.2011 it would be just to enhance and award the compensation amount under the Head of Pain & Suffering and Special Diet from Rs.10,000/- to Rs. 1 lakh.

Tribunal has not granted any amount towards disability as no evidence had been adduced by the claimant with regard to having suffered any permanent disability.

In this regard, even counsel for the appellant has not advanced any submission.

Under the Head of Loss of Income, the Tribunal has not awarded any amount. In the claim petition, injured Subhash had claimed that he was earning Rs.25,000/- per month by indulging in agricultural work as well as from the dairy farming. However, no evidence had been adduced to substantiate such claim.

Be that as it may, the injured was an able bodied person and it would be safe to presume that he was earning at least Rs.4000/- per month i.e. the minimum wages admissible to an unskilled worker in relation to the date of accident i.e. 13.02.2011. Appellant had remained admitted in hospital from 14.02.2011 to 14.03.2011 i.e. for a period of one month and would not have been able to resume work immediately thereafter. By taking a notional monthly income of Rs.4000/- per month, an amount of Rs.12000/- is awarded by assuming that the appellant had been kept away from work for a period of 03 months on account of the accident.

Even under the Head of Attendant and Transportation,

the Tribunal has been rather frugal and having awarded an amount of Rs.5000/- only. It may be taken note that the appellant was a resident of District Sonapat and after the accident he was taken to PGIMS, Rohtak and then to Sir Ganga Ram Hospital, Delhi. The appellant remained admitted in hospital at Delhi for a period of one month and underwent 03 surgical procedures. During the period of hospitalization and for treatment of serious head injuries including a fractured skull, the appellant must have engaged an attendant.

Keeping in view the inflationary trends and increased costs, the amount of Rs.5000/- under Head of Attendant and Transportation would now stand enhanced to Rs.50,000/-.

In view of the above, the compensation amount is re-assessed and calculated as follows:

Sr. No.	Head	Calculation
1.	Medical Expenses/Medical Treatment (as assessed by the Tribunal)	Rs. 6,11,000/-
2.	Pain & Suffering and Special Diet	Rs.1,00,000/-
3.	Loss of Income	Rs.12,000/-
4.	Attendant and Transportation	Rs.50,000/-
	Total	Rs.7,73,000/-

The afore-assessed enhanced compensation amount be released in favour of the appellant along with the interest @ 6% per annum from the date of filing of the instant appeal till actual realization. However, the period from 04.05.2018 to 10.10.2018 shall be excluded for purposes of calculating interest in view of

order dated 04.05.2018 passed by this Court.

Appeal is allowed in the aforesaid terms.

Since the main appeal itself has been decided, pending application(s), if any, shall also stand disposed of.

10.10.2018	(TEJINDER SINGH DHINDSA)
vandana	JUDGE
Whether speaking/reasoned	Yes
Whether Reportable	No