

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

F.A.O No. 2008 of 2014 (O&M)

Date of decision:- 29.01.2018

Umarddin

...Appellants

Versus

Makhmool and Others

...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arjun Atri, Advocate,
for the appellant.

Respondent No. 2 ex parte.

Mr. Vishal Aggarwal, Advocate,
for respondent No.3.

RITU BAHRI J. (Oral)

CM No. 7238-CII of 2014

For the reasons mentioned in the application, same is allowed and delay of 41 days in filing the present appeal are is condoned.

Accordingly, present application stands disposed of.

Main Case:

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Nuh at Mewat (hereinafter referred to as 'the Tribunal') vide Award dated 30.08.2013, on account of injuries suffered by the appellant in a motor vehicular accident due to rash and negligent driving of offending vehicle No. HR-74-7357 which took place on 17.07.2011.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 17.07.2011, appellant was going on cycle and when reached near water supply of village Shikarpur, in

the mean time offending dumper no. HR-74-7357 being driven by respondent No. 1 in a rash and negligent manner came from Sohna side and without blowing horn hit appellant and appellant and his cycle came under the offending vehicle. Appellant was taken to hospital by his nephew Shokalt Ali and after that due to multiple and grievous injuries he was admitted in Metro Hospital and Paras Hospital Faridabad. Appellant is still under treatment and suffered injuries on vital parts of his body including head and leg injuries. Nephew of the appellant reported the matter to the Police and in this regard FIR No.241 dated 17.07.2011 under sections 279/337-IPC was registered against respondent No. 1 as the accident has taken place due to rash and negligent driving of respondent No. 1.

Consequently, claimants-appellants 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 been caused on account of rash and negligent driving by respondent No.1. Upon notice, respondent No. 2 owner of the offending vehicle did not put in appearance.

This finding was rightly given on the basis of FIR, and others documentary evidence led by the appellant. At the time of the accident appellant was 60 years of age and as no proof of income of appellant has been found on record at present only there is mention that he is retired from Army and getting pension of Rs.10,000/-. Tribunal assessed income of the appellant Rs.53,592/- p.a. , and after multiplying of 7 it comes to Rs. 3,75,144/- and as per the judgment of Hon'ble Supreme Court in case titled as **Raj Kumar versus Ajay Kumar and Others 2009 (1) SCC, 343,**

Tribunal assessed future income to the claimant would be half of the permanent disability i.e. 12.5% and thus the loss of the future earning comes to Rs.30,011/-. Hence compensation assessed by the Tribunal as under :

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Medical Bills	Rs. 1,61,051/-
(ii)	Transportation Charges	Rs.5,000/-
(iii)	Pain and Suffering	Rs.10,000/-
(iv)	Loss of future Income	Rs.30,011/-
	Total Compensation Awarded	Rs.2,06100/-

Feeling dissatisfied with the impugned award, the claimant-appellants have preferred the present appeal.

In the present appeal, learned Counsel for the appellant argued on the point that appellant is disabled to the extent of 25% and is of 60 years of age which is proved after examination of Dr. Mohd. Farukh Medical Officer as PW4 who was member of Board for assessing disability of appellant and proved disability certificate as Ex. PW4/A, wherein disability of appellant is assessed as 25% and the age of the appellant is mentioned in disability certificate as 60 years. But at time of findings recorded by the Tribunal assessed the disability qua the whole body 12.5%.

I have heard learned counsel for the parties and perused the case file.

REASSESSED COMPENSATION

The fact of accident is admitted and proved. It stands established that the accident occurred due to rash and negligent driving by the respondent No. 1. Disability certificate which is proved by PW1-Dr. Mohd. Faruk as Ex. PW1/A shows that disability suffered by the appellant

is 25% which is permanent in nature as his right knee is fractured. Further perusal of the disability certificate shows that there is sewer restriction in movement of right knee. Since, the disability is permanent in nature. Keeping in view 60 years age of the appellant the disability qua the whole body is taken as 20% and amount of compensation is reassessed as under:

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Medical Bills	Rs. 1,61,051/-
(ii)	Transportation Charges	Rs.10,000/-
(iii)	Pain and Suffering	Rs.15,000/-
(iv)	Loss of future Income	Rs.75029/-
	Total Compensation Awarded	Rs.2,61,080/-
	Enhanced amount of compensation	Rs.2,61,080-2,06,100=54,980/-

The enhanced amount of compensation of **Rs.54,980/-** shall 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 @ 9% 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 “*Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others*”, 2015(1) SCC 539.

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.

29.01.2018

Riya Grover

(RITU BAHRI)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes

No