

213.

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

FAO-270-2014

Date of decision:19.04.2018.

VIKAS

... Appellant

Versus

MAYANK & ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr.Vikram Punia, Advocate,
for the appellant.

Mr. Sanjeev Kodan, Advocate,
for respondent No.2-Insurance Company.

HARI PAL VERMA, J.(Oral)

Appellant-claimant has filed the present appeal seeking enhancement of compensation over and above the compensation awarded by the Motor Accident Claims Tribunal, Sonapat (for short, “the Tribunal”) vide award dated 26.07.2013.

On account of injuries suffered by the claimant in a motor vehicular accident which took place on 08.01.2011, the claimant had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988. In the claim petition, it has been pleaded that the claimant was 24 years of age at the time of accident and was earning ₹8,000/- by doing agricultural work. In the accident, he sustained multiple grievous and serious injuries on various parts of his body. After the accident, he was taken to Civil Hospital, Sonapat where his medico-legal examination was conducted, but due to his serious condition, he was referred to PGIMS, Rohtak, from where he was

taken to Maharaja Agarsain Hospital, Delhi, where he remained admitted from 08.01.2011 to 15.01.2011. He was operated upon and plastic surgery was performed. He is a cricket player and has played upto national level.

For the injuries so suffered by the claimant, the Tribunal has awarded a total compensation of ₹2,96,000/-. The Tribunal has also recorded a finding that since there was contributory negligence on the part of the driver of motorcycle, 30% cut on account of contributory negligence was imposed.

Learned counsel for the appellant-claimant has argued that Dr. Raman Jain, Medical Officer, PHC, Bhalgaon, while appearing as PW7, had deposed that the injured was found with multiple lacerated wounds all over right leg, right thigh, right femur and bone was coming out, for which he was advised x-rays AP, lateral view and ortho surgeon opinion. He has further argued that though the doctor had opined that the claimant has suffered 10% temporary disability on account of post traumatic stiffness of right ankle, that disability still persists, therefore, the future of the appellant as a national cricket player has come to an end. He has further argued that there is no contributory negligence on the part of the claimant as he was merely a pillion rider on the motorcycle being driven by Sunil Kumar.

On the other hand, learned counsel for respondent No.2- Insurance Company has argued that the Tribunal has already awarded adequate compensation to the claimant. The injuries suffered by the claimant were not as serious as are being projected. Even the doctor has opined that the disability is only 10% and that too temporary in nature. PW8-Dr.B.R. Jawa, Deputy Civil Surgeon, Civil Hospital, Sonapat, while

found with 10% temporary disability and that too on account of post traumatic stiffness of right ankle. Now there is no evidence to show that such disability still persists.

I have heard learned counsel for the parties.

The accident and liability are not in dispute. What is in dispute is the compensation awardable to the claimant on account of injuries suffered by him. The plea of learned counsel for the appellant that the appellant suffered injuries as narrated by PW7-Dr.Raman Jain, Medical Officer, PHC, Bhalgaon, cannot be accepted in the absence of any other medical evidence and the injury as projected by the appellant is merely an advice of Dr. Raman Jain-PW7, whereas PW8-Dr. B.R. Jawa, Deputy Civil Surgeon, Civil Hospital, Sonapat, who was a member of the Medical Board, had examined the physical condition/disability of the claimant and it was found that the claimant suffered 10% temporary disability and that too on account of post traumatic stiffness of right ankle. Therefore, the injury is not permanent in nature.

The Tribunal has awarded the compensation in the following manner:-

Sr. No.	Heads	Amount
1.	Medical expenses	₹2,51,000/-
2.	Pain and suffering	₹20,000/-
3.	Special diet, transportation & attendant charges	₹5,000
4.	Loss of income	₹10,000/-
5.	On account of disability	₹10,000/-

Since on medical expenses, the claimant had spent ₹2,51,000/-, this amount speaks about the injuries and, therefore, for the injuries so suffered, it cannot

be expected that the injured would revert back to his normal working after a

month or so. Therefore, this Court finds that instead of ₹10,000/- towards loss of income, the claimant is entitled for ₹25,000/- towards loss of income. Similarly, the Tribunal has awarded merely ₹5,000/- towards special diet, transportation and attendant charges, which this Court finds that the claimant deserves to be ₹10,000/- under these heads. For pain and sufferings, the Tribunal has awarded ₹20,000/-, which this Court finds that considering the nature of injuries suffered by the claimant, this amount should have been ₹30,000/-. In all, the enhancement comes to ₹30,000/-.

With this modification in the award, present appeal is disposed of.

(HARI PAL VERMA)
JUDGE

19.04.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No