

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

FAO-4778-2014 (O&M)
Reserved on: 18.08.2018
Date of Decision:19.11.2018

Surinder Kumar

... Appellant

Versus

Lakhbir Singh & others

... Respondents

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

Present: Mr. Ashok Jindal, Advocate for the appellant.

Mr. Vinod Chaudhary, Advocate for respondent No.3.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

This is claimants appeal seeking enhancement of compensation.

2. Surinder Kumar/appellant filed a claim petition under Section 166 of the Motor Vehicles Act seeking compensation to the tune of Rs.10 lakhs on account of injuries sustained by him in an accident that took place on 08.04.2013.

3. Tribunal has awarded a total compensation amount of Rs.91,000 and calculated as follows:

1.	Amount awarded on account of medical treatment	Rs.66,000/-
2.	On account of pain and suffering, attendant charges, mental agony etc.	Rs.20,000/-
3.	On account of special diet	Rs.5000/-
4.	Total	Rs.91,000/-

4. Counsel representing the appellant would argue that the compensation amount awarded by the Tribunal under various heads is

grossly inadequate and deserves to be enhanced. On the contrary, counsel representing the contesting Insurance Company would support the award passed by the Tribunal.

5. Counsel for the parties have been heard.

6. Briefly, it may be noticed that the claim petition was filed asserting that the claimant was proceeding on a motorcycle on 08.04.2013 and the same was struck by a tanker truck bearing registration No.PB-03X-9486 and which was being driven by Lakhbir Singh/respondent No.1 in a rash and negligent manner. On account of the accident, wife of the claimant, namely, Renu suffered fatal injuries and the claimant, who was driving the motorcycle suffered grievous injuries.

7. It would be opposite to take note that the claim petition having been contested, findings had been returned in favour of the claimant that the injuries were suffered by him in the accident that took place on 08.04.2013 involving the offending/insured truck and which was being driven in a rash and negligent manner. Such findings have not been assailed by the respondent/Insurance Company and the same, as such, have attained finality.

8. In the considered view of this Court, the compensation amount awarded by the Tribunal would require to be enhanced.

9. In the landmark judgment delivered by the Apex Court in **Raj Kumar Vs. Ajay Kumar & another, 2011 (1) SCC 343**, it was observed that as per provisions of the Motor Vehicles Act, 1988, the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of

wrong done as far as money can do so, in a fair, reasonable and equitable manner.

10. In **R.T. Hattangadi Vs. Pest Control India (Pvt.) Limited, (1995) 1 (SCC) 551**, the Apex Court while dealing with a case involving claim of compensation had observed as follows:

“In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.”

11. Adverting back to the facts of the present case, claimant/appellant/Surinder Kumar has appeared as CW1 before the Tribunal and has testified by way of his affidavit Ex.CW1/A that in the accident he had sustained multiple fractures/injuries including fracture of right knee and right arm. After accident that took place on 08.04.2013, he was immediately removed to MAX Hospital, Bathinda and thereafter removed to the hospital of Dr. Rajesh Badyal and where he remained admitted upto 25.04.2013. He was operated upon and a steel plate/rod was inserted in his right leg. He further claimed himself to be 43 years of age at the time of accident and was earning Rs.25,000/- per month by doing dairy business. Claimant had examined Dr. Rajesh Badyal, proprietor of Badyal Hospital, Bathinda as CW2. CW2 deposed that the claimant remained admitted in his hospital from 08.04.2013 to 25.04.2013. Right leg of Surinder Kumar was fractured and an operation was done to insert a rod in the right leg. CW2 further testified that an operation would have to be conducted in the future for removing the plate inserted in the right leg and the cost of which would be

approximately Rs.20,000/-. Claimant had also adduced on record medical bills, Ex.C1 to Ex.C12 and Ex.C15 to Ex. C33 and which reflected an amount of Rs.65,851/- having been spent on hospital expenses/medical treatment. The Tribunal has rounded off the amount of Rs.65,851/- to Rs.66,000/- while awarding compensation based on the medical bills adduced on record. The same do not call for any intervention.

12. A total amount of Rs.25,000/- has been awarded under the head of admission, pain and suffering, attendant charges, mental agony and special diet etc. Keeping in view the period of hospitalization of almost 18 days, nature of injury i.e. a fracture of the right leg as also the claimant having undergone an operation for insertion of a steel rod, the amount of Rs.25,000/- awarded under such heads would stand enhanced to Rs.50,000/-. As per testimony of CW2, Dr. Rajesh Badyal, an operation would have to be conducted in the future for removal of the plate/rod inserted in the right leg of the claimant/appellant. In view thereof, a sum of Rs.20,000/- is awarded towards future medical expenses.

13. Even though, no conclusive evidence had come forth as regards the claimant earning Rs.25,000/- per month from dairy business, yet it can safely be presumed that the claimant was earning a certain amount to sustain his family. Keeping in view the date of accident i.e. 08.04.2013 and the minimum wages admissible to an unskilled worker as on the date of accident, the monthly income of the claimant/appellant is assessed as Rs.7500/-. In the present case, no evidence has come forth as regards any permanent disability having been suffered by the claimant. Be that as it may, on account of the accident suffered and taking into account the period of

hospitalization and a certain period for recovery and recuperation the appellant deserves to be awarded a compensation amount of loss of income for a period of two months i.e. Rs.15,000/-.

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

Sr. No.	Computation/Head	Revised calculation
1.	Amount as awarded by the Tribunal on account of medical treatment	Rs.66,000/-
2.	Hospital admission, pain and suffering, attendant charges, mental agony, special diet etc.	Rs.50,000/-
3.	Future medical expenses	Rs.20,000/-
4.	Loss of income for a period of two months	Rs.15,000/-
6.	Total	Rs.1,51,000/-

15. The afore calculated enhanced compensation amount be released in favour of the appellant along with interest @ 6% per annum from the date of filing of the claim petition till actual realization.

16. Appeal is disposed of in the aforesaid terms.

19.11.2018

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No