

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

FAO No. 3284 of 2015 (O&M)

Date of decision : October 16, 2018

Surender

.....Appellant

Versus

Gurlal and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Nonish Kumar, Advocate
for the appellant.

Mr. Parveen Kumar, Advocate for
Mr. Pankaj Bali, Advocate
for respondent No. 1.

Mr. Pardeep Kumar, Advocate
for respondent No. 2.

LISA GILL, J.

This appeal has been preferred by the appellant – Surender for enhancement of compensation awarded to him vide award dated 10.02.2015 passed by the learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'Tribunal') on account of injuries and disability suffered by him in the motor vehicle accident, which took place on 23.08.2012.

Brief facts necessary for adjudication of the case are that the appellant was involved in a motor vehicle accident on 23.08.2012. He alongwith one Dilawar was going towards his village Shahpur from Karnal on motorcycle bearing registration bearing No. HR-05-P-6652, which belonged to his employer. The motorcycle was driven by Dilawar. Surender was a pillion rider. When they reached near Pingli Chowk, tractor bearing registration No. HR-05AE-7976 driven by respondent No. 1 in a rash,

negligent manner and at a high speed came from the side of Chirov and struck the motorcycle. As a result thereof, they both fell on the unmetalled berm of the road. The claimant received multiple injuries including fracture on his right leg. He was taken to Guru Nanak Hospital, Karnal, where he remained admitted from 23.08.2012 to 29.08.2012. Claim petition under Section 166 of Motor Vehicles Act was preferred by the appellant seeking compensation on account of the injuries and disability suffered by him.

Claim petition was resisted by the respondents. Following issues were framed by the learned Tribunal:-

1. Whether the claimant Surender son of Seebha Ram had suffered injuries in a road side accident which took place on 23.08.2012 at Karnal to Kaithal road at about 8.15 p.m., because of rash and negligent driving of respondent No. 1 while driving the offending vehicle bearing registration No. HR-05-AE-7976? OPP
2. If issue No. 1 is proved in affirmative, whether the claimant is entitled for compensation and if so to what extent on what terms and conditions and from whom? OPP.
3. Whether the respondent No. 1 was not having a valid and effective driving licence at the time of this accident and the vehicle in question was being plied, if so to what effect?
4. Whether the vehicle in question was being plied without a valid policy and in contravention of terms and conditions of the policy, if so to what effect? OPR
5. Relief.

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 tractor bearing registration No. HR-05-AE-7976 by respondent No. 1. This finding of the learned Tribunal has attained finality.

The learned Tribunal concluded that the appellant sustained injuries in this

accident leading to 5% disability. Appellant was aged 32 years at the time of the accident. The learned Tribunal awarded a total compensation of ₹1,68,852/- as under:-

Loss of income during treatment	: ₹ 5,000/-
Medical expenses	: ₹1,38,852/-
Special diet	: ₹ 5,000/-
Pain and suffering	: ₹10,000/-
Disability 10% qua limb and 5% qua body.	: ₹10,000/-

Present appeal has been filed seeking enhancement of the compensation awarded.

Learned counsel for the appellant argues that the appellant was a working at Vinay Medical Hall, Karnal drawing a salary of ₹7,000/- per month at the time of the accident. He had to leave his job after the accident. The learned Tribunal, it is submitted, has erred in awarding a meagre amount of compensation. It is further submitted that no compensation has been awarded on account of loss of amenities, transportation, attendant charges and the amount awarded towards pain and suffering, special diet etc. is too meagre. It is thus prayed that compensation awarded to the appellant be enhanced.

Learned counsel for the respondent - insurance company while refuting the arguments raised, submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. It is submitted that the compensation has been rightly assessed and the impugned award dated 10.02.2015 be upheld.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

There is no dispute regarding the appellant having suffered injuries as mentioned in the motor vehicle accident caused by the rash and

negligent driving of the offending tractor by respondent No. 1 on 23.08.2012.

PW7 Dr. Vinod Kumar alongwith members of Board examined the claimant on 11.06.2014. Disability was assessed as 10% qua the limb vide disability certificate Ex.PW7/A as it was an operated case of right leg bone with malunion with limping. PW7 stated that disability qua the whole body would be 5%. Learned counsel for the appellant is unable to deny that there is no functional disability which may have been suffered by the appellant. Therefore, compensation of ₹10,000/- awarded on account of permanent disability is upheld. A sum of ₹1,38,852/- on account of medical expenses and ₹5,000/- on account of special diet is upheld as well. The appellant is, however, entitled to a sum of ₹25,000/- (instead of 10,000/-) on account of pain and suffering. The appellant is also entitled to a sum of ₹25,000/- on account of loss of amenities and ₹ 5,000/- on account of attendant charges. Loss of income of the claimant during treatment is assessed as ₹10,000/-. He remained in hospital from 23.08.2012 to 29.08.2012, 22.01.2013 to 23.01.2013 and then from 02.10.2013 to 07.10.2013. He remained under treatment for a period of 3 months. Thus, loss of income for three months is assessed as ₹30,000/-(₹10,000 x 3).

Appellant is, thus, entitled to compensation detailed as under:-

Loss of income for three months (10,000 x 3)	₹30,000/-
Loss of amenities	₹25,000/-
Medical expenses	₹1,38,852/-
Pain and suffering	₹25,000/-
Special diet	₹5,000/-
Attendant charges	₹5,000/-
Total	₹2,28,852/-

Amount already awarded by the Tribunal to the appellant/claimant 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, present appeal is disposed of.

October 16, 2018
rts

(Lisa Gill)
Judge

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