

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.5728 of 2013 (O&M)

Date of decision:13.11.2018.

Surjit Singh

...Appellant

Versus

Sukhdev Singh and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. B.D. Sharma, Advocate for the appellant.

Mr. Navin Kapur, Advocate for respondent No.3/Insurance
Company.

LISA GILL, J.

This appeal has been filed by the claimant seeking enhancement of the compensation awarded to him by the learned Motor Accident Claims Tribunal, Kapurthala ('Tribunal' for short) vide award dated 01.06.2013 on account of injuries and disability suffered by him in a motor vehicle accident on 25.06.2011.

Brief facts necessary for adjudication of the case are that a 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. The appellant was involved in a motor vehicle accident on 25.06.2011 when he went to Fathu Dyinga on his motor-cycle bearing No.PB-09-G-4054. When he was returning to his house, a tractor trolley bearing No.PB-67-B-7828, which was being driven by respondent No.1-Sukhdev Singh in a rash and negligent manner, came from the front side and struck against the motor-cycle of the appellant. As a result of this accident, claimant and his motor-cycle came under the tractor. Driver of the tractor trolley dragged him along with motor-cycle and stopped at some distance. Claimant received injuries on both his legs, head, hands and other parts of

the body including ribs, neck and chin. Inderjit Singh alias Bittu and some other persons came to the spot. The claimant and his motorcycle were removed from underneath the offending vehicle. FIR No.64 dated 08.07.2011 was registered at Police Station Fathu Dyinga, District Kapurthala. Appellant was taken to Satyam Hospital, Jalandhar, where he remained admitted for about one month. Thereafter, he was shifted to Tagore Hospital, Jalandhar, where he was operated upon on 29.06.2011 for fracture of right lower limb and left lower limb, i.e. hip, thigh and lower leg. Another surgery was done on 07.07.2011 of left thigh and bones around the knee. Then, he developed deep vein thrombosis of left lower limb, for which the appellant was referred to Tagore Hospital, Jalandhar for putting IVC filter to prevent death due to pulmonary embolism. He was discharged on 28.07.2011. Appellant was again admitted to the hospital on 29.07.2011 and finally discharged on 15.08.2011. It was pleaded that neither the appellant can walk himself nor he can do any work due to the injuries received by him in the said accident. Appellant was re-admitted in the hospital on 06.04.2012 and he was operated upon for total knee replacement.

It was pleaded that the claimant at the time of accident was 60 years old. He was an agriculturist, besides running a dairy and his monthly income was Rs.30,000/-. The claimant was cultivating 15 acres land belonging to him besides cultivating another 15 acres land on lease as well as running a dairy. On account of injuries suffered by the appellant, his income has been reduced. Appellant it was stated employed three servants for cultivation and looking after the buffaloes while paying a sum of Rs.6000/- per month to each of them. He has also become disabled permanently of his right leg. Compensation was, thus, prayed for.

The 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 the offending vehicle by its driver. There is no dispute regarding the above said finding of the learned Tribunal on this issue, which has attained finality.

The learned Tribunal has concluded that the appellant spent a total sum of Rs.8,54,200/- on his medical treatment. Learned Tribunal has assessed the loss of income of the appellant as Rs.20,000/-. Besides this, another sum of Rs.20,000/- each was granted on account of special diet, mental and physical pain and future treatment. Thus, the appellant was held entitled to total compensation of Rs.9,34,200/- (8,54,200+20,000+20,000+20,000+20,000) along with interest @ 9% per annum from the date of filing of the petition till its realization.

Learned counsel for the appellant vehemently argues that though there is no specific medical/disability certificate on record to show that the claimant suffered any permanent disability due to the injuries suffered by him in the accident, it is a matter of record that the claimant underwent total knee replacement of the left knee on 07.04.2012. Therefore, it is proved on record that even if it is to be accepted that he did not suffer any permanent disability, the claimant suffered loss of income for at least one year as he could not have attended to his work. The claimant claimed to be an agriculturist besides running a dairy farm. It is further pleaded that a meagre compensation has been afforded to the appellant on account of loss of income as well. Less compensation has been afforded on account of pain and sufferings as well as special diet and future treatment. It is thus prayed that compensation awarded to the appellant be enhanced.

Learned counsel for the Insurance Company prays for upholding the compensation being justified in the facts and circumstances of the case.

I have heard learned counsel for the parties and have gone through the file.

There is no dispute regarding the appellant having suffered injuries in the accident which took place on 25.06.2011 due to the rash and negligent driving of the offending vehicle. AW5 Dr. Shubhang Aggarwal has testified as under: -

“On 25.06.2011 Surjit Singh son of Piara Singh resident of Village Kheeranwali, Kapurthala was brought to our hospital with alleged history of road traffic accident at about 8.00 pm. He was diagnosed to be in hemorrhagic shock due to multiple fracture of right lower limb and left lower limb. He was operated upon on 29.06.2011 for fracture of right lower i.e. hip, thigh and lower leg. The next surgery was done on 07.07.2011 for fracture of left thigh and leg bones around the knee. Then he developed deep vein thrombosis of left lower limb for which he was referred to Tagore Hospital, Jalandhar for putting IVC filter to prevent death due to pulmonary embolism. He was discharged on 28.07.2011 to Tagore Hospital, Jalandhar and readmitted to us on 29.07.2011 and finally discharged on 15.08.2011. I have brought the original record of the patient Surjit Singh, the photo copy of the same are Ex.A74 and Ex.A75. Around two surgery are to be performed on the left foot and left knee of Surjit Singh and the estimated expenditures of these operations is about Rs.2,75,000/- regarding which I have issued a certificate Ex.A76.”

AW5 further testified that total knee replacement surgery was carried out on the patient on 07.04.2012 and he remained admitted in the hospital till 15.04.2012. The bills in question have been proved by AW5. Dr. Shubhang Aggarwal further stated that after the knee replacement surgery, the appellant would not walk without support and for foot drop on left side he was given a support in the form of an AFO from Endolite Company. The appellant is claimed to be an agriculturist besides running a dairy farm. It is fairly stated by learned counsel that there is no evidence on record to prove the same except the statement of the appellant. In this view of the matter, it cannot be

said that the appellant suffered any functional disability and is entitled to loss of future income. At the same time, it cannot be lost sight of the fact that for nearly about one year, the appellant could not have been able to carry out his vocation. The minimum wage in the State of Punjab at the time of the accident was about Rs.5000/-, which can reasonably be assessed as the income of the claimant. Therefore, it is considered just and appropriate to award a sum of Rs.60,000/- (5000x12) instead of Rs.20,000/- on account of loss of income. A sum of Rs.8,54,200/- has been rightly awarded on account of medical expenses on the basis of bills proved on record. The appellant is entitled to a sum of Rs.1,00,000/- instead of Rs.20,000/- on account of pain and sufferings. He is also entitled a sum of Rs.30,000/- on account of special diet instead of Rs.20,000/-. Another sum of Rs.20,000/- is awarded for attendant charges. The appellant is also entitled to Rs.30,000/- for loss of amenities as it is a matter of record that he was suffered from left side. Sum of Rs.20,000/- for future treatment is maintained.

Thus, the claimant is entitled to compensation as detailed hereunder: -

Sr.No.	Heads of Claim	Rupee
1.	Loss of income	Rs.60,000/-
2.	Pain and sufferings	Rs.1,00,000/-
3.	Special diet	Rs.30,000/-
4.	Attendant charges	Rs.20,000/-
5.	Loss of amenities	Rs.30,000/-
6.	Future treatment	Rs.20,000
7.	Medical expenses	Rs.8,54,200/-
Grand Total		Rs.11,14,200/-

The amount of compensation already awarded to the appellant, needless to say, shall stand deducted from the amount calculated as above. Appellant shall be entitled to interest at the rate of 7.5% per annum on the enhanced compensation amount from the date of filing of the petition till realization.

With the abovesaid modification in the award dated 01.06.2013, present appeal is disposed of.

(LISA GILL)
JUDGE

November 13, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No