

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3280 of 2016 (O&M)
Date of Decision:15.12.2018

Babu Lal

...Appellant

Versus

Anil Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Kanhiya Soni, Advocate for
Mr. Devender Arya, Advocate for the appellants.

AVNEESH JHINGAN, J. (ORAL)

The award dated 19.11.2015, passed by the Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal') has been assailed by the claimant seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act').

2. The driver of Innova car bearing No.HR-38M-1467(hereinafter referred to as 'the offending vehicle'), owner and insurer (i.e. IFFCO TOKKIO General Insurance Company Ltd.) of the offending vehicle have been arrayed as respondents No. 1 to 3 respectively in the appeal.

3. Brief facts of the case are that on 10.01.2015, appellant-Babu Lal alongwith Pardeep Kumar had gone to Mandi Ateli. When Babu Lal was standing at Khod turn on katcha portion, a rashly and negligently driven offending vehicle hit him. As a result of the accident, he sustained multiple

and grievous injuries. FIR No. 05 dated 10.01.2015 under Sections 279/337/338 IPC was registered at Police Station Ateli.

4. A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and appreciating the evidence produced, held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay compensation. The Tribunal awarded ₹ 50,000/- as compensation along with interest at rate of 9% per annum. The amount awarded included ₹13,500/- for expenses on medicines, ₹16,000/- for loss of future amenities, ₹8,000/- for pain and suffering, ₹6,500/- for transportation charges, services of attendant and special diet and ₹6,000/- for loss of income.

5. In the claim petition, it was pleaded that the claimant suffered 8% permanent disability. The disability certificate was produced as Ex.P-20. But the disability certificate was not proved by the doctor. It was further stated that the appellant remained hospitalized for 8 days.

6. The Tribunal pointed out that the fracture of clavicle bone was not going to hamper the activities of the person and the restriction in moving shoulder can be corrected by physiotherapy.

7. Heard learned counsel for the parties and perused the paper book and record.

8. Learned counsel for the appellant contends that the appellant suffered fracture and was hospitalized for 8 days and thus, ₹6500/- awarded towards transportation, services of attendant and special diet is on lower side.

9. In the present case, the appellant failed to adduce any cogent evidence with regard to the permanent disability suffered by him. The certificate Ex.P-20 was only showing an old fracture of clavicle bone with restriction of shoulder movement, no doctor was examined and nothing was produced on record to show that the disability suffered affected the functional ability of the appellant. Still the Tribunal has awarded ₹16,000/- for loss of future amenities and the medical expenses were also duly reimbursed. The Tribunal while considering the fact that in case of non-fatal accident, pecuniary and non-pecuniary damages are to be re-imbursed, awarded a sum of ₹8,000/- for pain and suffering and a consolidated amount of ₹6,500/- for transportation, attendant and special diet was awarded.

10. Considering the fact that the petitioner suffered a fracture and was hospitalized for 8 days, he would have required an attendant not only for the period of hospitalization but thereafter also. For follow up treatment, he would have required transportation. He would have not been able to attend to his daily work at least for six weeks as he suffered fracture.

11. Keeping in view, the facts and circumstances, the amount awarded of ₹50,000/- by the Tribunal is enhanced by ₹25,000/-, to compensate the appellant for the damages incurred under the pecuniary and non-pecuniary heads. It is worth mentioning here that while enhancing the amount of ₹25,000/- the interest to be awarded under Section 171 of the Act, has been taken into consideration.

12. Considering the view taken in appeal, it was not deemed appropriate to issue notice to the respondent at this stage, as there is a minor enhancement. It is however, clarified that in case the respondents have any

grievance against the order passed by this Court, they would be at liberty to file an application for revival for the same.

13. Disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

December 15, 2018

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No