

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

FAO No. 4315 of 2015 (O&M)

Date of decision : September 24, 2018

Naresh Tyagi

.....Appellant

Versus

Manoj Kumar and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Virender Singh Punia, Advocate for the appellant.

Mr. Bhawna Grewal, Advocate for
Mr. S.K. Yadav, Advocate for respondent No. 2.

None for respondent No. 3 despite service.

Mr. M.B. Jain, Advocate for respondent No. 4.

LISA GILL, J.

Present appeal has been filed by the claimant for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as the 'Tribunal') on account of injuries suffered by him vide award dated 25.04.2014.

Brief facts necessary for adjudication of the case are that the claimant filed petition under Section 166 of the Motor Vehicles Act seeking compensation on account of injuries suffered by him in a motor vehicle accident caused due to driving of the offending vehicle Toyota Innova bearing registration No. DL-IV-B-2629 driven by respondent No.1 in a rash and negligent manner. It was averred that on 21.03.2011, claimant Naresh Tyagi was going to Delhi from his house on his bicycle. His brother-in-law was following him on another bicycle. When he reached at the U-turn for Faridabad, offending vehicle Toyota Innova bearing registration No. DL-IV-B-2629 driven by respondent No.1 at a high speed, in a rash and negligent manner came from Delhi side and hit his bicycle. Claimant –

Naresh Tyagi fell down and suffered injuries in his leg and other parts of the body. His left leg was fractured. He was admitted at Handa Medical Centre, Sector 16, Faridabad for treatment.

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

1. Whether the accident has taken place on 21.03.2011 at about 10.15 a.m., on account of rash and negligent driving of offending Toyota Innova No. DL-IV-B-2629 driven by respondent No. 1. If so, whether petitioner sustained injuries in this accident? OPA
2. If issue No. 1 is proved, whether the petitioner is entitled to compensation, if so, to what amount and from whom? OPP.
3. Whether the respondent No. 1 was not holding a valid and effective driving and if so, its effect? OPR3
4. Relief.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 21.03.2011 due to rash and negligent driving of the offending Toyota Innova bearing registration No. DL-IV-B-2629 by respondent No. 1.

Learned Tribunal afforded compensation to the appellant as under:-

Pain and sufferings	₹30,000/-
Treatment expenses	₹54,000/-
Loss of income for three months	₹15,000/-
Loss of amenities due to permanent disability	₹40,000/-
Special diet, attendant charges and transportation	₹25,000
Total	₹1,64,000/-

Aggrieved of the quantum of compensation, claimant - injured has filed this appeal.

Learned counsel for the appellant submits that meagre compensation has been afforded by the learned Tribunal. He prays for enhancement of the same.

Learned counsel for the respondent - insurance company 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 25.04.2014 be upheld.

Heard learned counsel for the parties.

There is no dispute regarding the injuries as detailed in the petition were suffered by the appellant in the accident which took place on 21.03.2011 on account of rash and negligent driving of the offending vehicle by respondent No. 1 – Manoj Kumar. This finding has attained finality. PW2 Vipul Kumar, Clerk, Handa Medical Centre, Sector 16, Faridabad, produced the treatment record of the appellant and identified the signatures of Dr. Harish Handa on the discharge summary (Ex.P2). Certified copy of the MLR has also been proved by him. It is proved that the appellant was operated upon for fracture of his left leg on account of Conni Bicondylor fracture of tibia with depression of lateral condyle. As per the disability certificate (Ex.P1) proved by PW1 Siri Chand , Clerk, Office of Civil Surgeon, Faridabad, the appellant suffered 15% permanent disability of the limb. The appellant was found to be permanently disabled on account of malunited fracture, proximal tibia left, with partial restriction of knee movements, left quadriceps coasting left thigh.

Learned Tribunal has rightly held that there is nothing on record to indicate that the disability suffered by the appellant effected his

earning capacity in any manner. This is so for the reason that specific details about the vocation of the appellant or nature thereof has not been proved on record.

Even today, learned counsel for the appellant is unable to reveal the profession of the appellant or the nature of the work done by the appellant to earn his livelihood.

In this view of the matter, it would not be justified to hold that there is any loss of earning or income to the appellant on account of the disability suffered by him. However, it is noticed that the learned Tribunal has not afforded any compensation on account of permanent disability suffered by the appellant. It is considered appropriate to award a sum of ₹30,000/- to the claimant on account of permanent disability suffered by him. Sum of ₹30,000/- awarded on account of pain and suffering is enhanced to ₹50,000/-. Needless to say, the appellant shall be entitled to a sum of ₹54,000/- for treatment expenses, ₹15,000 for loss of income for three months, ₹40,000/- for loss of amenities and ₹25,000/- for special diet, attendant charges and transportation as already awarded to the learned Tribunal.

The appellant is, thus, entitled to compensation detailed as under:-

Loss of income for three months	₹15,000/-
Pain and suffering	₹50,000/-
Treatment expenses	₹54,000/-
Loss of amenities	₹40,000/-
Special diet, attendant charges and transportation	₹25,000/-
Compensation on account of permanent disability	₹30,000/-
Total	₹2,14,000/-

Amount of compensation already awarded to the appellant 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 amount from the date of filing of the petition till realisation.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

September 24, 2018
rts

(Lisa Gill)
Judge

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