

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

FAO No. 5992 of 2014 (O&M)

Date of decision : December 17, 2018

Rajender Kumar

.....Appellant

Versus

Mukesh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ajay Shekhawat, Advocate
for the appellant.

None for respondent No. 1.

None for respondent No. 2.

Respondent No. 3 proceeded exparte vide
order dated 08.03.2017.

Mr. Rohit Goswami, Advocate for
Ms. Madhu Sharma, Advocate
for respondent No. 4.

LISA GILL, J.

This appeal has been preferred by the appellant – Rajender Kumar for enhancement of compensation awarded to him vide award dated 02.08.2013 passed by the learned Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'Tribunal') on account of injuries and disability suffered by him in the motor vehicle accident, which took place on 16.02.2010.

Brief facts necessary for adjudication of the case are that the appellant was involved in a motor vehicle accident on 16.02.2010 when he alongwith other persons, namely Surender, Narinder and Ravi were travelling in a vehicle bearing registration No. HR-99DH(Temp) 9702 (subsequently registered as HR-16H-7309) to attend the marriage of his

nephew. The vehicle was driven by the appellant – Rajender Kumar. When they reached near gate of Rama Fibre, offending vehicle bearing registration No. HR-38G-0920 came from the opposite side, struck against the vehicle on which the appellant alongwith other persons was travelling. The appellant and other occupants received serious injuries in the accident. They were shifted to PGIMS Rohtak. 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.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to rash and negligent driving of offending vehicle canter bearing registration No. HR-38G-0920 driven 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 40% functional disability. Multiplier of 14 was applied. An amount of ₹6,04,109/- was awarded by the learned Tribunal as compensation.

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

Learned counsel for the appellant argues that income of the appellant, who was a driver at the time of the accident, has been assessed on the lower side. Moreover, increment in income on account of loss of future prospects and compensation on account of loss of income for the period the appellant remained incapacitated due to his injuries has not been afforded. Meagre compensation has been afforded on account of pain and suffering, transportation, special diet etc. It is further submitted that interest at a lower rate has been awarded. It is, thus, prayed that compensation awarded to the

appellant be reworked accordingly.

Despite the matter being called twice, none appears on behalf of respondents No. 1 to 2. It is pertinent to note at this stage that respondent No. 2, earlier proceeded against ex parte, was permitted to join the proceedings on 28.08.2018. However, none appeared on behalf of respondent No. 2 on the last date of hearing. Today again, despite the matter being called twice, none appears on behalf of respondent No. 2.

I have heard learned counsel for the appellant and respondent No. 4 and have perused the record with their assistance .

There is no dispute that the appellant suffered injuries in the motor vehicle accident, which took place on 16.02.2010 caused by the rash and negligent driving of the offending vehicle by its driver - respondent No. 1. Respondent No. 2 – Bajaj Allianz General Insurance Company Limited was held liable to deposit the awarded amount with liberty to recover the same from the insured/owner – respondent No. 1. Respondents No. 3 and 4 were not held liable to pay any compensation to the claimants.

It is a matter of record that the appellant after the accident was taken to PGIMS, Rohtak on 16.02.2010. He was thereafter admitted in Maharaja Aggarsain Hospital, New Delhi from 17.02.2010 till 24.02.2010. He was subsequently admitted from 07.09.2010 to 10.09.2010 and yet again from 24.03.2012 to 26.03.2012. Discharge summary as well as bills in respect to the medical expenses incurred to the extent of ₹2,41,549/- stand proved. Award passed by the learned Tribunal to this extent is upheld.

It is pertinent to note that the appellant has claimed to be working as a driver at the time of the accident. His driving licence is on record as Ex.R1. Disability certificate (Ex.DC) was duly proved by PW3

Dr. M.K. Sheoran, Ortho Surgeon, General Hospital, Bhiwani, who deposed that he alongwith other members of the Board assessed disability of the appellant to be 40% on account of united fracture of neck of right humerus with screw insitu with united fracture sub-trochanter with united fracture supra condylar femur right side with implant insitu with united fracture right tibia with plate insitu. Loss of a range of movements of right knee about 50% and loss of range of movement of right hip about 30% and loss of range of right shoulder about 30% with pain at right shoulder and knee joint was reported as well. It is mentioned that disability pertained to right upper limb and right lower limb and not qua the whole body.

It is pertinent to note that there is nothing on record to discredit the appellant's claim that he was engaged as a driver at the time of the accident. His monthly income has been correctly assessed as ₹4800/- per month as even the minimum wage at the time of the accident was about ₹4500/- per month in the State of Haryana for a skilled labourer. There is no evidence on record to indicate that the appellant was earning an amount higher than the same. Assessment of income of the appellant by the learned Tribunal is correct, thus, upheld. However, functional disability of the appellant, in this case, cannot be assessed to be less than 50% especially keeping in view the vocation followed by the appellant. Functional disability is, accordingly, assessed as 50%. He is, thus, entitled to 25% increment on account of loss of future prospects in view of his age i.e. 42 years at the time of accident. A multiplier of 14 has to be applied.

As per the guidelines laid down by the Hon'ble Supreme Court in **Sayed Sadiq etc. versus Divisional Manager, United India Insurance Company 2014 (1) R.C.R. (Civil) 765**, the appellant would be entitled to

loss of future income of ₹5,04,000/- [(₹4800 x 50/100) + (25/100 x 50/100 x ₹4800) x 12 x 14]. The appellant is further entitled to a sum of ₹50,000/- for pain and suffering instead of ₹20,000/- awarded by the learned Tribunal. Instead of a consolidated sum of ₹20,000/- on account of transportation, special diet, attendant charges etc. the appellant is entitled to a sum of ₹10,000/- each on account of special diet and transportation and ₹8,000/- for attendant charges. The appellant is entitled to a sum of ₹25,000/- on account of loss of amenities. Needless to say, the appellant shall be entitled to a sum of ₹2,41,549/- on account of medical bills as already awarded to the learned Tribunal. Keeping in view the nature of injuries suffered by the appellant, it is apparent that he would not have been able to carry on any kind of work for atleast six months. He is entitled to a loss of income for the said period.

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

Loss of future income	₹5,04,000/-
Pain and suffering	₹50,000/-
Loss of amenities	₹25,000/-
Special diet	₹10,000/-
Transportation	₹10,000/-
Medical expenses	₹2,41,549/-
Attendant charges	₹8,000/-
Loss of income for six months(4800x3)	₹14,400/-
Total	₹8,62,942/-

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.

December 17, 2018
rts

(Lisa Gill)
Judge

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