IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 6622 of 2015
Date of decision: 18.12.2018

Sunil Tiwari

.. Appellant

v.

Rajdeep Hazarika and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Amandeep Rana, Advocate for the appellant.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 7.5.2015, passed by the Motor Accident Claims Tribunal, Gurgaon (for brevity, 'the Tribunal') has been assailed by the claimant seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The brief facts necessary for adjudication of the present appeal are that on 13.1.2014, the appellant was going on a motorcycle bearing registration No. DL-3S-AT-4788. When he reached near Boom Plaza Petrol Pump T-Point of block-A of Sector 56, Gurgaon, the motorcycle was hit by a rashly and negligently driven car bearing registration No. HR-26AV-7233 (hereinafter referred to as 'the offending vehicle'). As a result of the impact, the appellant sustained injuries and was taken to Anand Hospital, Gurgaon.

A claim petition under Section 166 of the Act was filed. The Tribunal, after considering the facts and appreciating the evidence adduced, held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner-cum-driver and insurer of the offending vehicle were held jointly and severally liable to pay compensation. The

Tribunal awarded a sum of ₹3,87,099/- along with interest @ 9% per annum. The details of the amounts awarded are as under:

i.	Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure.	₹ 2,27,099/- + ₹ 10,000/- + ₹ 10,000/- + ₹ 10,000/-
ii.	Loss of earning during the period of treatment.	₹ 80,000/-
iii.	Damages for pain, suffering and trauma as a consequence of the injuries	₹ 50,000/-
	Total:	₹ 3,87,099/-

Learned counsel for the appellant contends that the amount awarded by the Tribunal is on the lower side, as the appellant was earning ₹13,500/- per month, but the Tribunal has considered his monthly earning as ₹10,000/-. He relies upon a Division Bench judgment of this Court in the case of **<u>United India Insurance Company Limited v. Raj Rani</u>, 1996(2) PLR 495.**

The appellant suffered fracture shaft right femur and supracondylar fracture of left femur. He was admitted in the hospital on 13.1.2014 and after operation and necessary treatment, he was discharged on 22.1.2014. A certificate was produced that expenses of ₹ 25,000/- may have to be incurred by the petitioner for removal of the implant.

Admittedly, neither there was any permanent nor temporary disability. The hospitalisation was for 10 days. Nothing was placed on record that there was subsequent follow up treatment but the Tribunal keeping in view the documents produced not only reimbursed the medical expenses incurred but also awarded ₹ 25,000/- which may have to be incurred in future for removal of the implant. Further, additionally a sum of

₹ 10,000/- was awarded over and above the medical bills produced by the appellant. Keeping in view the nature of injuries and period of hospitalisation, just and equitable amounts had been awarded by the Tribunal for pain, suffering and trauma; transportation, nourishing food and miscellaneous expenses. ₹ 80,000/- have been awarded for loss of earning for the period of treatment by assessing the monthly income of the appellant as ₹ 10,000/-.

The contention raised by learned counsel for the appellant that the Tribunal erred in not accepting the monthly income of the appellant as ₹13,500/- lacks merit. It was claimed that the appellant was working as a Clerk with M/s Arient Building Material Carrier. The proprietor of the concern appeared as PW-5 to depose that the appellant was getting a salary of ₹13,500/- per month, but in his cross-examination, he admitted that he is neither maintaining any record of salary nor any attendance register, the claim that the deceased was earning ₹13,500/- was not found worth reliance. In such circumstances, the Tribunal assessed the monthly income as ₹10,000/-.

The reliance placed upon by learned counsel for the appellant in **Raj Rani's** case (supra) does not enhance his case. In that case, the court was dealing where the deceased was allegedly doing business of selling footwear and no documentary evidence could be produced. In that set of circumstances, it was observed that oral evidence adduced should be accepted. In the present case, the evidence was available, as it was claimed that the appellant was an employee. The proprietor of the concern deposed before the Tribunal but never produced any document in support of his deposition. In such circumstances, it would not be appropriate to accept the oral evidence, which is not backed by the required documents.

In view of the above, no case is made for interference in the impugned award. Accordingly, the appeal is dismissed in *limine.*

(AVNEESH JHINGAN)
JUDGE

18.12.2018
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No