

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

F.A.O No. 620 of 2016 (O&M)

Date of decision:- 02.02.2018

Jaivir @ Jaibir

...Appellant

Versus

Rai Singh and ors.

...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Divay Sarup, Advocate,
for the appellant.

Mr. Suvir Dewan, Advocate,
for respondent No. 3-new India Ass. Co.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') vide Award dated 20.08.2015, on account of injuries sustained by the appellant-Jaivir in a motor vehicular accident which took place on 16.03.2014.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 16.03.2014, the petitioner alongwith his brother Satpal had come to Hisar for taking household articles etc. on the eve of Holi Festival. After purchasing the household articles they were returning back to their village Kirtan and they boarded the bus bearing registration No.HR-39-A-2969 (hereinafter referred to as offending vehicle). At about 3.00/3.15 pm when the bus reached near Dall Mill near gate No.2,CCS, HAU Hisar on Balsamand Road, then the petitioner

remembered that he had forgotten the purchased items in the shop and told about it to his brother Satpal who asked the conductor to stop the bus and the driver only slowed down the speed by applying sudden brakes and again speed up his bus. Due to which petitioner fell down from the bus while he was alighting from rear door of the bus. The brother of the petitioner told the driver that Jaivir has fell down, the driver told him that Jaivir has got down safely and after reaching Kirtan, the brother of petitioner received telephonic call to the effect that petitioner is admitted in Life Line Institute of Medical Sciences, Model Town, Hisar who sustained serious head injury and he is in comma. The accident was caused by respondent No.1 while driving the offending bus in a rash and negligent manner. The matter was reported to the Police and in this regard FIR No. 177 dated 21.03.2014 was registered under Sections 279/336/338 of IPC at Police Station, Civil Lines Hisar against respondent No. 1.

Consequently, claimants-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused on account of rash and negligent driving of respondent No.1 while driving offending vehicle.

This finding was rightly given on the basis of FIR, and others documentary evidence led by the appellant. Appellant/petitioner has alleged that he was earning Rs.15000/- per month while working as a salesman but there is no such evidence on the file, therefore, it can not be accepted as a gospel truth. Tribunal assessed income of the appellant as Rs. 8349/- per month as per minimum wages fixed by the State Government and his annual

income comes to Rs.1,00,188/-. Appellant has suffered permanent disability to the extent of 100% and accordingly, earning capability of the petitioner has diminished to the extent of 100%, therefore, annual loss of income comes to Rs.1,00,188/-. Petitioner was 38 years of age at the time of accident as such multiplier of 15 has to be applied in view of Schedule II of the Act, which takes compensation to Rs.15,02,820/-. Hence, compensation awarded by the Tribunal as under :

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Loss of earning due to disability	Rs. 15,02,820/- per annum
(ii)	For medical expenses	Rs.6,04,142/-
(iii)	For pain and suffering	Rs. 1,00,000/-
(iv)	Special died and transportation charges	Rs.20,000/-
(v)	For loss of amenities and enjoyment of life	Rs. 30,000/-
(vi)	For loss of income during hospitalization	Rs. 24,698/-
	Total Compensation Awarded	Rs.22,81,660/-

Feeling dissatisfied with the impugned award, the claimant-appellants have preferred the present appeal.

I have heard learned counsel for the parties and perused the case file.

REASSESSED COMPENSATION

The fact of accident is admitted and proved. It stands established that the appellant sustained grievous injuries due to the accident. In the peculiar facts and circumstances of the case, to meet the ends of justice and compensation awarded by the Tribunal requires to be reassessed keeping in view the judgments passed by Hon'ble the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017)***, in case titled as ***Sanjay Verma versus Haryana Rodways, 2014(3) SCC 210 and in case***

titled as Rajan versus Soly Sebastian and ors, 2015(4) Law Herald (SC)

2929. Income taken by the Tribunal was Rs. 8349/- it can be rounded out as Rs.8500/- and reassessed amount of compensation as under:

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Loss of earning due to disability	Rs. 15,30,000/-(8500X12X 15)per annum
(ii)	40% future prospects due to permanent disability awarded	Rs. 15,30,000 + 6,12,000=21,42,000/-
(ii)	For pain and suffering	Rs. 2,00,000/-
(iii)	For medical expenses	Rs.6,04,142/-
(iv)	Special died and transportation charges	Rs.20,000/-
(v)	For loss of amenities and enjoyment of life	Rs. 30,000/-
(vi)	For loss of income during hospitalization	Rs. 24,698/- (compensation awarded in heads of (iii), (iv), (v) and (vi) will remain same and do not require any modification)
	Total Compensation Awarded	Rs.30,20,840/-
	Enhanced amount of compensation	Rs. 30,20,840-22,81,660=7,39,180/-

The enhanced amount of compensation of **Rs.7,39,180/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others***”, 2015(1) SCC 539.

Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

02.02.2018

(RITU BAHRI)
JUDGE

Riya Grover

Whether speaking/reasoned

Whether reportable

Yes

No

