

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

**CM No.26826-CII of 2016 in/and
FAO No.8005 of 2016 (O&M)
Date of decision: 07.05.2018**

Shabbir

....Appellant

Versus

Jamshed and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Tripathi, Advocate,
for the appellant.

Ms. Vandana Malhotra, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

CM No.26826-CII of 2016

In view of the averments mentioned in the application, same is allowed and delay of 180 days in filing of the appeal is condoned.

FAO No.8005 of 2016

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal') vide award dated 22.01.2016, on account of injuries received by him in a motor vehicular accident which took place on 14.09.2012.

Brief facts of the case are that on 14.09.2012, at about 8.00 P.M., claimant-appellant (Shabbir) along with Kasim was returning from village Bhuapur in a three wheeler bearing registration No. HR-38-Q-9366, which was being driven by respondent No.1-Jamshed. When they reached

near Tigaon bridge, claimant asked respondent No.1 to switch on the head lights of the three wheeler. However, head lights of the said vehicle were not in working order. Therefore, claimant requested the driver (respondent No.1) to stop the vehicle, so that he could hire another vehicle. However, upon assurance of respondent No.1 that he would drive the vehicle at a slow speed with utmost care and caution, claimant boarded the said three wheeler again. But, respondent No.1 again started driving the three wheeler in a rash and negligent manner despite the fact that claimant and other passengers requested him to drive the three wheeler at a slot speed. When the said three wheeler reached at bye-pass, Sector 2-3 Chowk, the same struck with a roundabout, as a result of which, right leg of claimant came between roundabout and three wheeler and he sustained grievous/serious injuries. In this accident, he lost one finger of right foot. Claimant was taken to Manchanda Ortho & Physio-care Centre, Faridabad. With regard to the accident, FIR No.593 dated 02.11.2012, under Sections 279/337 IPC was registered at Police Station, City Ballabgarh against respondent No.1 on the statement of claimant-Shabbir. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of offending vehicle by its driver-respondent No.1 and thus, returned finding on issue no.1 in favour of the claimant. This finding was rightly given on the basis of deposition of claimant-appellant (PW-4). Claimant has also proved on record copy of challan Ex.P22 and FIR Ex.P23. The compensation was awarded as under:-

Sr. No.	Heads	Amount
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1.	Costs of medicines as per bills Ex.P5 to Ex.P21 & Ex.P31	Rs.12,000/-
2.	Pain and sufferings, special diet	Rs.5,000/-
3	Transportation	Rs.3,000/-
4	Loss of income	Rs.10,000/-
	Total	Rs.30,000/-

Ultimately, the claimant was found entitled to a total compensation of Rs.30,000/- along with interest at the rate of 7.5% from the date of filing of the claim petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. Parties are not in dispute with regard to finding given by the Tribunal on issue No.1 to the effect that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver. A perusal of the impugned award shows that claimant-appellant had remained under treatment from 17.09.2012 to 07.11.2012. Keeping in view the peculiar facts and circumstances of the case, the compensation is hereby re-assessed as under:-

Sr. No.	Heads	Amount (Rs.)
1	Costs of medicines as per bills Ex.P5 to Ex.P21 & Ex.P31	Rs.12,000/-
2	Pain and sufferings	Rs.10,000/-
3	Special diet and attendant charges	Rs.10,000/-
4	Transportation	Rs.10,000/-
5	Loss of income	Rs.10,000/-
6	TOTAL COMPENSATION AWARDED	Rs.52,000/-
	Enhanced amount of compensation	Rs.52,000 – 30,000 = Rs.22,000/-

The enhanced amount of compensation of **Rs.22,000/-** 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 @ 7.5% 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 “**Shri Nagar Mal and others vs. The Oriental Insurance Company Ltd. and others**, Civil Appeal No.448 of 2018 (decided on 19.01.2018).

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.

(RITU BAHRI)
JUDGE

07.05.2018
ajp

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