

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-3003-2017 (O&M)
Date of Decision: 18.09.2018

Vikram

--Appellant

Versus

Sanjay & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Munish Mittal, Advocate for the appellant.

Mr. P.K. Rohilla, Advocate for respondent no.1.

Mr. Vinod Gupta, Advocate for respondent no.3.

TEJINDER SINGH DHINDSA.J (Oral)

Claimant-appellant Vikram has filed the instant appeal seeking enhancement of compensation in respect of injuries suffered by him in a motor vehicle accident that took place on 5.4.2014 involving the offending car bearing registration no. HR-05-AG-8702.

Brief facts of the case are that a claim petition was filed under Section 166 of the Motor Vehicles Act on the averments that on 5.4.2014 the claimant was traveling along with other passengers in a three wheeler being driven by Dharambir. At about 7.30 PM the three wheeler was struck by the offending car bearing registration no. HR-05-AG-8702 and which was being driven by respondent no.1 Sanjay in a rash and negligent manner. Due to the impact of the accident the claimant is stated to have received injuries on vital parts of his body including head, chest, shoulders, mouth, hand and legs etc. Claimant/appellant was taken to Shri Hari Hospital, Karnal and remained admitted from 6.4.2014 to 14.4.2014. It was claimed that a sum of Rs.6 lacs was spent on the treatment. FIR No.278 dated 6.4.2014 under sections 279, 337 and 338 I.P.C was registered against the

driver of the offending car. It was claimed that the claimant was 26 years old on the date of accident and was working as a motor mechanic and earning Rs.14,000/- per month. A total compensation amount of Rs.15 lakhs along with interest @ 24% per annum from the date of accident till realization was claimed.

On notice respondents no.1 and 2 i.e. driver and owner of the offending vehicle filed a joint written statement in which even though the accident was not denied but it was asserted that it was the fault of the driver of the three wheeler. Respondent no.3 Insurance Company filed a written statement taking a stand that the claim petition had been filed in collusion with respondents no.1 and 2 and the car in question has been falsely involved by the claimant only to get the compensation.

Upon the pleadings of the parties, the following issues were framed by the Tribunal:-

“1. Whether the claimant sustained injuries in the accident in question which took place due to rash and negligent driving of offending vehicle bearing registration no. HR-05AG-8702 by its driver i.e. respondent no.1 Sanjay as alleged?OPP.

2. If Issue No.1 is proved, whether the claimant is entitled to claim any compensation, if so how much and from whom?OPP.

3. Whether the respondent no.1 was not having a valid and effective driving license at the time of his accident and the offending vehicle was being plied in violation of the terms and conditions of the Insurance Policy, if so, to what effect?OPR.

4. Relief.”

At the outset, it may be noticed that findings were returned by the Tribunal that the accident in question had taken place due to rash and

negligent driving of the offending car bearing registration no. HR-05-AG-8702 by respondent no.1 and in which the claimant had received the injuries and undergone treatment. Such finding has not been assailed either by driver/owner or the Insurance Company and the same, as such, has attained finality.

With regard to compensation amount, the Tribunal has awarded a total sum of Rs.2,35,312/- in favour of the claimant/appellant along with interest @ 9% per annum from the date of filing of the claim petition till realization. While computing such amount, a sum of Rs.1,91,312/- has been awarded as medical expenses, Rs.14,000/- towards hospitalization and Rs.30,000/- on account of pain and suffering.

The liability to pay the compensation amount has been held to be joint and several.

Having heard counsel for the claimant/appellant and counsel representing the contesting Insurance Company, this Court is of the considered view that the compensation amount deserves to be enhanced as per settled principle laid down by the Apex Court in matters with regard to award of compensation in injury cases under the Motor Vehicles Act.

The Apex Court in ***R.D. Hattangadi Vs. Pest Control (India) Private Limited (1995) 1 S.C.C 551*** while dealing with the matters involving claim of the compensation under the Motor Vehicles Act had observed as follows:-

“In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.”

In *Raj Kumar Vs. Ajay Kumar, (2011) 1 SCC, 343* the Supreme Court had held that a person is not only to be compensated for the physical injury but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

Adverting back to the facts of the present case the claimant had adduced hospital bills Ex. P-2 and P-3 which would reflect an amount of Rs.1,91,312/- having been spent towards medical treatment, doctor fee, medicines etc. The Tribunal has awarded such amount and the same does not call for any interference.

Claimant/appellant had examined PW-1 Dr. Rohit Kumar, Neuro Surgeon, Shri Hari Hospital, Karnal and who deposed that the claimant had been admitted in the hospital on 6.4.2014 and had been discharged on 14.4.2014. He was, thereafter, again admitted to the said hospital on 7.10.2014 and was discharged on 11.10.2014. Ex.P-1 was the discharge summary of the petitioner. The claimant/appellant is stated to have been treated for a head injury that had been suffered in the accident. The C.T. Scan (head) adduced on record reflected a right parietal bone depressed fracture with contusions. As per testimony of PW-1 Dr. Rohit Kumar, craniotomy with alleviation of depressed fracture was done on 6.4.2014. Against the backdrop of the injuries suffered as also the period of hospitalization the amount of Rs.30,000/- awarded by the Tribunal on account of pain and suffering is considered rather meager and would now stand enhanced to Rs.1 lakh.

An amount of Rs.14,000/- has been awarded by the Tribunal as hospitalization apart from Rs.1,91,312/- as medical expenses. The same are upheld.

Tribunal has not awarded any amount under the head of loss of income. Claimant had asserted in the claim petition that he was earning Rs.14,000/- per month while working as a motor mechanic. Such claim, however, has not been substantiated by any cogent evidence adduced on record. The accident had taken place on 5.4.2014. It would be safe to presume that the claimant/appellant was earning a sum of Rs.6,000/- per month at the very least i.e. at par with the minimum wages admissible to a daily wager in relation to the date of accident. On account of the injuries suffered period of hospitalization and a reasonable time required for a complete and effective recovery, a sum of Rs.30,000/- is awarded towards loss of income i.e. 6,000x5 months.

This Court would further award a sum of Rs.10,000/- each under the heads of transportation, nutritious diet and attendant charges.

In view of the above, the amount of compensation is enhanced and calculated as follows:-

1.	<i>Medical expenses</i>	-	<i>Rs.1,91,312/-</i>
2.	<i>Hospitalization</i>	-	<i>Rs.14,000/-</i>
3.	<i>Pain and suffering</i>	-	<i>Rs.1,00,000/-</i>
4.	<i>Loss of income</i>	-	<i>Rs.30,000/-</i>
5.	<i>Nutritious diet</i>	-	<i>Rs.10,000/-</i>
6.	<i>Transportation charges</i>	-	<i>Rs.10,000/-</i>
7.	<i>Attendant charges</i>	-	<i>Rs.10,000/-</i>
	<i>Total</i>	-	<i>3,65,312/-</i>

The afore-calculated enhanced compensation amount be released in favour of the claimant/appellant along with interest @ 6% per annum from the date of filing of the appeal till actual realization.

Appeal is disposed of in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

18.09.2018

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No