

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

FAO No.242 of 2018 (O&M)

Date of Decision: January 17, 2018

The New India Assurance Co. Ltd.

...Appellant

Versus

Darshan Singh and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr. G.D.Gupta, Advocate for the appellant.

HARINDER SINGH SIDHU, J.

This is an appeal filed by the New India Assurance Company challenging the award dated 09.10.2017 passed by the Motor Accident Claims Tribunal, Sangrur (for short 'the Tribunal').

On 7.6.2015 at about 9.30, the claimant – respondent, namely Darshan Singh while riding motorcycle No.PB-13R-3538 was hit by a Balero Pick-up Milk Tanker bearing No.PB-13AB-0877 being driven in a rash and negligent manner by Dharampal alias Pappu – respondent No.2. As a result, Darshan Singh, an agriculturist aged about 52 years, suffered multiple grievous injuries and was shifted to Civil Hospital, Sangrur, from where he was referred to higher institute and got admitted in CMC, Ludhiana. An FIR was registered against respondent No.2 for causing the accident.

The claimant filed claim petition under Section 166 of the Motor Vehicles Act, 1988 before the Tribunal claiming compensation. It was

claimed that he was doing agricultural work on 8 acres of land and earning Rs.1 lac per month. It was further pleaded that he was also running a dairy farm having 20 milch animals and earning Rs.1 lac by selling milk. As a result of the accident in question, he suffered injuries on his plank, head and his left leg was badly damaged and fractured, which was ultimately amputated. He had to close his dairy business and his social life was ruined. It was also pleaded that due to permanent disability, the claimant was rendered incapable of doing any physical and heavy work.

On the basis of the evidence led by the parties, the Tribunal held that the accident was caused due to rash and negligent driving of the tanker. The monthly income of the claimant was assessed at Rs.7500/- per month i.e. Rs.90,000/- per annum and the loss of income was held to be 80% (Rs.72,000/- per annum) due to the permanent disability (65% of the body) suffered by the claimant. 50% addition in the income was granted towards future prospects and multiplier of 11 was applied, besides awarding compensation under other heads. The claimant was held entitled to compensation as under:-

Sr.No.	Particulars	Amount (in Rs.)
1	Medical Bills	2,75,226/-
2	Pain and suffering	50,000/-
3	Loss of earning	7,92,000/-
4	Transportation Charges	25,000/-
5	Attendant and diet charges	25,000/-
6	Future Prospects	3,96,000/-
	Total	15,63,226/-

Challenging the award, learned counsel for the appellant –

Insurance Company has argued that the finding recorded by the Tribunal that the accident was caused due to rash and negligent driving of the offending tanker, is not sustainable as it is based only on preponderance of probabilities. It is further argued that the injured was aged about 53 years and, thus, as per the settled law, the Tribunal was not justified in granting of addition of 50% in the income towards future prospects. Reliance has been placed on judgment dated 31.10.2017 of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others** SLP (Civil) 25590 of 2014.

Having considered the submissions made by learned counsel for the appellant – Insurance Company, I do not find merit in the same.

So far as the issue of negligence is concerned, FIR No.54 dated 29.6.2015 (Ex.C1) under Sections 279, 337, 338 and 427 was registered against respondent No.2, who was driving the offending tanker at the time of the accident. The investigation was carried out by the Police and it submitted its report under Section 173 Cr.P.C. challaning respondent No.2 for causing the accident.

It is well-settled that requirement of proof in a MACT case is not as stringent as in a criminal case.

In **The United India Insurance Co. Ltd. vs. Deepak Goel and others, MAC.APP.No.750/2006**, decided on 24.01.2014, while taking note of the decisions of the Hon'ble Supreme Court, it was observed by the Delhi High Court as under:-

“xxx xxx xxx In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis

of preponderance of evidence, but in a claim petition before the Motor Accident Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability.

21. *Nonetheless, in a case, where FIR is lodged, charge-sheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal. Thus, the claimants have proved negligence of the driver of the offending vehicle”*

The Hon'ble Supreme Court in **Kusum Lata and others vs. Satbir and others, 2011(2) RCR(Civil) 379 (SC)**, while distinguishing the criminal trial and motor accident has observed that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. It was also stressed that the Court must keep this distinction in mind. Strict proof of an accident caused by a particular vehicle in a particular manner may not be possible for the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

In view of the above factual and legal position, the finding of the Tribunal that the accident was caused due to rash and negligent driving of the offending tanker is affirmed.

The second argument that 50% addition in the income towards

future prospects could not have been granted in view of Pranay Sethi's case (supra), and that the claimant was entitled to addition of 10% on that account has to be accepted. However in the facts of this case that would not affect the total quantum of compensation because the Tribunal has not awarded due compensation under the heads of 'pain and suffering', 'attendant and diet charges' 'loss of enjoyment of future life'. The decrease in compensation on account of future prospects will be offset by the corresponding increase in the compensation payable under the above heads of compensation.

It has proved on record that the Board of Doctors examined the claimant and found that he was permanently disabled to the extent of 65% in relation to body. Disability certificate dated 4.8.2015 mentions that the disability of patient is permanent. Before the accident, the injured was doing the agricultural work and dairy business. He has suffered amputation of his left leg, besides other injuries on the body. Due to such disability, he will be greatly hindered in continuing with his previous work. It cannot be doubted that after amputation of left leg rendering the body 65% permanently disabled, he cannot continue with the agricultural work or the business of dairy farming, as his movements would be restricted and limited.. In these circumstances, it may not be out of place to assume that he has lost his earning capacity to the extent of 100% and, therefore, the loss of income to the extent of 80% assessed by the Tribunal is on lower side.

In regard to his injuries and the consequent mental agony and physical pain, the evidence of Dr.Sumant Chacko, Post Graduate Resident,

Department of Orthopedics at CMC, Ludhiana, who appeared as CW5 before the Tribunal is relevant. He stated that the claimant was admitted in their hospital on 7.6.2015 with alleged history of road traffic accident. He was initially treated by Dr.Michael Deodhar and then transferred to their department on 9.6.2015. The team headed by Dr.Bobby John, Dr.Ritesh Pandey along with him and other doctors gave treatment to the claimant. He was diagnosed with left foot open fracture of metatarsals with lisfrancs dislocation. He was taken up for surgery on 9.6.2015 for wound debridgement + open reduction + screw fixation + K wire fixation metatarsas + jess fixator and again for surgery on 11.6.2015 for across ankle external fixator followed by multiple surgeries of wound debridgement + vac application on 13.6.2015, 16.6.2015, 18.6.2015 and 20.6.2015. Thereafter, he was referred to plastic surgery for wound coverage and was taken up for surgery on 26.6.2015 for wound debridgement + change of vac. Then, he was referred back to department of orthopedics and in view of unhealthy wound and infected and necrotic tissue, he was taken again for surgery on 26.6.2015 for left below knee amputation and again on 2.7.2015 for left below knee revision amputation + closure. It was thereafter that the claimant was discharged on 8.7.2015 for follow up treatment in orthopedics OPC. The treatment was proved by document Ex.C7, produced on record.

Considering the nature of injury and the complicated treatment of the same including number of surgeries, resulting in infection and finally amputation of the left leg below knee, the amount awarded under the heads of 'pain and suffering' and 'attendant and diet charges' appear to be meagre. The Tribunal has also not awarded any amount for 'loss of enjoyment of

future life'.

After giving 10% increase towards future prospects, the amount awarded under this head i.e. Rs.3,96,000/- will be reduced to 79,200/-. However, the appellant would be entitled to Rs.1,50,000/- towards 'pain and suffering', Rs.1,50,000/- for 'loss of future enjoyment of life', and Rs.50,000/- for 'attendant and diet charges'. Besides, on the basis of the functional disability being 100%, there would be corresponding increase in the 'loss of earnings', which has been assessed at 80% functional disability by the Tribunal. Therefore, the compensation payable to the injured may be more than that awarded by the Tribunal.

However, since, it is not an appeal for enhancement, so that issue is not being considered.

In view of the aforesaid, the award of the Tribunal need not be interfered with.

Appeal dismissed.

January 17, 2018

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(**HARINDER SINGH SIDHU**)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No