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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
2019.08.14 15:46
I attest to the accuracy and
authenticity of this document

Date of decision : 13.8.2019

FAO-1628-2002

Ajay Sondhi

..... Appellant (s)

Versus

Bishnu Dev and others

..... Respondent (s)

FAO-1629-2002

Meenu Sondhi

..... Appellant (s)

Versus

Bishnu Dev and others

..... Respondent (s)

FAO-1630-2002

Neelima Sondhi

..... Appellant (s)

Versus

Bishnu Dev and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ajay Sondhi, Appellant in person for himself
and other appellants.

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KULDIP SINGH J. (ORAL)

The lawyers are abstaining from work.

By this order, I will dispose of abovenoted three appeals
filed by appellants for enhancement of compensation against the award
dated 21.9.2001 passed by Tribunal, as facts of cases are same.

Facts

Facts of case are that on 14.4.1997, present claimant Ajay
Sondhi alongwith his sisters Meenu Sondhi and Neelima Sondhi, was

going from Chandigarh to Amritsar in their car bearing No. CH-O1-Q 7389, being driven by Ajay Sondhi (claimant) while Meenu Sondhi and Neelima Sondhi were sitting on rear seat. When they reached near Railway Crossing, Kurali at about 6.50 AM, car was stopped at left side of road. In the meanwhile, a truck bearing No. HR 02 A 4744 came from behind and struck against car. As a result of which, occupants of car suffered serious injuries. Car was totally smashed. The accident took place due to rash and negligent driving of driver of truck (respondent No. 1). Truck is owned by respondent No. 2 company. The truck was insured with respondent No. 3 insurance company. Respondent No. 1 did not appear before Tribunal and proceeded against ex parte. Respondents No. 2 and 3 however contested claim petition.

In written statement, respondent No. 2 took preliminary objection that claim petition is bad on account of non joinder of necessary parties i.e. Matador No. MP-11-B-2972 which was also involved in accident. It was denied that accident took place due to rash and negligent driving by truck driver. Insurance company also denied liability.

From pleadings, following issues were framed :-

1. Whether the claimant sustained injuries in a Motor Vehicle Accident caused by rash and negligent driving of truck No. HR-01-A-4744 by respondent No. 1 as alleged ? OPC
2. Whether the claimant is entitled to claim compensation. If so, how much and from which of them ? OPC
3. Whether the respondent No. 2 has not been properly sued.

If so its effect ? OPR

4. Whether the claim petition is bad for non joinder of necessary parties ? OPR

5. Whether the claim petition is barred by laches. If so, its effect ? OPR

6. Whether the driver of car No. CH-01-Q-7389 himself was guilty of contributory negligence if so, its effect ? OPR

7. Whether the claim petition is fraudulent, bogus mala fide, illegal in law as alleged ? OPR

8. What is the effect of preliminary objection No. 2 in the written statement of respondent No. ? OPR

9. What is the effect of preliminary objections No. 3 in the written statement of respondent No. 3 ? OPR

10. Whether the respondent No. 1 was not holding the valid driving licence at the time of accident ? OPR

11. Relief.

While taking up issues No. 1 and 2 and considering facts and circumstances, it was held that accident took place due to rash and negligent driving by truck driver in which Ajay Sondhi and others sustained injuries.

Coming to compensation to be awarded, Ajay Sondhi in MACT No. 161/1997, it was found that left arm of claimant-appellant was amputated at spot. Claimant-appellant further stated that lid of right eye was badly damaged and he underwent plastic surgery from PGI. Claimant-appellant was admitted in CMC, Ludhiana on 14.4.1997 and discharged on 3.5.1997. He also claimed that he was operated at CMC, Ludhiana. He has to pay Rs. 2,00,000/- for

treatment. He also placed on record bills Ex.P7 to P21 to tune of Rs. 1101/-. He also claimed that he lost vision of his right eye and cornea was transplanted later on. He was treated at Patiala for about 10 days. He was working as Branch Manager in Anupam Plantation, Amritsar. On account of injury, he could not attend his duties and his services were terminated. Now, he is unemployed. He used to draw Rs. 25000/- per month inclusive of all allowances and incentives. Claimant is not satisfied with said compensation.

None has appeared for respondents.

Appeal is of year 2002. I have heard Ajay Sondhi, appellant for himself and his sisters and have considered case of both parties and have also carefully gone through file.

FAO-1628-2002

I am of view that Tribunal erred in granting lump sum compensation of Rs. 350000/- to Ajay Sondhi without minutely examining damages suffered by claimant. In this case, claimant was 27 years of age at the time of accident. He was getting salary of Rs. 15950/- plus Rs. 8000/- as proved by Rajan Thukral (PW3). Total income of claimant was Rs. 23950/-. It is also on file that claimant remained on leave for 4 months and ultimately, his services were terminated. His left arm was amputated at spot. He remained admitted in CMC, Ludhiana, for 19 days. Loss of income for 4 months is Rs. 95800/- (23950 x 4). On account of amputation of left arm, earning capacity of claimant is likely to be reduced. He was working as Branch Manager with Anupam Plantation, Amritsar. His services were terminated by said company. I am of view that loss of

income on account of amputation of left arm is calculated at 50% which comes to Rs. 11975/-. Considering that loss of income is for whole of life, compensation is to be granted by applying multiplier method. Considering age of claimant, multiplier of 17 is applied, amount of compensation comes to Rs. 24,42,900/- (11975x12x17). Though claimant has produced medical bills of Rs. 32547/-, however, actual expenses in purchasing medicines from outside and transportation have not been allowed. In the absence of medical bills, by way of guess, some amount on account of purchase of medicines from outside are to be allowed. Therefore, a sum of Rs. 75000/- as medical expenses are allowed. Since, claimant was young man and he has to live with one arm and face difficulties throughout life, Rs. 2,00,000/- for loss of enjoyment of life are allowed. For transportation, attendant and other miscellaneous charges, Rs. 50000/- are allowed. Total amount of compensation comes to Rs. 28,63,700/-. Enhanced compensation shall be paid by insurance company with 7.5% per annum interest from the date of filing of claim petition till realization. FAO-1628-2002 is accordingly allowed.

FAO-1360-2002

Now, coming to case of Neelima Sondhi, while appearing as PW5, she claimed that she remained admitted in PGI for 5 days. She spent Rs. 1,00,000/- on her treatment. Her jaw was fractured. She also produced medical bills Ex.P23 to Ex.P43, total of which comes to about Rs. 34162/-. She further stated that she was shifted to CMC Ludhiana. She was operated there. Another operation was done in CMC regarding her skull. She was also treated by dental surgeon. On

account of skull injuries, she feels numbness and her face has been disfigured due to injuries. Dr. Vijay Obed (PW7) deposed that claimant was admitted in CMC Ludhiana on 18.4.1997 and was discharged on 30.4.1997. She paid Rs. 20,425/-. Dr. Yugesh Caplash (PW8) deposed that Neelima Sondhi was operated on 8.5.1997 and glass pieces and hair were removed. He further deposed that she never remained as indoor patient and she spent Rs. 2900/- . The disability certificate (Ex.P1) shows that medical board assessed her disability as 20% in relation to right upper limb. The Tribunal awarded lump sum compensation of Rs. 70000/-.

I am of view that in given circumstances, award of lump sum compensation is unjust.

Claimant has claimed in appeal that now she is 25 years of age . She has completed law studies and was practising as advocate in Punjab and Haryana High Court since October 1997. Her marriage prospects were diminished to great extent. The discharge medical summary of CMC Ludhiana (Ex.P44) shows that Neelima was 21 years of age at the time of accident. She was referred to PGI. She had laceration of skull, fracture of mandible and fracture of clavical and multiple facial lacerations. It further shows that she was admitted in hospital on 18.4.1997 and was discharged on 30.4.1997 i.e. for 13 days. Further medical record (Ex.P45) of Chandigarh Medical Centre has been produced. The record of Dental Care Ex.P46 has been produced which shows that some teeth were treated for injuries and filling was done. As per disability certificate Ex.P1, she suffered 20% disability of right upper limb. Admittedly, claimant Neelima Sondhi was

unmarried. She was 21 years at the time of accident. Due to fracture of mandible and clavical and facial lacerations, she had to undergo lot of pain and suffering and discomfort which is likely to continue for whole of life. Due to multiple facial laceration, face is also likely to disfigure to some extent leaving permanent scars on face which are likely to adversely affect prospects of marriage. Therefore, Tribunal erred in granting lump sum compensation of Rs. 70000/- to the claimant. For admission of 13 days in hospital, compensation of Rs. 2000/- per day for special diet, attendant, pain and suffering etc. which comes to Rs. 26000/- are allowed. For 20% disability, compensation to tune of Rs. 300000/- is allowed. For loss of prospects of marriage, Rs. 100000/- is allowed. Rs. 50000/- as medical expenses are allowed. Total compensation comes to Rs. 476000/-. Since insurance company was held liable, therefore, enhanced compensation shall be paid with 7.5% per annum interest from the date of filing of claim petition till realization. Enhanced compensation shall be paid by insurance company with 7.5% per annum interest from the date of filing of claim petition till realization. FAO-1630-2002 is allowed.

FAO-1629-2002

Now coming to case of Meenu Sondhi, while appearing as PW6, she deposed that her disc was fractured and she was removed to PGI where she remained admitted for 5 days and she was advised rest for 6 weeks. She further deposed that she also remained in CMC from where she was referred to Navedi Hospital. She claimed that she spent Rs. 50000/- on her treatment. However, medical bills

Ex.P47 to Ex.P52 to the tune of Rs. 5957-50 were produced. She also produced disability certificate Ex.P3 which shows disability to the extent of 20%. The Tribunal awarded a lump sum compensation of Rs. 30000/- without going into details of injury. The finding clearly shows that there was fracture of L2. She was having weakness in both lower limbs and muscle powers. With such kind of disability one cannot lead normal life and has always to take precautions. Further bed ticket of PGI on file shows that there was fracture of L2 and there was fracture of left Tygona in road side accident. She was advised absolute bed rest for 6 weeks. The fracture of L2 was opined to be managed conservatively. As per medical record, age of claimant is mentioned to be 24 years at the time of accident. She remained admitted in CMC Ludhiana from 18.4.1997 to 30.4.1997 i.e. for 13 days. In the appeal, it is claimed that claimant cannot sit. Her face has been damaged. Her marriage prospects have also been damaged. Therefore, it is unjust towards lump sum compensation of Rs. 30000/- as done by Tribunal. For 13 days admission in CMC Ludhiana, compensation for attendant, special diet at Rs. 2000/- per day are allowed which comes to Rs. 26000/-. For 20% disability on account of injuries on spinal cord, compensation to tune of Rs. 300000/- is allowed. For loss of prospects of marriage, Rs. 100000/- is allowed. Rs. 50000/- for medical expenses are allowed. Total compensation comes to Rs. 476000/-. Enhanced compensation shall be paid by insurance company with 7.5% per annum interest from the date of filing of claim petition till realization.

In view of above, appeals i.e. FAO-1628, 1629, 1630-2002
are allowed. Since insurance company is liable to pay compensation,
therefore, enhanced compensation shall be paid within one month
with 7.5% per annum interest from date of filing of claim petitions till
realization.

(KULDIP SINGH)
JUDGE

13.8.2019
sjks

Whether speaking order	:	Yes / No
Whether reportable	:	Yes / No