

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

FAO-1386-1994 (O&M)

Date of decision: 18.12.2019

Bhir Singh

...Appellant

Versus

National Insurance Company Ltd. and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Tarundeep Kumar, Advocate for the appellant.

Mr. Aseem Aggarwal, Advocate for respondent No.1.

H.S. MADAAN, J.

Petitioner/claimant Bhir Singh son of Pritam Singh, resident of Village Bhalla Pind, Tehsil Ajnala, District Amritsar had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') against respondents i.e. National Insurance Company Ltd., Amritsar-insurer of Maruti Car No.PAE-3456 (for brevity 'the offending car') and K.L. Chaudhari-driver and owner of the offending car, claiming compensation on account of injuries suffered by him in the motor vehicular accident, which took place on 19.08.1992 at about 05.30 PM, in the area of turning point of the road in the locality of Kennedy Avenue, Amritsar. As per version of the claimant, on the fateful day, in the evening, he along

with his brother Wazir Singh were proceeding on their scooter No.PB02-D-153 from the side of Sessions Court, Amritsar going towards their village Bhalla Pind. The scooter was being driven by Wazir Singh, whereas Bhir Singh was pillion riding the same. While the scooter had reached the turning point of road in the locality of Kennedy Avenue, Amritsar, the offending car owned and driven in a rash and negligent manner by respondent No.2 came from the opposite side and hit the scooter, driven by Wazir Singh with claimant Bhir Singh as a pillion rider. Resultantly, Bhir Singh suffered injuries and his left leg got fractured at two places. He was taken to Kakkar Hospital, Amritsar. An amount of Rs.70,000/- was spent upon his medical treatment and he was still undergoing treatment at the time of filing of claim petition. According to the claimant, at the time of suffering injuries in the road side accident, he was aged about 48 years, employed as a Junior Assistant in Punjab Roadways, Amritsar, earning Rs.3331/- per month. On account of receiving injuries in the mishap, he has become crippled/bed ridden and his promotional avenues have been affected. He prayed that a sum of Rs.5,87,000/-, in addition to Rs.70,000/- spent by him on his medical treatment etc., total Rs.6,57,000/- be granted to him by way of compensation, payable by both the respondents jointly and severally.

On getting notice, both the respondents served, however,

only respondent No.1 put in appearance to offer a contest and filed written statement, whereas, respondent No.2 did not appear despite service and as such, was proceeded against ex parte.

In the written reply filed by respondent No.1-insurance company, it had taken up various legal objections and statutory defences, on merits, denying the assertions in the claim petition. According to such respondent, the driver of the car was not holding a valid and effective driving licence at the time of accident, therefore, the insurance company was not liable to pay any compensation. In the end, such respondent prayed for dismissal of the claim petition.

On pleadings of the parties, the following issues were framed:-

- 1. Whether the claimant-applicant sustained injuries as a result of rash and negligent driving of Car No.PAE-3456 by respondent No.2, as alleged? OPA.*
- 2. If issue No.1 is proved, whether the claimant/applicant is entitled to claim compensation? OPA.*
- 3. Relief.*

The parties led evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Amritsar (for short 'the Tribunal') vide award dated 07.03.1994, decided issues No.1 & 2 in favour of the claimant against the respondents. Resultantly, the claim petition was accepted

and compensation of Rs.1.60 lacs was awarded to the petitioner/claimant, payable by both the respondents jointly and severally with interest @ 12% p.a. from the date of filing of claim petition till actual realization. The claim petition was accepted with costs.

However, the claimant was not satisfied with the amount of compensation awarded to him by the Tribunal and he has approached this Court, by way of filing the present appeal, notice of which was given to the respondents, however, only respondent No.1 has put in appearance through counsel to offer a contest. Since respondent No.2 had been proceeded against ex parte before the Tribunal and liability to pay compensation had been held to be joint and several of both the respondents, therefore, issuance of notice to respondent No.2 was deferred.

I have heard learned counsel for the parties besides going through the record.

The Tribunal on analysis of the evidence adduced before it has come to the conclusion that respondent No.2 K.L. Chaudhari was author of the accident by his rash and negligent driving of the offending car, in which petitioner/claimant Bhir Singh had suffered injuries. This finding is proper and appropriate and does not call for any interference. It being so, respondent No.2 being owner as well as driver of the offending car and respondent No.1-insurance company,

insurer of such car were rightly held to be jointly and severally liable to pay compensation to the petitioner/claimant. Respondent No.1 had placed on record insurance policy Ex.R1 showing that the car in question was insured with it at the relevant time. Further, though, the insurance company had taken up a defence that the person driving the car at the relevant time was not having a valid and effective driving licence at the time of accident but the Tribunal has observed that in the insurance policy itself, it is mentioned that owner of the car was having a valid driving licence. Even, otherwise the insurance company has failed to point out any violation of terms & conditions of insurance policy, which might have absolved such insurance company of its liability to indemnify the insured with regard to liability to pay compensation to the petitioner/claimant.

As regards the quantum part, the Tribunal in discussion under issue No.2 of the award has noticed that after the accident, Bhir Singh was got admitted in Kakkar Hospital, Amritsar for treatment and he was operated upon four times for the injuries on his person. AW5 Dr. S.S. Sandhu, Surgeon in the Kakkar Hospital has testified in that regard, stating that the petitioner/claimant remained under his treatment in the said hospital on four different occasions between the period from 19.8.1992 to 31.05.1993 and ultimately, when his left leg became unsalvageable due to infection, the same had to be amputated below knee and necessary amputation was done on

21.05.1993 and he was ultimately discharged from the hospital on 31.5.1993. Furthermore, the petitioner/claimant had to be operated upon thrice before the necessary amputation was done in the case. Prior to amputation, the petitioner/claimant had been visiting the hospital in connection with his treatment on the basis of follow up card Ex.AW3/1 to Ex.AW3/4 issued to him. AW3 Jagdish Kehar had stated that the petitioner/claimant remained admitted in Kakkar Hospital Amritsar for different periods between 19.08.1992 to 31.05.1993 in connection with his treatment regarding the injuries suffered by him in the accident. AW2 Prem Singh had produced bills and receipts regarding various expenses incurred by the petitioner/claimant in connection with his treatment, Ex.P2 to P61 showing thereby that petitioner/claimant had spent Rs.80,000 to 90,000/- on purchase of medicines/hospital charges and payment of fee and other charges to the Bone Care Centre etc. The Tribunal has noticed that the petitioner/claimant and his relatives were required to spend substantial amount on conveyance and various other miscellaneous expenses for which no bills are issued by the concerned persons. In that way, the petitioner/claimant must have spent nearly Rs.1 lakh in connection with his treatment, conveyance and other charges. The Tribunal has, however, not taken into consideration the fact that some time chemists do not issue bills/cash memos on account of purchase of medicines and some time, such

bills/cash memos get misplaced or lost. No arrangement for future treatment of the claimant had been made, with left leg of petitioner/claimant amputated below the knee; follow up treatment would have been there. As such on account of expenses incurred for medical treatment and future treatment, a sum of Rs.1,25,000/- deserves to be awarded to the petitioner/claimant.

The Tribunal fell in error in adding the conveyance amount along with medical charges. A separate amount of Rs.10,000/- is awarded to the petitioner/claimant under that head.

With type of injuries suffered by him requiring hospitalization and surgeries four times, leading to amputation of his left leg below knee, special diet was required to be given to the petitioner/claimant for early healing of injuries. A sum of Rs.10,000/- is awarded on that account.

The petitioner/claimant would have required the help of a person in looking after him during the period of his hospitalization and going to the doctor for follow up treatment etc. Therefore, on account of attendant charges which have not been given to him by the Tribunal, a sum of Rs.10,000/- is allowed.

The Tribunal has not separately awarded any amount for pain and suffering. With prolonged period of hospitalization, undergoing four surgeries, leading to amputation of left leg below knee, the petitioner/claimant must have undergone lot of shock and

trauma and suffering pain also, it is very difficult to quantify such pain and suffering, however, a sum of Rs.30,000/- is awarded to him under that head.

The petitioner/claimant would not be able to lead life of a normal human being as he used to do before suffering injuries in the accident. He would not be able to walk, run and sit as he could do earlier. Therefore, on account of loss of amenities, a sum of Rs.25,000/- is awarded to him.

The injuries have certainly affected his life expectancy, another sum of Rs.20,000/- is awarded to him for that reason.

As per disability certificate Ex.P1 produced by him, he had suffered 60% permanent disability, though, the petitioner/claimant was employed as Jr. Assistant in Punjab Roadways, Amritsar involving field duty and after the accident, he was unable to perform the field duty and is said to have been adjusted in the office, though, there has not been any loss of earning in the process but one thing remains that he is unable to perform the field duty and as has been observed by the Tribunal, he is required to spend extra amount on conveyance and he might not be found fit for higher post involving the field duty. In judgment **Master Mallikarjun Vs. Divisional Manager, the National Insurance Co. Ltd & Anr. 2013 (4) RCR (Civil) 295**, the Apex Court had given structured formula for award of compensation to a child, who had

suffered permanent disability in a motor vehicular accident, it was observed that in addition to actual expenditure, following compensation be awarded in respect of permanent disability:-

For permanent disability upto 10% Rs. 1 lakh.

Disability above 10% and upto 30% Rs.3 lacs.

Disability upto 60% Rs.4 lacs.

Disability upto 90% Rs.5 lacs.

Disability above 90% Rs.6 lacs.

Though, the case in question related to a child and it could be said that the permanent disability is with respect to the entire body and not to particular limb but even then, it has to be taken that the efficiency of the petitioner/claimant has certainly been affected. Though, there might not have been any reduction in his salary while he remains in service but after retirement, he shall definitely be adversely affected in doing his normal work. The Tribunal has granted an amount of Rs. 60,000/- not only due to permanent disability but for clubbing other heads like pain and suffering, transportation etc. In my considered view, the petitioner/claimant deserves to be granted a sum of Rs.1.5 lacs on account of suffering permanent disability. This amount is accordingly awarded to the claimant.

Furthermore, the petitioner/claimant deserves to be given some amount to have an artificial limb. Though, there is no evidence that petitioner/claimant has paid any amount for artificial limb for himself or what is the probable cost thereof but keeping in view the

fact that a proper artificial limb may not be costing less than Rs.50,000/-, a sum of Rs.50,000/- is granted to the petitioner/claimant for such purpose. Thus, the total compensation worked out to Rs.4,30,000/-.

The Tribunal has awarded compensation of Rs.1.60 lacs to the claimant. Thus, an additional compensation payable to the claimant is arrived at Rs.2,70,000/- (Rs.4,30,000 – 1,60,000/-) along with interest @ 7.5% p.a., from the date of filing of appeal till actual realization. The liability to pay this amount would be joint and several of the respondents.

The appeal stands partly allowed.

18.12.2019

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(H.S. MADAAN)
JUDGE

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