

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

F.A.O. No. 4967 of 2003

DATE OF DECISION :- October 31, 2019

Abdul Hamid

...Appellant

Versus

Ali Mohammad and others

...Respondents

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

Present:- Mr. Ashish Gupta, Advocate for the appellant.

Mr. Pardeep Goyal, Advocate for respondent No. 3..

Briefly stated the facts of the case as per version of the claimant are that on 3.10.2001 petitioner claimant Abdul Hamid along with one Asgar son of Rozdar, resident of Village Malab were coming from village Skalmaba on scooter bearing registration No. DDE-2828 driven by Asgar at a slow speed. When they had reached Adbar Chowk Nuh, they stopped the scooter on the katcha portion of the road for the purpose of purchasing bidi from the nearby shop. In the meanwhile Jeep No. HR-28-2800 driven by respondent No. 1-Ali Mohammad in a rash and negligent manner came from Bus Adda Nuh side and by going on the wrong side, it hit the scooter of petitioner claimant, in the process, he suffered injuries including fracture. After the accident respondent No. 1-Ali Mohammad ran away from the spot along with the Jeep. Asgar reported the matter to the police. Petitioner

injured was taken to CHC Nuh from where he was referred to AIIMS New Delhi. He remained admitted there till 11.10.2001 and thereafter he got treatment from Kalyani Hospital, Gurgaon. He also remained admitted at Medicare Diagnostic Centre, Yusuf Sarai Bus Stop, New Delhi and in Nursing Home Jharsa Road, Gurgaon. He is still getting treatment.

The petitioner claimant had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against Ali Mohammad-driver, Umar Mohammad-owner and The Oriental Insurance Company Ltd., Palwal-insurer of Jeep No. HR-28-4800 (hereinafter referred to as the offending vehicle) claiming compensation to the tune of Rs.5 lacs.

On being put to notice, all the three respondents appeared. Respondents No. 1 and 2 filed a joint written statement whereas respondent No. 3 came up with a separate written statement. All three of them opposed the claim petition praying for its dismissal.

Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, the Motor Accident Claims Tribunal, Gurgaon vide Award dated 5.9.2003 accepted the claim petition and granted compensation of Rs.2,67,122/- to the petitioner claimant payable by all the three respondents jointly and severally with interest at the rate of 9% per annum from the date of filing of claim petition till actual realization. It was further directed that 50% of the amount of compensation be deposited in some nationalized bank in the form of FDR to be opened in the name of petitioner for a period of two years and remaining 50% of the amount shall be given in cash to the petitioner claimant.

Petitioner-claimant felt dissatisfied with the amount of compensation awarded by the Tribunal and has approached this Court by way of filing an appeal, notice of which was given to respondent No. 3-Insurance company and it has put in appearance through counsel

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

From statement of PW3 Dr. Subhash Sindhu, Medical Officer, General Hospital, Gurgaon who was a member of Board which had examined petitioner claimant Abdul Hamid and had assessed his disability, it comes out that such disability was found to be 80% on account of amputation of right thigh above knee in lower one third which was permanent in nature. He had proved disability certificate in that regard as Ex.PE. The witness had stated that the petitioner claimant cannot drive any vehicle as a result of suffering injuries.

The Tribunal had assessed the monthly income of petitioner claimant to be Rs.2100/- and had made deduction of 1/3rd towards his own maintenance. In my view, the Tribunal fell in error in doing so. The complete income of the claimant should have been taken. The disability has been found to be 80%. Therefore, the loss in that way comes out to Rs.1680/- per month and annual loss Rs.20,160/- (1680 x 12). The Tribunal has taken the age of claimant as 45 years and had used multiplier of 15. In that way the amount comes out to Rs.3,02,400/- (20160 x 15). The Tribunal has granted a sum of Rs.29,122/- on account of medical treatment. I find that keeping in view the fact that many a times the bills, cash memos and receipts for purchase of medicines and other related articles get misplaced

and record thereof is not maintained either by ignorance or by illiteracy and it is not possible to keep account of each and every penny spent upon medical treatment, therefore, I enhance this amount to Rs.35,000/-. The Tribunal has awarded a sum of Rs.40,000/- on account of pain and suffering as well as under the Head loss of enjoyment of limb. Though this amount should have been awarded separately but I find this amount to be on lower side. Therefore, the same is enhanced to Rs.60.000/-. No amount has been awarded under the Head special diet, attendant charges and transportation. Therefore, considering all these things the amount of compensation is enhanced to Rs.5 lacs as prayed for by the claimant in the claim petition. The Tribunal has awarded a sum of Rs.2,67,122/-. Accordingly, the claimant is entitled to Rs.2,32,878/- as additional amount of compensation with interest at the rate of 7.5% per annum payable by all the respondents jointly and severally from the date of filing of the appeal till actual realization.

With such modification, the appeal is allowed partly.

(H.S. MADAAN)
JUDGE

October 31, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No