

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

FAO-411-2001(O&M)

Date of decision:-26.9.2019

Lal Singh and others

...Appellants

Versus

Jagan and others

...Respondents

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

Present: Mr.Govind Rana, Advocate
for the appellants.

Mr.Rajender Kumar, Advocate
for respondent No.1.

Mr.Gaurav Singh, Advocate
for respondent No.2(i).

Mr.Ashwani Talwar, Advocate
for respondent No.3.

H.S. MADAAN, J.

Briefly stated, the facts of the case as per version of the claimants are that on 20.4.1997, petitioners/claimants, namely, Lal Singh, Nirmala and Phool Singh, all residents of Om Nagar, Gurgaon were going to Ballabgarh on their scooter bearing registration No.DVE-9661, driven by Lal Singh; when they had reached near village Sarmathla and time was about 9:00 a.m., then a tractor bearing registration No.HR30-5312 (hereinafter referred to as the offending vehicle) being driven by respondent No.1 – Jagan in a rash and negligent manner without blowing

horn came from kacha path and hit the scooter, resultantly, all the three riders fell down and suffered multiple injuries; they were removed to Civil Hospital, Sohna by some unknown person, from where they were referred to Civil Hospital, Gurgaon for treatment; the scooter driven by petitioner Lal Singh was totally damaged; FIR No.216 dated 20.4.1997 for the offences under Sections 279, 337, 427 IPC was registered with Police Station Sohna.

According to the petitioners/claimants, petitioner No.1 - Lal Singh was aged about 22 years and petitioner No.2 – Nirmala was aged about 25 years at the time of accident and they were earning Rs.2,000/- per month from their private service, whereas petitioner No.3 Phool Singh was aged about 28 years and was also earning Rs.3,000/- per month. All three of them had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Jagan – driver and co-owner, Ramji Lal – co-owner and National Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation.

On notice, all the three respondents had appeared and contested the claim petition. Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, the Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as the Tribunal) while allowing the petition vide award dated 13.11.1999, awarded compensation of Rs.40,707.25 to petitioner/claimant No.1 - Lal Singh, Rs.17,500/- to the petitioner/claimant No.2 – Nirmala and Rs.8,519.20 to petitioner/claimant No.3 – Phool Singh along with interest @ 12% per annum from the date

of filing of the petition payable by respondents No.1 to 3 jointly and severally. The directions with regard to mode of payment are there in the original award.

Feeling that the compensation awarded to them was on lower side, the claimants have filed the present appeal seeking enhancement of compensation, notice of which was given to the respondents, who have appeared through counsel.

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

The Tribunal on analysis of the evidence produced before it both oral as well as documentary had decided issue No.1 in favour of the claimants and against the respondents holding that the accident in question, which took place on 20.4.1997 in village Sarmathla in which the petitioners/claimants had suffered injuries had taken place on account of rash and negligent driving on the part of respondent No.1 – Jagan driver of the offending tractor. The finding is correct and does not call for any interference. The same is hereby affirmed.

In view of such inference drawn, the Tribunal found the petitioners/claimants to be entitled to recover compensation from the driver, owners and insurance company of the offending vehicle. However, I find that the compensation awarded by the Tribunal to the claimants is on lower side.

Now coming to the compensation awarded to petitioner/claimant No.1 – Lal Singh to the tune of Rs.40,707.25. Such claimant getting his statement recorded as PW1 had stated that he had

received grievous injuries on various parts of his body and fracture on the right hand and left leg, stitches were applied on his chin; he was operated upon twice for his fractured left leg and he cannot walk properly; he was referred to AIIMS Delhi for further treatment and is still getting treatment from there; his right hand was also fractured and remain under plaster for two months; that before the accident he was employed with Universal factory as a Press Operator and was getting Rs.1,800/- as salary; that he has spent Rs.1 lakh on his treatment and Rs.25,000/- on transportation. PW6 Dr.Akhlaq Ahmad, who was member of medical board, which had assessed the permanent disability of such petitioner/claimant Lal Singh, stated that there was mild restriction of movement of the left knee and left ankle and vide certificate Ex.P7, the permanent disability was assessed as 15%. PW4 Jai Narain owner of Maruti Van No.HR-26E-3150 stated that he had taken Lal Singh injured to AIIMS, New Delhi and charged Rs.3,000/-, proving receipts Ex.P1 to Ex.P5. On the basis of evidence available, the Tribunal has awarded a sum of Rs.13,707.25 to the petitioner/claimant Lal Singh towards medical expenses.

While granting reimbursement of Rs.13,707.25 towards medical treatment, the Tribunal has not taken into view the fact that many a times, the record of various amounts spent on purchase of medicines in the form of bills, receipts, cash memos etc. is not kept or at times it gets misplaced or lost and no amount has been awarded towards future medical expenses. Thus, the compensation under that head is enhanced to **Rs.20,000/-**.

On account of permanent disability of 15%, the Tribunal has

awarded compensation of Rs.15,000/-. I find that this amount is on lower side.

Learned counsel for the claimant has referred to authority *Master Mallikarjun Versus Divisional Manager, The National Insurance Company Limited and another, 2014(14) SCC 396* by the Apex Court wherein the Apex Court had laid down parameters for award of compensation in case of permanent disability as follows:

- (i) For permanent disability upto 10% Rs. One Lakh.
- (ii) Disability above 10% and upto 30% ₹ 3 lakhs.
- (iii) Disability upto 60% ₹ 4 lakhs.
- (iv) Disability upto 90% ₹ 5 lakhs.
- (v) Disability above 90% ₹ 6 lakh.

In that way for disability above 10% and up to 30%, compensation is a sum of Rs.3 lakhs.. Even if it is taken that the disability noticed in case of petitioner/claimant Lal Singh is qua a particular limb only and his functional disability is taken to be half thereof, even then the amount awarded is on the lower side. Therefore, the compensation awarded to the tune of Rs.15,000/- is enhanced to **Rs.1 lakh**.

The Tribunal has awarded a sum of Rs.2,000/- on account of transportation. Keeping in view the nature and extent of injuries suffered by him, period of hospitalization and visits for follow up treatment, this amount is on very lower side and the same is enhanced to **Rs.10,000/-**.

Similarly, an amount of Rs.10,000/- awarded under various heads is quite meagre.

I award a sum of **Rs.30,000/-** for pain and suffering and

further a sum of **Rs.10,000/-** towards special diet.

The claimant Lal Singh having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of **Rs.20,000/-** is accordingly awarded to the appellant/claimant Lal Singh on that score.

No amount has been awarded to the claimant on account of loss of income during the period claimant Lal Singh was unable to work as a result of suffering injuries. I award a sum of **Rs.25,000/-** under that head.

The claimant/petitioner Lal Singh on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. Thus, I award a sum of **Rs.25,000/-** each (total **Rs.50,000/-**) under the heads loss of amenities and loss of expectation of life.

Thus the total compensation to petitioner/claimant Lal Singh comes out to **Rs.2,65,000/-**.

The Tribunal has awarded compensation of **Rs.40,707/-** to the petitioner/claimant Lal Singh. In this way, the enhanced amount comes out to **Rs.2,24,293/-** (**2,65,000 - 40,707**). The claimant Lal Singh would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of **Rs.2,24,293/-**. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

Similarly, in case of petitioner/claimant Nirmala, injured, who had suffered 7.5% disability as per disability certificate Ex.P10, the compensation awarded on that account is **Rs.7,500/-** only, which is on

very low side. The same is enhanced to Rs.50,000/-.

An amount of Rs.10,000/- awarded to the petitioner/claimant Nirmala under various heads is quite meagre.

I award a sum of Rs.30,000/- for pain and suffering, Rs.10,000/- towards transportation, Rs.10,000/- towards special diet, Rs.20,000/- towards attendant charges, Rs.25,000/- as loss of income and Rs.25,000/- each (total Rs.50,000/-) under the heads loss of amenities and loss of expectation of life to the petitioner/claimant Nirmala.

Thus, the total compensation to petitioner/claimant Nirmala comes out to Rs.1,95,000/-.

The Tribunal has awarded compensation of Rs.17,500/- to the petitioner/claimant Nirmala. In this way, the enhanced amount comes out to Rs.1,77,500/- (1,95,000 - 17,500). The claimant Nirmala would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.1,77,500/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

As regards petitioner/claimant Phool Singh, who has been awarded a sum of Rs.8,519.20, which is on very low side. Though he had not suffered any permanent disability but had taken treatment.

I award a sum of Rs.15,000/- towards medical treatment, Rs.7,500/- towards transportation, Rs.7,500/- towards special diet, Rs.5,000/- towards attendant charges, Rs.5,000/- as loss of income to the petitioner/claimant Phool Singh.

Thus, the total compensation to petitioner/claimant Phool

Singh comes out to Rs.40,000/-.

The Tribunal has awarded compensation of Rs.8,519/-to the petitioner/claimant Phool Singh. In this way, the enhanced amount comes out to Rs.31,481/- (40,000 - 8,519). The claimant Phool Singh would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.31,481 /-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modifications, the appeal is allowed partly.

26.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No