

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

FAO No.3825 of 2002 (O&M)

Date of decision: 13.12.2019

Himanshu

....Appellant

Versus

Sham Lal and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashwani Arora, Advocate,
for the appellant.

Mr. Deepak Bhardwaj, Advocate,
for respondent No.1.

Mr. Akash Sridhar, Advocate,
for Mr. Ashwani Talwar, Advocate,
for respondent No.4-insurance company.

RITU BAHRI J. (Oral)

This appeal is directed against the Award dated 11.10.2001 passed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal') dismissing the claim petition filed by the claimant-appellant seeking compensation on account of the injuries received by him in a motor vehicular accident which took place on 05.11.1996.

Brief facts of the case are that on 05.11.1996, at about 1.30 P.M., Himanshu (claimant-appellant) along with his brother was coming from Punjabi University towards Patiala City on a scooter bearing registration No. PB-25-2110. The said scooter was being driven by his brother and the claimant was a pillion rider. When they reached near Sirhind Gate, Patiala, in the meantime, an oil tanker bearing No.PUC-9133 being driven by Karam Singh-respondent No.3 in a rash and negligent manner, came from behind

and hit the scooter, as a result of which, claimant fell down and received multiple injuries. His scooter was also damaged. He was shifted to Rajindra Hospital, Patiala by his brother Rajiv Singh and other persons. In this accident, claimant had suffered compound fracture on his left leg. He also got treatment from Dr. Kaler and thereafter, from Punjab Saket Hospital, Patiala. With regard to the accident, a case was registered at Police Station, Kotwali, Patiala. Consequently, the claimant-appellant filed a claim petition under Section 166 of the Motor Vehicle Act before the Tribunal.

After going through the entire evidence led by the parties, the Tribunal has dismissed the claim petition on the ground that there was contradiction in the version of DDR and the witnesses. While dismissing claim petition, the Tribunal has held that although the claimant was injured in a motor vehicular accident on 05.11.1996 with an oil tanker, which was being driven by Karam Singh-respondent No.3, owned by respondent Nos.1 and 2 and insured with respondent No.4-Insurance Company, but he (claimant) was not entitled to any compensation as he has concealed the material facts from the Tribunal and has concocted a false version in order to get easy money. Hence, the present appeal.

Heard.

The Tribunal has returned a finding that claimant-appellant has suffered injuries on account of the aforesaid accident and even, DDR Ex.A2 was got registered in this regard. Keeping in view this finding, the claimant is entitled for compensation by converting this petition as a petition under Section 163-A of the Act as the accident is not in dispute between the parties as observed by the Tribunal in para no.29 of the award.

Accordingly, the present claim petition is being converted

from Section 166 of the Motor Vehicle Act to a petition under Section 163-A of the Motor Vehicle Act. In the facts of the present case, claimant was 16 years of age when he met with the accident. Even though, he was minor and was not having a driving licence at the time of accident, he has a right to claim compensation under Section 163-A of the Act. A perusal of the award shows that the claimant has suffered disability to the extent of 30%. Disability certificate, in this regard, has been proved as Ex.A3.

Learned counsel for the Insurance Company-respondent No.4 has vehemently argued that this disability certificate has not been issued by the Medical Board and claimant should again be given direction to get a fresh certificate.

A perusal of the record shows that the disability certificate Ex.A3 has been issued by the Civil Surgeon, Patiala after getting the claimant examined from Orthopedic Doctor. As per this certificate, claimant has suffered disability to the extent of 30%. Hence, this disability certificate is being made basis for calculating the compensation. The notional income of deceased is being assessed as Rs.30,000/- per annum. Since, he has suffered 30% disability, loss of income due to disability comes to Rs.1,44,000/- (30,000 x 30/100 x 16). So, keeping in view the peculiar circumstances of the case, compensation is hereby re-assessed as under:-

Sr. No.	HEADS	AMOUNT (In Rs.)
(i)	Medical expenses	Rs.35,000/-
(ii)	Pain and sufferings	Rs.5,000/-
(iii)	Future loss of income on account of disability	Rs.1,44,000/-
(iv)	TOTAL COMPENSATION AWARDED	Rs.1,84,000/-

Total amount of compensation of **Rs.1,84,000/-** shall be

payable by respondent No.4-Insurance Company (National Insurance Company Limited) being insurer of the vehicle, to the claimant within a period of two months from the date of receipt of certified copy of this order. The amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of "**Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and others**", Civil Appeal No.4528 of 2019 (arising out of SLP (C) No.5720 of 2019) (decided on 01.05.2019).

The present appeal is allowed in the above terms.

(RITU BAHRI)
JUDGE

13.12.2019

ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No