

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 2945 of 2005 (O&M)

Date of Decision: 25.09.2019

Kashmir Singh

..... Appellant

Versus

Sitender Kumar and other

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vinod Kanwal, Advocate, for
Mr. Ashit Malik, Advocate,
for the appellant.

Mr. Neeraj Khanna, Advocate,
for the Insurance Co.

JAISHREE THAKUR, J.

1. The instant appeal has been filed seeking enhancement of compensation as allowed by the Motor Accident Claims Tribunal, Panipat.

2. In brief, the facts are that an accident took place on 02.02.2003 when a vehicle, namely a Tata sumo bearing registration No. HR-06D-7178 being driven by Sitender Kumar struck against motorcycle bearing registration No. HR-06H-2400 driven by Kashmir Singh. On account of the accident, the appellant Kashmir Singh suffered injuries, which led to the filing of a claim petition under Section 166 of the Motor Vehicles Act. It was alleged that the accident in question took place due to rash and negligent driving of

the vehicle described as TATA sumo. A sum of ₹ 10 lakhs was claimed as compensation on account of treatment expenses, pain and suffering. The petition was contested by respondent Nos. 1 & 2 being the owner and driver, who denied the accident in question stating false implication in the case. Respondent No. 3 the Insurance Company filed a separate written statement. In the preliminary objection, it was stated that the vehicle was being driven in contravention to the terms and conditions of the Insurance Policy. Thereafter, the tribunal framed the issues and recorded evidence. In order to prove his case, the claimant examined Dr. Manish Jha as PW-1, Dr. Raghbir Singh as PW-3 and himself appeared in the witness box as PW-4 and closed his evidence. Whereas, respondent Nos. 1 and 2 tendered documents and closed their evidence. The Insurance Company did not produce any documentary evidence other than getting the statement of Sh. N.R. Pruthi, Assistant Regional Manager as RW 3.

3. The Tribunal by taking into account the statement of the claimant who stepped into the witness box as PW-4 held that the accident took place due to rash and negligent driving by respondent No.1, the driver. The driver did not step into the witness box to deny the factum of the accident, nor was any evidence led to the effect that there was false implication. On the question of compensation the tribunal allowed a sum of ₹ 30,000/- towards disability while further awarding ₹ 5000/- on account of pain and suffering thereby totalling

a sum of ₹ 35,000/- to be paid as compensation.

4. Learned counsel appearing on behalf of the appellant contends that the compensation as awarded is wholly inadequate. It is contended that on account of the accident, the appellant remained hospitalised for several days. He was initially taken to Dr. Prem Hospital where he was admitted for 7 days and was operated upon by Dr. Chhabra on account of infection and thereafter remained admitted from 9.2.2003 to 23.2.2003 at PGI. He also received treatment from Dr. Maini Hospital as an outdoor patient where he spent an amount of ₹ 1 lakh on his treatment. It is also submitted that the claimant had to undergo operation twice keeping in view the serious nature of injuries. It is argued that bills worth ₹ 2,42,080/- were submitted to his insurance company as he had taken a personal accident policy, however the company reimbursed only an amount of ₹ 1,76,442/- and, therefore, the entire amount of medical bills were not reimbursed to the claimant. It is further contended that he had also spent an amount of ₹ 14,450/- on his treatment for which he would also be entitled. It is argued that the claimant had sustained disability to the extent of 15% and would be entitled to compensation on this account apart from compensation on account of special diet, transportation and loss of earnings.

5. Per contra, Mr. Neeraj Khanna, learned counsel appearing on behalf of the respondent -company urges that the appellant would not be entitled to claim any sum on account of

medical bills since he had been reimbursed by the Insurance Company against the personal accident policy taken. It is argued that he had been allowed sufficient compensation by the Tribunal.

6. I have heard learned counsel for the parties and have perused the pleadings of the case.

7. The claimant was involved in an accident which resulted in him suffering serious injuries. He remained in hospital for several days and was also operated upon. The Insurance Company directly cleared part of his medical bills to the extent of ₹ 1,76,442/- and the Tribunal allowed a sum of ₹ 35,000/- towards pain and suffering and permanent disability of 15%. Counsel for the appellant would rely upon a judgment rendered in *Manoj Kumar Yadav vs. Azad and others 2015 (3) PLR 211* to contend that the Insurance Company must release the entire amount of the medical expenditure and not deduct the amount as directly paid by Insurance Company to the hospital. This contention is not sustainable in view of the pronouncements in *Iffco Tokio General Insurance Co. Ltd. v. Shambhu Pathak and others, 2013 (1) TAC 313*, *Jitendra Singh Jain v. Rahul Singh Parihar and others, 2008 (5) MPHT 336*, *Vishal v. Bugga Singh and Ors., 2016(3) Punjab Law Reporter 51*, [*National Insurance Company Limited v. Shashank Bhardwaj & Anr, 2017\(2\) PLR 29*](#). The judgment rendered in *ICICI Lombard General Insurance Company Ltd. v. Harinder Singh Rosha & Ors. (P&H) 2018(4) PLR 258* especially distinguishes the case as

relied upon by the counsel for the appellant and it is held that as the injured-claimant cannot be given double benefit. Similar is the view in ***Shashank Bhardwaj*** case (supra) wherein the entire case law has been discussed and it is held that both Life Insurance policy and Mediclaim Policy are different *“There is a difference between Life Insurance Policy and the mediclaim policy. The premium in the mediclaim policy is paid once which is for a particular period and the policy expires by efflux of time automatically and in case no untoward incident happens then the amount of premium paid is not refunded whereas in the case of Life Insurance Policy which is obtained for number of years, premium is regularly paid, the amount is reimbursed or otherwise in case of any untoward incident, the insured is paid the amount as per the policy, therefore, the respondent No.1 cannot rely upon the decision rendered in the case of Helen C Rebello's case (supra) or even the case of Reliance General Insurance Co. Ltd. (supra) in which it was held that the compensation received from the Government under the Haryana Compassionate Assistance to the Dependents of Deceased in the policy.”*

8. As regards the other claims, there is nothing on the record to substantiate that the injured claimant was doing any work or had an income. So in the absence of any income proof, it can be inferred that he was earning minimum wages as applicable for the year 2003 in the State of Haryana. However, he did undergo two

operations on account of injuries suffered including communitied fracture upper right tibia and fibula. Dr. Jha PW2 appeared in the witness box and deposed about his injuries whereas Dr. Raghbir Singh deposed about his operations and that he remained admitted till 23.02.2003. The disability has been assessed to be 15% based upon the certificate Ex. PW3/A duly proved by Dr. Raghbir Singh. The appellant had produced medical bills on the record which were marked as Mark 1 to Mark 35, which were not taken into account by the Tribunal as they had not been proved, which decision cannot be faulted. However, as pointed out the claimant has not been allowed any compensation towards transportation, attendant charges, special diet etc. Therefore, the compensation on account of the injuries suffered along with payment towards the medical bills/expenses which remained unpaid by the Insurance Company needs to be re-assessed, as under :-

	Compensation Heads	Compensation amount
1	Loss of Income	₹ 3,000/- x 4 = ₹ 12,000/-
2	Medical expenses	₹66,000/-(Balance of ₹ 2,42,000/- already paid)
3	Pain and agony/per fracture	₹10,000/-
4	Loss of income during laid up period	₹ 6,000/-
5	Special Nourishment	₹ 5,000/-
6	Attendant charges	₹ 6,000/-
7	Permanent disability of 15%	₹ 30,000/-
8	Conveyance	₹ 1,000/-
9	Loss of amenities & discomfort in life	NIL
	Total	₹ 1,36,000/-

9. In view of the above, the appeal is allowed and consequently the compensation awarded is enhanced from ₹ 35,000/- to ₹ 1,36,000/-.

10. The Insurance Company is directed to release the enhanced compensation in favour of the claimant-appellant with interest @ 7.5% per annum from the date of filing of the petition till realization in terms of the judgment rendered by the Supreme Court in *Dara Singh @ Dhara Banjara vs. Shyam Singh Varma & Ors., Civil Appeal No. 4528 of 2019 [SLP(C) No. 5720 of 2019]* decided on 01.05.2019.

11. The award is modified and the appeal is allowed to the above extent.

25.09.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes.

Whether reportable

No.