

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

FAO-1988-2006(O&M)

Date of decision:-30.9.2019

Amarjit Singh

...Appellant

Versus

Ram Khiladi and others

...Respondents

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

Present: Ms.Kamaldeep Kaur, Advocate for
Mr.Adarsh Jain, Advocate
for the appellant.

Mr.Suvir Dewan, Advocate
for respondent No.3.

H.S. MADAAN, J.

Sh.Amarjit Singh, aged about 48 years working as an ASI with Haryana Police had suffered injuries in a road side accident, which took place on 15.2.2004 at 5:00 p.m. near dividing road of Guru Nanak Hospital, Palwal, statedly on account of rash and negligent driving of a three-wheeler bearing registration No.HR-38-J-6653 (hereinafter referred to as the offending vehicle) by respondent No.1 – Ram Khiladi. In the accident right leg of Amarjit Singh got fractured and he also sustained other injuries on his body. He was removed to Guru Nanak Hospital, Palwal. He was operated upon for joining of the fractured bones in his leg. He remained hospitalized. Formal FIR with regard to the accident was registered. He had brought a claim petition under Section 166 of the

Motor Vehicles Act against respondents i.e. Ram Khiladi – driver, Bal Chand – owner and Oriental Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.9 lakhs along with interest. According to him, he was getting Rs.12,500/- per month as salary and was an income tax payee; he had incurred expenditure of Rs.1,50,000/- on his treatment and after the accident he has not been able to walk smoothly and gently and he cannot run, which is very much needed in his job as a police officer; he will not be able to undertake strenuous work in future and he has suffered great pain and suffering also.

Notice of the claim petition was issued to all the three respondents. However, respondents No.1 and 2 did not appear despite service and were proceeded against ex-parte. Respondent No.3 – insurance company appeared and filed written statement contesting the claim petition raising various legal objections and taking up a stand that the alleged accident had been caused by some unknown vehicle but later on with the help of local police, the vehicle in question was involved. According to answering respondent, though the three-wheeler in question was insured with it but respondent No.1 was not holding a valid and effective driving licence on the date of accident, as such respondent No.2 had violated the terms and conditions of the insurance policy, therefore, the insurance company was not liable to pay the amount of compensation. Such respondent prayed for dismissal of the claim petition.

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

After hearing arguments, the Motor Accidents Claims

Tribunal, Faridabad (hereinafter referred to as the Tribunal) while allowing the petition vide award dated 10.3.2006, awarded compensation of Rs.1,01,770/- along with interest @ 7.5% per annum from the date of filing of the petition to the claimant payable by respondents No.1 to 3 jointly and severally.

Feeling that the compensation awarded to him was on lower side, the claimant has filed the present appeal seeking enhancement of compensation, notice of which was given to the respondents and respondent No.3 – insurance company has appeared through counsel.

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

The Tribunal on analysis of the evidence brought on file by the parties has come to the conclusion that respondent No.1 Ram Khiladi was author of the accident by his rash and negligent driving of the three-wheeler in question and the petitioner/claimant had suffered injuries in that mishap. The finding given by the Tribunal in that regard is proper and appropriate and does not call for any interference.

Next Coming to the quantum of compensation. The Tribunal considering the oral as well documentary evidence brought on file by the claimant has come to the conclusion that the petitioner/claimant was entitled to get Rs.61,770/- as medical expenses. While granting such compensation towards medical expenses, 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.75,000/-**.

On account of permanent disability to the extent of 22%, the Tribunal has awarded a sum of Rs.22,000/- only, which in my view is very less. The Apex Court in judgment *Master Mallikarjun Versus Divisional Manager, The National Insurance Company Ltd. and another, 2014(14) SCC 396* has provided the yardstick for award of compensation to a child, who suffered permanent disability in a motor vehicular accident providing that for permanent disability upto 10%, Rs.1 lakh is to be awarded besides some more compensation under different heads. However, since the permanent disability of the claimant in this case is 22% with regard to upper limb only and not with regard to entire body, as such in my view, it would be proper and appropriate, if the petitioner/claimant is awarded a sum of **Rs.1,00,000/-**. Ordered accordingly.

The Tribunal has awarded a sum of Rs.10,000/- to the petitioner/claimant on account of pain and suffering. I find that such amount is meagre. In my view considering the number of injuries suffered by the claimant, period of hospitalization, it is very difficult to quantify the pain and suffering undergone by a person suffering injury requiring long hospitalization, surgeries and follow up treatment. Thus, compensation under that head is enhanced to **Rs.25,000/-**.

The Tribunal has awarded a sum of **Rs.8,000/-** for hospitalization of the claimant for sixteen days. Though the claimant happened to be a Government servant and medical leave is awarded to

such officials, however, in the long run at the time of calculating the earned leave, the leave already availed does affect the amount of leave encashment. Thus, I allow such amount awarded to remain as such.

The Tribunal has not awarded any compensation towards attendant charges. The claimant 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.25,000/-** is accordingly awarded to the appellant/claimant on that score.

Similarly, the Tribunal has not awarded any compensation towards transportation. Keeping in view the period of hospitalization and nature of injuries and that claimant would have gone to the hospital for follow up treatment also, a sum of **Rs.25,000/-** is awarded to him on account of transportation.

The Tribunal has not awarded any amount towards special diet. A person suffering injuries does need special diet for early and proper recovery. I award a sum of **Rs.20,000/-** under that head.

No amount has been awarded to the claimant on account of loss of amenities and loss of expectation of life. The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. A sum of Rs.25,000/- each (total **Rs.50,000/-**) is awarded to him under those heads.

Thus, the total compensation amount comes out to **Rs.3,28,000/-**.

The Tribunal has awarded compensation of **Rs.1,01,770/-** along with interest @ 7.5% per annum from the date of filing of the

petition payable by respondents No.1 to 3 jointly and severally.

In this way, the enhanced amount comes out to Rs.2,26,230/- (3,28,000 - 1,01,770). The claimant 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.2,26,230/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modification, the appeal is allowed partly with costs.

30.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No