IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.3401 of 2007
Date of Decision: 15.02.2019

Rampal …..Appellant

Versus

Jaipal and others …..Respondents

Coram: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Argued by: Mr. Anil Ghanghas, Advocate for the appellant.

Mr. Ishwar Lal, Advocate for respondents No.1 to 3.

Mr. R.C. Kapoor, Advocate for respondent No.4.

ARUN KUMAR TYAGI, J.

1. The claimant (hereinafter referred to as "appellant") has filed the present appeal seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal (Fast Track Court), Bhiwani (for short "the Tribunal") vide award dated 29.03.2007 passed in MACT Petition No.21-RBT of 2005/2007 titled Rampal Vs. Jaipal and others on account of injuries suffered by him in a motor vehicular accident, which took place on 09.02.2005.

2. Briefly stated, the facts which are relevant for disposal of the present appeal are that the appellant filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short "M.V. Act") on the averments that on 09.02.2005 at about 03:30 P.M., he was going on motorcycle bearing registration HR-16C-4416 with his

brother Krishan Kumar as pillion rider towards LIC Office. When they reached near HUDA Complex, Matador bearing registration No.HR-06A-5478, owned by respondent No.2 and insured with respondent No.4, came from the side of HUDA Complex driven by respondent No.1 rashly and negligently without blowing any horn and struck against his motorcycle due to which he suffered injuries and the motorcycle was damaged. After the accident respondent No.1 fled away from the spot leaving the matador on the spot. FIR No.18 dated 09.02.2005 was registered under Sections 279, 337 and 427 of the Indian Penal Code in Police Station Civil Lines, Bhiwani, regarding the accident on the statement of brother of the appellant.

3. The appellant averred in the petition that he, being aged 20 years was earning ₹5,000/- per month by doing private service with Ms. Suman Lamba, LIC Agent at the time of accident. After the accident he was taken to General Hospital, Bhiwani where he remained hospitalised from 09.02.2005 to 19.02.2005. He spent amount of ₹1,00,000/- on his medical treatment and requires amount of ₹50,000/- towards his future medical treatment. He could not work from 09.02.2005 to 01.09.2005 and suffered loss of income of ₹35,000/-. Due to the injuries suffered he became permanently disabled. The appellant accordingly sought award of compensation of R6,14,000/- with costs and interest @ 18% per annum from the date of institution till realisation.

4. The petition was contested by the respondents. In their written statement respondents No.1 to 3 pleaded that the accident

did not occur due to negligence of respondent No.1 and denied their liability while alternatively asserting liability of respondent No.4-Insurance Company to indemnify the insured. Respondent No.4-Insurance Company took usual legal objections besides objections as to respondent No.1-driver not having valid and effective driving licence and respondent No.2-owner having committed breach of the terms and conditions of the insurance policy and denied its liability.

5. Issues were framed and the parties were given opportunity to produce their evidence.

6. On perusal of the evidence produced by the parties and consideration of submissions made by the learned counsel for the parties, the Tribunal held that the appellant suffered injuries due to accident caused by rash and negligent driving of the Matador by respondent No.1 and awarded compensation of ₹65,000/- and directed respondents No.1 to 4 to pay the same jointly and severally with costs and interest at the rate of 7% per annum from the date of filing of the petition till realization.

7. Feeling aggrieved, the appellant has filed the present appeal.

8. I have heard the learned counsel for the parties and gone through the record.

9. Mr. Anil Ghangas, learned counsel for the appellant has argued that the appellant, aged about 20 years at the time of accident, lost six teeth due to the injuries caused, resulting in disfigurement of his face and requiring denture periodically. The

appellant remained hospitalized for 12 days and out of work for seven months. The appellant suffered permanent disability to the extent of 45%. The Tribunal awarded a lumpsum amount of ₹25,000/- on account of loss of future earnings without applying the multiplier method. The Tribunal also awarded meagre amount towards conveyance, attendant and special diet, loss of earnings during treatment and pain and suffering and did not award any amount for future medical treatment. The compensation awarded is not just and proper. The Tribunal also awarded interest at very low rate. Therefore, the award may be modified to enhance the same.

10. On the other hand, Mr. Ishwar Lal, learned counsel for respondents No.1 to 3 and Mr. R. C. Kapoor, learned counsel for respondent No.4 have argued that the appellant did not produce any record regarding his admission in the hospital, dental treatment and requirement of future medical treatment. The appellant did not produce any reliable evidence to quantify loss of future earnings due to functional permanent disability. The Tribunal has awarded just compensation to the appellant and he is not entitled for enhancement thereof.

11. It is now well settled that in personal injury cases compensation can be awarded under the following heads:-

(1) **<u>Pecuniary damages (Special damages</u>**)-

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure;

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising
   (a) Loss of earning during the period of treatment; and
   (b) Loss of future earnings on account of permanent disability; and
(iii) Future medical expenses
(2) **Non-pecuniary damages (General damages)**
(i) Damages for pain, suffering and trauma as a consequence of the injuries;
(ii) Loss of amenities (and/or loss of prospects of marriage); and
(iii) Loss of expectation of life (shortening of normal longevity).

(See Raj Kumar Versus Ajay Kumar and another (2011) 1 Supreme Court Cases 343 and R. D. Hattangadi Versus Pest Control (India) Limited and others 1995 ACJ (SC) 366).

12. So far as the claim of the appellant for expenses relating to treatment, hospitalization and medicines is concerned, even though the appellant testified as PW-1 that he remained hospitalized from 09.02.2005 to 19.02.2005 at General Hospital, Bhiwani and spent ₹1 lac on his treatment but the appellant did not produce any documentary evidence regarding his admission in the Hospital and dental treatment. The appellant merely produced bills Mark A-1 to A-17 showing that he incurred expenses of ₹4,904/- on his treatment and in view thereof amount of ₹5,000/- has been rightly awarded to the appellant by the Tribunal towards expenses incurred on his medical treatment. The appellant did not produce any cogent and reliable evidence to

prove his requirement of future medical treatment. Therefore, the appellant is not entitled to award of any compensation to meet the expenses to be incurred on future medical treatment.

13. The appellant did not produce any cogent and liable evidence to prove the amounts spent on conveyance, attendant and special diet. Even though the appellant testified as PW-1 that he spent ₹10,000/- on special diet but he did not produce any bills and therefore, his testimony in this regard could not be relied upon. In the facts and circumstances of the case, amount of ₹5,000/- awarded by the Tribunal towards amounts spent on conveyance, attendant and special diet cannot be said to be inadequate.

14. The appellant pleaded and testified as PW-1 regarding his employment on salary of ₹5,000/- with Suman Lamba, LIC Agent who also appeared as PW-3 and produced the attendance-cum-salary register for the year 2005-06 (copy Ex.P3). However, the register was admittedly required to be but not counter signed by the LIC Officer and, therefore, the same could not be given any weightage and was rightly ignored by the Tribunal. Consequently, for assessment of loss of earnings during the period of medical treatment and loss of future earnings due to functional permanent disability, the appellant could be considered to be having income of ₹2,500/- per month approximating the amount of ₹2,343.37/- notified by Labour Department, Haryana as minimum wages payable to an unskilled labourer for the relevant period.

15. Even though the appellant pleaded and testified as PW-1 that he remained hospitalized from 09.02.2005 to 19.02.2005 at General Hospital, Bhiwani and could not work from 09.02.2005 to 01.09.2005 but this claim was not supported by any reliable documentary evidence and was accordingly rightly declined by the Tribunal. However, in view of the nature of the injuries suffered which included fracture, the appellant would have remained out of work for a period of more than three months. The Tribunal awarded a lumpsum amount of ₹10,000/- towards loss of earnings during the above said period of three months without assessing his income. However, in view of the fact that the appellant is not proved to be having income of ₹5,000/- per month and is proved to be having income of ₹2,500/- per month, the amount awarded cannot be said to be inadequate.

16. To prove his permanent disability and consequent loss of future earnings, the appellant examined Dr. M.K. Garg as PW-6 who testified that the appellant was having fracture of lower end of right radius with restriction of half movement of right wrist and orthopaedic disability of 15%; scar on the chin and aesthetical disability of 75%, loss of six teeth with functional disability of 22.5% and total orthopaedic disability of 45%. However, PW-6 Dr. M.K. Garg admitted that the disability was pertaining to particular limb and mouth only and was not of the whole body.

17. It is now well settled that in personal injury cases compensation to be awarded is not measured by the nature, location or degree of the injuries but rather by the extent or

degree of the incapacity resulting from injury. The Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability and its effect on earning capacity. The Tribunal is not bound to blindly accept the disability certificate produced by the claimant and can accept or reject the same for cogent and plausible reasons. Reference in this regard may be made to **Ramachandran Vs. Manager Royal Sunderam Alliance Insurance Company Ltd. 2011(4) RCR (Civil) 107; Sampath Vs. United India Insurance Company Ltd. 2011(4) RCR (Civil) 550; Raj Kumar Vs. Ajay Kumar and another, (2011) Supreme Court Cases 343 and S. Perumal Versus K. Ambika and another 2015 (2) RCR (Civil) 228 (Supreme Court).**

18. In the present case, the appellant cannot be said to have suffered loss of future earning capacity to the extent of 45% due to orthopaedic and dental disability of 45%. In view of the fracture of his right arm and consequent permanent disability of 15%, functional permanent disability of the appellant can, at the most, be measured as 15% only and was rightly measured by the Tribunal. However, the tribunal awarded amount of ₹25,000/- on account of loss of future earnings due to permanent disability of 15% qua right-hand without applying the multiplier method. The Tribunal was required to assess the loss of future earnings due to functional permanent disability by applying the multiplier method. Reference in this regard may be made to the observations in **Raj Kumar Vs. Ajay Kumar and another, (2011) Supreme Court**

Cases 343. The appellant was aged about 20 years and was having income of ₹2,500/- per month at the time of the accident to which addition of 40% has to be made towards future prospects. In view of his age multiplier of 18 was applicable. On application of the multiplier method, proportionate compensation payable to the appellant for loss of future earnings due to functional permanent disability and consequent loss of future earning capacity to the extent of 15% comes to (₹3500 X 12 X 18 = ₹7,56,000 X 15%) ₹1,13,400/-.

19. So far as the non-pecuniary general damages are concerned, the Tribunal merely awarded amount of ₹20,000/- towards pain and suffering as a consequence of the injuries and did not award any amount for loss of amenities. Even the amount awarded for pain and suffering was on the lower side keeping in view the nature of the injuries including disfigurement of the face caused by the loss of teeth, fracture of right arm and consequent orthopaedic and aesthetic disability. In the facts and circumstances of the case, it would be just and proper to award amount of ₹30,000/- towards pain and suffering and ₹20,000/- towards loss of amenities. However, the injuries are not proved to have shortened the longevity of life and resulted in loss of expectation of life and the appellant is not entitled to any compensation therefor.

20. It follows from the above discussion that the claimant is entitled to payment of compensation as calculated under the

following heads:-

Sr. No.	Head	Compensation
1.	Expenses relating to medical treatment, hospitilzation and medicines	₹5,000/-
2.	Future medical treatment	-nil-
3.	Expenses relating to Transportation, Special Diet and Attendant	₹5,000/-
4.	Loss of earnings during the period of treatment	₹10,000/-
5.	Loss of future earnings due to functional permanent disability	₹1,13,400/-
6.	Pain and suffering	₹30,000/-
7.	Loss of amenities	₹20,000/-
8.	Shortening of longevity of life	-nil-
9.	**Total Compensation**	**₹1,83,400/-**

21. In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 7% per annum from the date of filing of the claim petition till realization of the whole amount which is challenged to be inadequate and the question which arises is as to what would be the appropriate rate of interest.

22. In claim petitions under Section 163-A or 166 of the M.V. Act, the Motor Accident Claims Tribunal is empowered by Section 171 of the M.V. Act to award interest, in the eventuality of claim petition being allowed, from the date of making the claim at such rate as may be specified by it. In awarding interest, the Motor Accident Claims Tribunal is not bound by the provisions of Section 34 of the Code of Civil Procedure, 1908 to restrict the award of interest to 6% per annum. In **Puttamma and others Vs.**

K.L.Narayana Reddy and another 2014 (1) R.C.R. (Civil) 443, Hon'ble Apex Court observed in para 60 as under:-

> "This Court in Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India and another (2003) 3 SCC 148 noticed that varying rate of interest is being awarded by the Tribunals, High Courts and this Court. In the said case, this Court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc."

In **Supe Dei and others Vs. National Insurance Company Ltd. and another 2009 (4) SCC 513**, Hon'ble Apex Court held that 9% per annum would be the appropriate rate of interest to be awarded in Motor Accidents Claims compensation cases. In **Sube Singh and another Vs. Shyam Singh (Dead) and others 2018 (2) R.C.R. (Civil) 131 (SC)** rate of interest of 6% per annum awarded by the Motor Accidents Claims Tribunal was modified by Hon'ble Supreme Court of India to 9% per annum.

23. In view of the observations in above referred judicial precedents, mercantile rate of interest prevalent, rate of interest allowed by Nationalized Banks on fixed deposit receipts and other relevant factors, it will be appropriate to modify interest awarded by the Tribunal to 9% per annum.

24. Mr. R.C. Kapoor, learned counsel for respondent No.4-Insurance Company has argued that as per verification report of the Licensing Authority, Kamrup Ulubari, Gauwahati, driving licence of respondent No.1-driver purporting to have been issued

by the Licensing Authority, Kamrup Ulubari, Gauwahati, was not issued by their office. Therefore, the driving licence of respondent No.1-driver was fake. Since the driving licence of respondent No.1-driver was fake, its subsequent renewal by the Licencing Authority, Hisar and Tohana did not confer any legitimacy to the same. Since respondent No.1-driver was not having valid and effective driving licence at the time of the accident, the insured respondent No.2-owner committed breach of the terms and conditions of the insurance policy. Consequently, respondent No.4-Insurance Company is absolved from its liability indemnify the insured respondent No.2-owner.

25. On the other hand, Mr. Ishwar Lal, learned counsel for respondents No.1 to 3 has argued that respondent No.4-Insurance Company did not file any appeal or cross-objections and in the absence thereof, respondent No.4-Insurance Company cannot challenge before this Court the findings of the Tribunal as to joint and several liability of respondent No.4-Insurance Company to pay the compensation awarded to the claimant. Further respondent No.4-Insurance Company did not prove the verification report in accordance with law by examining the concerned official. By the evidence on record it is established that the insured respondent No.2-owner employed respondent No.1-driver with due care and caution and the insured respondent No.2-owner could not be said to be guilty of any negligence in fulfilling the terms and conditions of the insurance policy.

Therefore, respondent No.4-Insurance Company is not absolved of its liability to indemnify the insured respondent No.2-owner.

26. In the present case, respondent No.4-Insurance Company had raised the objections before the tribunal that respondent No.1-driver was not having valid and effective driving licence and the insured respondent No.2-owner had committed breach of the terms and conditions of the insurance policy. Issues No.7 and 8 were framed by the tribunal in this regard. The Tribunal held that respondent No.4 insurance company had failed to prove driving license verification report by examining the concerned official. The tribunal referred to judgement of Hon'ble Supreme Court in **National Insurance company Ltd. Vs. Swarn Singh and others 2004 (1) Accident Compensation Judicial Reports 486**, judgment of this Court in **Nazar Mohammad Vs. Harbans Singh 2006 (3) Accidents Compensation Judicial Reports** and judgement of Hon'ble Supreme Court in **Lal Chand Vs. Oriental Insurance Company Limited III (2006) ACC 731** and in view of the ratio of above said judgements held that in view of renewal of the driving license of respondent No.1 in the year 1986 up to year 2005 after every three years by the Licensing Authority at Tohana and Hisar no negligence or deliberate breach on the part of the insured owner could be presumed. The insured owner was not required to verify the genuineness of the driving license. Further the insured owner would not have come to know about driving licence of respondent No.1-driver being fake when even the Licensing Authorities, Hisar and Tohana, which

presumably renewed the same on the basis of no objection certificate, could not come to know about the same. The Tribunal held that the insurance company did not plead specifically that owner had deliberately and knowingly violated the terms and conditions of the insurance policy and that it was in the knowledge of the insured owner that the driving licence of respondent No.1 was originally fake and even then he continued to employ respondent No.1 as his driver. The respondent No.4-insurance company did not call the owner of the vehicle in the witness box to show that the owner was negligent or that he wilfully breached the terms and conditions of the policy. Accordingly, the Tribunal decided issues No.7 and 8 against respondent No.4 and held respondent No.4 Insurance Company to be jointly and severally liable for payment of compensation to the claimant.

27. Interestingly, respondent No.4-Insurance Company did not file any appeal or cross objections challenging the findings of the Tribunal on issues No.7 and 8. In the absence of such appeal or cross objections, respondent No.4-Insurance Company is precluded from challenging the findings of the Tribunal on the above said issues before this Court.

28. Even otherwise, respondent No.4-Insurance Company did not prove verification report in accordance with law by examining the concerned official of the Licensing Authority, Kamrup Ulubari, Gauwahati by summoning him or through Local Commission. Respondents No.1 to 3 were thereby deprived of an opportunity to demonstrate that the verification report was not

correct as per the record of the Licensing Authority, Kamrup Ulubari, Gauwahati and also that the driving license of respondent No.1 was renewed by the Licensing Authority Tohana and Hisar on the basis of no objection certificate submitted by the Licensing Authority, Kamrup Ulubari, Gauwahati. Therefore, the report of the Licensing Authority, Kamrup Ulubari, Gauwahati, which has not been proved in accordance with law was liable to be and has been rightly discarded by the Tribunal.

29. In any case even if the verification report of the Licensing Authority, Kamrup Ulubari, Gauwahati is accepted on its face value, the mere fact that the driving licence of respondent No.1 is fake would not, per se, absolve respondent No.4-Insurance Company from its liability to indemnify the insured respondent No.2-owner. In **National Insurance Co. Ltd. V/s Swaran Singh and others, 2004 (1) Accident Compensation Judicial Reports 486**, it was observed by Hon'ble Supreme Court in para No.106 (iii) & (iv) of its judgment as under:

> "(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability toward insured, the insurer has to prove that the insurer was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.
>
> (iv) The insurance companies, however, with a view to avoid their liability must not only establish the available

> defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.”

30. In **Pepsu Road Transport Corporation v. National Insurance Company, 2013 (10) SCC 217**, the insurance company was absolved by the Tribunal of its liability on the ground of licence issued to the driver being fake. It was proved that the appellant-employer had employed the driver in 1994 by putting him to a driving test and had also been imparted training. On scanning the evidence of the Licensing Authority before the Tribunal it could not also be absolutely said that the licence of the driver had not been issued by the said authority and that the licence was fake. It was held by Hon’ble Supreme Court that the insured appellant-employer could not be said to be at fault and the insurance company was held to be liable to indemnify the appellant-employer. In that case, Hon’ble Supreme Court observed as under:-

> “In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance

> company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

31. In **Rama Chandra Singh Vs. Rajaram and others, Civil Appeal No.8145 of 2018 decided on 14.08.2018**, Hon'ble Supreme Court observed as under:

> "Suffice it to observe that it is well established that if the owner was aware of the fact that the licence was fake and still permitted the driver to drive the vehicle, then the insurer would stand absolved. However, the mere fact that the driving licence is fake, per se, would not absolve the insurer."

32. In the present case the mere fact that driving licence of respondent No.1 was originally fake did not by itself entitle respondent No.4-insurance company to avoid its liability. Respondent No.4 insurance company was required to further prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of employment of respondent No.1 driver and fulfilling the condition of insurance policy regarding use of vehicle by duly licensed driver or one who was not disqualified to drive at the relevant time. It is pertinent to observe here that respondent No.1 was employed as driver under Bhakra Beas Management Board, a statutory body constituted

under Section 79 of the Punjab Re-organisation Act, 1966. A presumption arises under Section 114 (e) of the Indian Evidence Act, 1872 that respondent No.1 was appointed as driver on fulfilment of the requisite eligibility conditions and passing of requisite driving tests. Respondent No.4-insurance company has not produced any evidence to prove that respondent No.2 had any knowledge about the original driving licence of respondent No.1 being fake and despite such knowledge, employed and allowed him to continue as driver on the offending matador. The insured respondent No.2-owner cannot be said to be guilty of negligence and to have failed to exercise reasonable care in the matter of employment of respondent No.1 driver and fulfilling the condition of insurance policy regarding use of vehicle by duly licensed driver or one who was not disqualified to drive at the relevant time.

33. In these facts and circumstances of the case, respondent No.4-Insurance Company is not entitled to its exoneration from liability to indemnify the insured respondent No. 2 owner and the findings of the Tribunal on issues No.7 and 8 cannot be said to be perverse and are not, therefore, liable to be set aside.

34. It follows from the above discussion that the appellant is entitled to payment of amount of ₹1,83,400/- from the respondents No.1 and 2 and 4 jointly and severally with costs and interest at the rate of 9% per annum from the date of institution of the petition till realization. Amount of ₹65,000/- already awarded to the

claimant shall be liable to be deducted from the abovesaid enhanced amount. The directions of the Tribunal as to manner of disbursement of compensation amount to the claimant shall also apply to disbursement of enhanced compensation.

35. In view of the above discussion, the appeal is allowed with costs in the above terms and award dated 29.03.2007 is modified as discussed above.

(ARUN KUMAR TYAGI)
JUDGE

15.02.2019
Vinay/kothiyal

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No