

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-1690-2008 (O&M)

Date of decision: 13.09.2019

Rani Devi @ Seema

..... Appellant

Versus

Kuldeep Kumar @ Deepak and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Fateh Saini, Advocate for the appellant.

Mr. RN Singal, Advocate
for respondent No. 3-Insurance Co.

RAMENDRA JAIN, J. (ORAL)

Through this appeal, the claimant has sought enhancement of compensation, modifying the impugned Award dated 05.12.2007 of the Motor Accident Claims Tribunal, Ambala (for short-'the Tribunal').

Briefly, in the day time of 21.02.2007, appellant-claimant accompanying her mother was going towards village Tandwal and when reached near Government High School, Tandwal, offending Scorpio bearing registration No. CH-03-S-0216, coming from opposite side, driven by respondent No. 1-Kuldeep Kumar @ Deepak in a rash and negligent manner, in the process of overtaking a cart, initially, struck against the same and thereafter, coming on the extreme wrong side, hit her. She was shifted to MM Medical College and Hospital, Mullana, where on medical examination, she was found to have suffered a fracture

in thigh and multiple fractures of spinal cord, besides other injuries on her entire body, rendering her permanently disabled.

With these broad submissions, appellant-claimant filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as-'the Act').

Holding trial, learned Tribunal awarded compensation to the tune of ₹7,85,000/- under various heads, along with interest @ 7.5 per annum from the date of filing of claim petition till realization.

Placing on record calculations (Mark-A), learned counsel contends that appellant-claimant on account of 100% permanent disability is entitled to enhanced compensation of ₹40,46,424/- less ₹7,85,000/- awarded by the learned Tribunal. In support of this contentions, learned counsel has relied upon judgments of Hon'ble the Supreme Court in (i) **Kavita Vs. Deepak and others**, 2012 (4) RCR (Civil) 273; (ii) **V.Mekala Vs. M. Malathi and another**, 2014(11) SCC 178 and (iii) **Sanjay Kumar Vs. Ashok Kumar and another**, 2014(1) RCR (Civil) 875.

Contrary to it, relying upon judgments of the Apex Court in (i) **Sanjay Kumar Vs. Ashok Kumar and another**, 2014 ACJ 653; (ii) **Lal Singh Marabi Vs. National Insurance Company Ltd. and other**, 2017(2) RCR (Civil) 238 and (iii) **S. Thangraj Vs. National Insurance Company Ltd.**, (2018) 3 Supreme Court Cases 605, learned counsel for respondent No. 3-Insurance Company contends that the appellant-claimant is entitled to enhance compensation of ₹7,86,424/- only over and above the compensation of ₹ 7,85,000/-

already awarded by the Tribunal. The total would come to ₹15,71,424/-. Calculation (Mark B) furnished by learned counsel for respondent No. 3-Insurance Company is taken on record. Be tagged at the appropriate place.

Having given thoughtful consideration to the rival submissions, this Court is in agreement with learned counsel for respondent No. 3-Insurance Company, inasmuch as, ratio laid down in **Sanjay Kumar's case (supra)**, being later in time has to be applied.

Folly of our legal system is that since, last several decades, uniform opinion could not be formed for awarding just compensation in a given set of circumstances. Every Court had its own perception. Thus, it is a need of the hour to lay down a set formula, so as to avoid disparity in awarding compensation under the provisions of the Act.

Be that as it may, it is pertinent to mention here that the judgments rendered in motor accident claims cases by the Apex Court or various High Courts, are only a guiding factor. They cannot be applied as a rule of thumb in every case, which has always its own peculiar facts and circumstances.

It is further relevant to mention here that the provisions of the Act for grant of compensation to a victim of road side accident, being benevolent in nature, insurance companies are being exploited to the maximum, finally forcing the general public to carry their burden.

Agreeing with the calculations (Mark B) furnished by learned counsel for respondent No. 3-Insurance Company, claimant-appellant is held entitled to compensation of ₹7,86,424/-over and above

the amount of ₹7,85,000/- already awarded by the learned Tribunal, vide Award impugned herein.

Respondent No. 3-Insurance Company, through its counsel is directed to deposit the aforesaid enhanced amount of compensation before the learned Tribunal, within one month from today, along with up-to-date interest @ 7.5% per annum from the date of filing of claim petition till realization, for onward disbursement to the claimant-appellant, in accordance with law against proper receipt and identification.

In case aforesaid enhanced amount is not deposited within stipulated time, Insurance Company would be liable to pay the same with interest @15% from the date of institution of claim petition till realization.

Disposed of.

September 13, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No