

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

FAO No. 4787 of 2008 (O&M)

Date of decision : October 22, 2019

Mam Chand

.....Appellant

Versus

Karam Singh and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ranjit Saini, Advocate
for the appellant.

None for respondent No. 1.

Respondent No. 2 - insurance company
proceeded exparte on 11.08.2014.

LISA GILL, J.

This appeal has been preferred by the appellant – Mam Chand for enhancement of compensation awarded to him vide award dated 16.05.2008 passed by the learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as 'Tribunal') on account of injuries and disability suffered by him in the motor vehicle accident, which took place on 31.10.2004.

Brief facts necessary for adjudication of the case are that the appellant was involved in a motor vehicle accident on 31.10.2004. The appellant alongwith his wife and two children was going to Buria on his motorcycle bearing registration No. HR-02E-0992. When he reached about half a kilometer ahead of village Shahzadpur near Govt. Tubewell, offending motorcycle bearing registration No. HR-02K-9192 driven in a rash and negligent manner by respondent No. 1 came from opposite side and struck against the motorcycle of the appellant. As a result thereof, they fell down on the road. He alongwith his wife sustained multiple injuries. Claim

petition under Section 166 of Motor Vehicles Act was preferred by the appellant seeking compensation on account of the injuries and disability suffered by him. The appellant claimed himself to be working as Clerk-cum-Cashier, Oriental Bank of Commerce, Radaur, earning a sum of ₹15,000/- per month.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to rash and negligent driving of the offending vehicle by its driver – respondent No. 1. This finding of the learned Tribunal has attained finality. The learned Tribunal afforded compensation to the appellant which is detailed as hereunder:-

1.	Permanent disablement	₹70,000/-
2.	Pain and suffering, transportation charges and special diet	₹15,000/-
3.	Expenses on medicines	₹35,400/-
4.	Loss of income for three months	₹28,200/-
	Total	₹1,48,600/-

Present appeal has been filed seeking enhancement of the compensation awarded.

Learned counsel for the appellant argues that no compensation has been awarded on account of loss of amenities, attendant charges and the amount awarded towards pain and suffering, special diet etc. is meagre. It is, thus, prayed that compensation awarded to the appellant be enhanced accordingly.

I have heard learned counsel for the appellant and have perused the file with his assistance .

There is no dispute that the appellant was about 35 years old at the time of the accident, which took place on 31.10.2004 due to rash and

negligent driving of the offending vehicle by its driver - respondent No. 1.

As per the evidence on record, the appellant suffered grievous injuries in the said accident. It is a matter of record that immediately after the accident the appellant was taken to Kohli Hospital, Jagadhri, where he remained admitted from 31.10.2004 to 05.11.2004. Thereafter, he was shifted to Goel Hospital and remained admitted there from 05.11.2004 to 20.11.2004. He suffered fracture of right knee and right foot.

PW1 Dr. Mahavir Goel, Goel Hospital, Jagadhri has proved discharge card (Ex.P1) of the appellant and specifically deposed regarding the operation, which was conducted upon the appellant on 06.11.2014 and 'tension band wiring of patella and DCS fixation of lower end femur' was carried out.

PW6 Dr. Sandeep Gupta, Medical Officer, Civil Hospital, Yamunanagar deposed that after examination, the Medical Board assessed permanent disability of the appellant to the extent of 35% on account of 'fracture condyle right femur leading to ankylosis right knee shortening of one inch and pain'. Disability certificate of the appellant (Ex.P27) is on record. It is stated by PW6 that the appellant may recover by way of physiotherapy to some extent and his permanent disability qua pain may reduce. It is a matter of record that the appellant continued in his employment as Clerk-cum-Cashier. There is no evidence to indicate that he lost out on any promotional avenue due to the physical disability suffered by him in this accident. There is, thus, no occasion for assessing any loss of future income in this case. Therefore, compensation of ₹70,000/- awarded on account of permanent disability is upheld. A sum of ₹35,400/- on account of medical expenses is upheld as well. The appellant is, however,

entitled to a sum of ₹50,000/- on account of pain and suffering (instead of ₹15,000/-). The appellant is also entitled to a sum of ₹50,000/- on account of loss of amenities, ₹8000 each towards special diet, attendant charges and transportation.

Appellant is, thus, entitled to compensation detailed as under:-

Permanent disability	₹70,000/-
Loss of amenities	₹50,000/-
Medical expenses	₹35,400/-
Pain and suffering	₹50,000/-
Special diet	₹8,000/-
Attendant charges	₹8,000/-
Transportation	₹8,000/-
Total	₹2,29,400/-

Amount already awarded by the Tribunal to the appellant/claimant under various heads shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of petition till realization.

Perusal of the reconstructed paper book reveals that there is an application for condonation of delay of 40 days in filing of FAO No. 4787 of 2008. There is no clarity as to whether the said delay in filing of the appeal filed in September 2008 was condoned. Be that as it may, keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is disposed of, accordingly.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

(Lisa Gill)
Judge

October 22, 2019

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