

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

FAO-494-2008(O&M)

Date of decision:-9.7.2019

Pawan Kumar

...Appellant

Versus

Sat Pal Singh and others

...Respondents

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

Present: Mr.G.S. Bal, Sr.Advocate with
Mr.ADS Bal, Advocate and
Mr.M.K. Madahar, Advocate
for the appellant.

Mr.Pawan Attri, Advocate
for respondent No.1.

Mr.M.B.Jain, Advocate and
Mr.Punit Jain, Advocate
for respondent No.3.

H.S. MADAAN, J.

On account of suffering injuries in a motor vehicular accident, which took place on 19.3.2006 at about 5:15 p.m. in the area of village Gangheri statedly on account of rash and negligent driving of Haryana Roadways, Kurukshetra Depot bus bearing registration No.HR65/0295 (hereinafter referred to as the offending bus) by Sat Pal Singh – respondent No.1, petitioner/claimant Pawan Kumar son of Sh.Prem Parkash Kalra, aged about 22 years, resident of village Begpur, Tehsil and District Kaithal had brought a claim petition under Section 166

of the Motor Vehicles Act against respondents i.e. Sat Pal Singh – driver, Haryana Roadways (Sub-Depot, Pehowa), Kurukshetra Depot – owner and ICICI Lombard General, Insurance Company – insurer of that bus, claiming compensation to the tune of Rs.5 lacs.

On notice, all the three respondent had appeared and contested the claim petition. Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

After contest, the Tribunal while allowing the petition partly vide award dated 24.5.2007, awarded compensation of Rs.1,19,850/- 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, finding it to be a case of contributory negligence. Negligence of Sat Pal Singh – driver of the offending bus being to the extent of 80% and as the claimant/injured was travelling in Maruti car bearing registration No.HR41-B/1799 at that time, Gurprit Singh, who was driving the car was also held to be negligent to the extent of 20% for the reason that it was a case of head on collision between the ill-fated Maruti car and the offending bus.

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 respondents, who appeared through counsel.

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

The Tribunal on the basis of the facts and circumstances of

the case has observed that the bus driver was rash and negligent and his such wrongful act contributed to the accident. His rashness and negligence was to be taken as 80% and that of driver of the ill-fated car to be 20%. In that way, it was a case of composite negligence but petitioner/claimant has filed the claim petition only against the driver, owner and insurer company of the offending bus and the driver, owner and insurance company of the ill-fated car have not been impleaded as respondents. Therefore, the Tribunal has rightly observed that the claimant can recover 80% of the compensation awarded to him from the respondents.

Next coming to the quantum of compensation. The accident in this case had taken place on 19.3.2006. The claimant had received injuries in the accident. He was hospitalized and got treatment from the hospital. Under the circumstances, he is entitled to recover pecuniary as well as non-pecuniary damages. Under the head pecuniary damages, he is entitled to be reimbursed for the money spent by him on his medical treatment. He has placed on file bills Ex.P1 to Ex.P7, total of which comes out to **Rs.68,463/-** and the Tribunal has rightly granted such amount to the claimant.

The claimant has further proved in evidence bills Mark P14 to Mark P41-A, the total of which was calculated as Rs.16,387/-. 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. Thus, the compensation under that head is enhanced to **Rs.20,000/-**.

No amount has been awarded towards further medical

treatment. The injury suffered by the claimant i.e. fracture in his right leg and his permanent disability assessed by the doctor being 4.5% and as stated by Dr.Pavnish Aggarwal, the same was likely to improve by physiotherapy, medication and passage of time, which means that the claimant would be required to undergo further treatment of course spending money on that account. He needs to be compensated for future medical treatment. A sum of **Rs.20,000/-** is awarded to him for that purpose.

The Tribunal has awarded a sum of Rs.9,000/- to the claimant on account of permanent disability. 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 up 10%, Rs.1 lakh is to be awarded besides some more compensation under different heads. However, since in the present case the disability of 4.5% is with respect to right leg of claimant and not the entire body, nevertheless I find that compensation of Rs.9,000/- awarded is on the lower side and it needs to be enhanced. Therefore, a compensation of **Rs.35,000/-** is awarded on account of permanent disability to the extent of 4.5% in the right leg of the claimant.

Considering the fact that the claimant was a student of B.A. Final at the time of mishap and as claimed on account of hospitalization, he could not attend to his dairy farming and poultry farming business and that he remained bedridden for several days, a sum of Rs.6,000/- was

awarded to him as compensation on account of loss of earning, which in my view is inadequate and is enhanced to **Rs.10,000/-**.

The claimant had been awarded a consolidated sum of Rs.20,000/- by the Tribunal under the head pain and suffering, special diet, transportation charges, attendant etc. However, in my view considering the nature and type 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 hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, I award a sum of **Rs.20,000/-** under that head pain and suffering. Similarly, a sum of Rs.10,000/- each (**Rs.30,000/-**) is awarded to the claimant under the heads special diet, transportation charges and attendant charges.

No other amount has been awarded to the claimant under any other head when he deserved to be compensated under the head loss of amenities and loss of expectation of life and for the reason that his marital prospects have been affected. With injury in his leg, he may not be able to find a suitable life partner and would not be able to walk, run and lead life of a normal human being. His life expectancy is also likely to be affected. Thus, I award a sum of Rs.15,000/- each (total **Rs.45,000/-**) under those heads.

The Tribunal has awarded compensation of Rs,1,19,850/- 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. The same is enhanced to Rs.2,48,500/-(total compensation calculated as

Rs.2,48,463/- is rounded of to Rs.2,48,500/-).

The claimant is entitled to receive 80% per cent of the total amount of Rs.2,48,500/- as compensation along with interest at the rate of 7.5% per annum from the date of filing appeal till actual payment from respondents No.1 to 3 jointly and severally. Keeping in view the request of learned counsel for the claimant that claimant requires money for meeting his needs and for medical treatment, the compensation amount be paid to him in cash.

With such modification, the appeal is allowed partly.

9.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No