

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

**FAO No.2713 of 2009 (O&M)
Date of decision: 08.03.2019**

Oriental Insurance Co. Ltd.

.... Appellant

Versus

Krishan Kumar and Another

.... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. Raj Kumar Bashamboo,
Advocate for the appellant.

Mr. Pankaj Mehta, Advocate
for respondent No.1.

Mr. Tara Chand Dhanwal, Advocate
for respondent No.2.

ARUN KUMAR TYAGI, J.

1. The respondent No.2-Insurance Company has filed present appeal seeking setting aside of award dated 12.01.2009 passed by the learned Motor Accidents Claims Tribunal, Hisar (for short 'the Tribunal') in **MACT Case No.106 of 2006 titled as Krishan Kumar Vs. Rajesh and another** whereby compensation was awarded to claimant-Krishan Kumar on account of injuries suffered by him in a motor vehicular accident, which took place on 16.11.2005.

2. For the sake of convenience the parties are referred to by their description in the claim petition.

3. Briefly stated, the factual matrix, emerging from the above-said claim petition and giving rise to filing of the present appeal is that on 16.11.2005, Krishan Kumar was going on moped bearing registration No.HR-21B/1168, along with his brother-in-law Rajesh Kumar as pillion rider, from village Kulana to Hansi. At about 2:40 p.m. when they reached near Dayal Singh Colony Petrol Pump, three wheeler bearing registration No.HR39A/3721, insured with respondent No.2, came from Hansi side driven by respondent No.1-owner in a rash and negligent manner and struck against the moped by coming on wrong side due to which the pillion rider-Rajesh Kumar fell down on the Kacha portion and Krishan Kumar fell down on the road and suffered injuries including fracture of his right leg. FIR No.6 dated 04.01.2006 was registered under Sections 279 and 338 of the Indian Penal Code (for short 'IPC') against the respondent No.1 in Police Station City Hansi.

4. The claimant averred in the claim petition that after the accident he was taken to the City Hospital, Hisar, where he was operated upon and remained admitted there upto 24.11.2005. A sum of ₹1,50,000/- was spent on his treatment. He was aged about 30 years at the time of the accident and was earning ₹3,200/- per month by doing private service with Shiv Gaushala, Village Garhi. Due to injuries suffered in the accident he became permanently disabled. The claimant accordingly sought award of compensation with costs and interest against respondents No.1 and 2.

5. The petition was contested by the respondents. In his written statement respondent No.1 denied the accident and prayed for

dismissal of the petition while pleading the vehicle to be insured with respondent No.2. In its written statement respondent No.2-Insurance Company took preliminary objections as to the petition being collusive between the claimant and respondent No.1-owner/driver, respondent No.1 not having valid and effective driving license, breach of terms and conditions of the insurance policy by respondent No.1, controverted the averments made in the petition and denied its liability.

6. The Tribunal framed the issues and recorded the evidence produced by the parties. On conclusion of the enquiry, the Tribunal on perusal of the material on record and consideration of the submissions made by the learned Counsel for the parties held that the appellant suffered injuries due to accident caused by rash and negligent driving of the three wheeler by respondent No.1 and awarded compensation of ₹76,200/- and directed respondents No.1 to 2 to pay the same jointly and severally with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization.

7. Feeling aggrieved, the Insurance Company has filed the present appeal.

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

9. Mr. Raj Kumar Bashamboo, learned Counsel for the appellant-Insurance Company has argued that the accident of the claimant took place on 16.11.2005 but the FIR regarding the accident was lodged on 04.01.2006. Injured Krishan Kumar was admittedly discharged from the hospital on 24.11.2005. The accident was allegedly witnessed by his brother-in-law Rajesh Kumar, who was

travelling on his moped as pillion rider. The claimant or his brother-in-law Rajesh Kumar did not visit the police station and report the matter till 04.01.2006. Rajesh Kumar admitted in his statement as PW-7 that the police recorded his statement for the first time on 04.01.2006. There was unexplained, inordinate delay of about one month and eleven days in lodging of the FIR which proves collusion between the claimant and respondent No.1. In the FIR number of the vehicle and name of the driver were not mentioned. The testimony of claimant-Krishan Kumar examined as PW-1 and testimony of his brother-in-law Rajesh Kumar examined as PW-7 is proved to be false by MLR of claimant-Krishan Kumar, wherein claimant-Krishan Kumar is stated to have been brought to the hospital by Satbir and also by absence of injuries on the person of Rajesh Kumar. PW-7 Rajesh Kumar is a planted witness and his testimony could not be relied upon. In MLR the attending Doctor had given history of assault. The claimant has not examined Satbir who took him to the hospital to corroborate his testimony as to how the accident occurred. In the facts and circumstances of the case uncorroborated testimony of PW-6 Krishan Kumar also could not be and has been wrongly relied upon by the Tribunal. The findings of the Tribunal are perverse and have resulted in miscarriage of justice. Therefore, the appeal may be allowed, the impugned award may be set aside and the claim petition may be dismissed.

10. Mr. Tara Chand Dhanwal, learned Counsel for respondent No.1-owner/driver, while denying collusion between the claimant and respondent No.1, has argued that no accident took place with the

three wheeler of respondent No.1 who has been falsely implicated. Therefore, the impugned award may be set aside and the claim petition may be dismissed.

11. Mr. Pankaj Mehta, learned Counsel for claimant has argued that the claimant has appeared in the witness box and examined his brother-in-law who witnessed the accident. Delay in the lodging of FIR occurred due to physical inability of the claimant caused by the injuries suffered in the accident to report the matter to the police. First priority of the claimant and his relatives was his medical treatment. The claimant did not know respondent No.1 previously and petition is not collusive. The claimant has proved negligence on the part of respondent No.1-owner/driver by producing cogent and reliable evidence. The findings of the Tribunal are based on proper appreciation of the evidence. The impugned award is not liable to be set aside. The appeal is devoid of any merit and the same may be dismissed. However, the Tribunal did not award just and adequate compensation. The Tribunal awarded meager amounts towards transportation, special diet and pain and suffering and did not award any amount towards attendant and loss of amenities. The Tribunal awarded compensation for loss of future earnings due to partial permanent disability without application of multiplier method. Therefore, the impugned award may be modified and the amount awarded may be enhanced.

12. In reply to the argument of learned Counsel for the claimant for enhancement of the compensation, learned Counsel for the appellant has argued that the claimant did not file any appeal or

cross-objections and in the absence thereof question of adequacy of compensation cannot be gone into and compensation awarded cannot be enhanced by this Court.

13. In order to discharge the onus of proving negligence on the part of respondent No.1-owner/driver, the claimant appeared in the witness box as PW-6 and examined his brother-in-law Rajesh Kumar as PW-7. PW-6 Krishan Kumar has testified as to having suffered injuries due to accident caused by rash and negligent driving of three wheeler by respondent No.1-owner/driver by striking against his moped by coming on wrong side. His testimony is corroborated by statement of PW-7 Rajesh Kumar who has deposed in akin terms. Since, PW-7 Rajesh Kumar happened to fall on 'Katcha' portion of the road, mere absence of injuries on his body does not falsify his testimony and disprove his presence on the spot at the time of the accident. It appears that PW-7 Rajesh Kumar, who did not suffer injuries, was left on the spot and therefore, the mere fact that Satbir Singh took the claimant to hospital also does not prove that PW-7 Rajesh Kumar was not accompanying the claimant on his mopad as pillion rider at the time of the accident. Since, there is nothing on record to show that Satbir Singh witnessed the accident his non-examination as witness is not of much significance and cannot be made a ground to doubt and the case of the claimant and discard his claim.

14. It may be observed here that FIR copy Ex.P-12 was lodged regarding the accident on 04.01.2006. No doubt, there is delay of about one month and eleven days in lodging of the FIR but the delay in

lodging of FIR is not by itself sufficient to doubt the case of the claimant and reject the claim petition. Reference in this regard may be made to **Ravi Vs. Badri Narayan and others 2011 (2) RCR Civil 190 (Supreme Court)** and **Parmeshwari Vs. Amir Chand and others 2011 (2) RCR (Civil) 153 (Supreme Court)**. After the accident the claimant was taken to General Hospital, Hansi, from where he was referred to PGIMS, Rohtak but was shifted to City Hospital, Hisar. PW-8 Dr.Ramesh Kumar has testified as to having medico legally examined the claimant-Krishan Kumar brought by Satbir with history of road side accident and found three injuries on his person mention in MLR copy Ex.P-30 with fracture of right leg shown by x-ray Ex.P-31. The first priority of the claimant, his brother-in-law Rajesh Kumar and other members of his family would have been to ensure requisite medical treatment to him and they could not be expected to lodge FIR without caring for his medical treatment. Once the claimant was taken to General Hospital, Hansi with history of road side accident, it was duty of the attending doctor to inform the police and thereafter, it was for the police to record his statement and lodge FIR. The claimant cannot be made to suffer for inaction on the part of public authorities or even his relatives. After admission in City Hospital, Hisar, the claimant was operated upon. Even on his discharge from the hospital, the claimant, who was unable to move due to fracture of his right leg, could not be expected to go to Police Station to lodge FIR. In these facts and circumstances, delay in lodging of FIR is satisfactorily explained and FIR lodged by the claimant on his recovery cannot be said to be product of concoction and manipulation for false

involvement of the offending vehicle and no inference of collusion between the claimant and respondent No.1 can be legitimately drawn on the basis of the delay in lodging of the FIR.

15. Pursuant to registration of the FIR, the police investigated the case. The number of the vehicle and name of the driver were disclosed during investigation. PW-8 Dr. Ramesh Kumar admitted that word assault was written by him inadvertently at the time of examination and the cutting was attested by him. On completion of the investigation, on finding the evidence to be sufficient to as commission of offences punishable under Sections 279 and 338 of the IPC by respondent No.1, S.H.O., Police Station City Hansi filed report copy Ex.P-13 under Section 173(2) of the Cr.P.C. against him. The fact that on investigation the police found that the accident took place due to rash and negligent driving of the three wheeler by respondent No.1 lends credence to the testimony of PW-6 Krishan Kumar and PW-7 Rajesh Kumar.

16. Respondent No.1 did not appear in the witness box and respondents No.1 and 2 did not examine any other person alleged to be present at the place of accident to depose either that the accident did not take place with the three wheeler or that the accident was not caused due to rash and negligent driving of the three wheeler by respondent No.1. Respondent No.2 pleaded the claim petition to be collusive between the claimant and respondent No.1 but respondent No.2 did not make any complaint to Superintendent of Police, Hisar or S.H.O. of the concerned Police Station regarding such collusion between the claimant and respondent No.1 and has not produced any

other evidence to prove the same. Consequently, respondent No.2 has failed to prove collusion between the claimant and respondent No.1 and respondents No.1 and 2 have failed to rebut the evidence of the claimant as to the accident having occurred due to rash and negligent driving of the three-wheeler by respondent No.1.

17. In these facts and circumstances of the case, the Tribunal must be held to have properly appreciated the evidence and to have rightly relied and acted upon the oral and documentary evidence produced by the claimant. The findings of the Tribunal are not contrary to the material evidence on record and are not perverse and are not, therefore, liable to be set aside.

18. The claimant is proved by the evidence on record to have suffered injuries in motor vehicle accident caused on 16.11.2005 by rash and negligent driving by respondent No.1-owner/driver of three wheeler bearing registration No.HR39A/3721 insured with respondent No.2. Respondent No.2 has failed to prove its defence of driving licence of respondent No.1 not being valid and effective and breach of the terms and conditions of the insurance policy by respondent No.1. Therefore, the Tribunal has rightly held the claimant to be entitled and respondents No.1 and 2 to be jointly and severally liable to pay compensation to the claimant. Consequently, the appeal filed by respondent No.2-Insurance Company is devoid of any merit and is liable to be dismissed.

19. The question which next arises is whether in the absence of any appeal or cross-objections by the claimant the question of

adequacy of compensation awarded by the Tribunal can be gone into and the compensation awarded can be enhanced by this Court.

20. In **State of Haryana and another Vs. Jasbir Kaur and others : 2003 (4) RCR (Civil) 140** it was observed by Hon'ble Supreme Court that provisions of the M.V. Act clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh various factors and quantify the amount of compensation, which should be just. In **Nagapaa Vs. Gurdoyal Singh : 2003 (1) RCR (Civil) 258 (Supreme Court)** and **Sanjay Verma Vs. Haryana Roadways : 2014 (1) RCR (Civil) 914 (Supreme Court)** it was held that there is no restriction that Tribunal/Court cannot award compensation exceeding the amount claimed.

21. Order 41 Rule 33 of the Code of Civil Procedure provides as under:-

"The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the Appellate Court shall not make any order under Section 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.

22. In view of the above quoted judicial precedents, statutory provisions and statutory duty to award just compensation, the question

of adequacy of compensation can be gone into and in appropriate cases where the material on record so warrants, compensation awarded by the Tribunal can be enhanced in case of inadequacy thereof by the High Court in exercise of powers under Order 41 Rule 33 of the Code of Civil Procedure, 1908. Reference in this regard may also be made to **Royal Sundarm Alliance General Insurance Company Limited Vs. Sharmila and others : 2018 ACJ 2720** where similar view was taken by Hon'ble Division Bench of Madras High Court.

23. In personal injury cases compensation can be awarded under the following heads:

(1) **Pecuniary damages (Special damages)-**

- (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 Vs. Ajay Kumar and another (2011) 1 Supreme Court Cases 343 and R.D.Hattangadi Vs. Pest Control (India) Ltd. and others 1995 ACJ (SC) 366).

24. To prove the expenses incurred on his medical treatment, the claimant appeared in the witness box as PW-6 and examined PW-8 Dr. Ramesh Kumar to prove his medico legal examination in General Hospital, Hansi and PW-2 Suresh Kumar Clerk of City Hospital, Hisar to prove his admission in City Hospital, Hisar on 17.11.2005 and discharge on 24.11.2005. The claimant produced bills/cash memo Ex.P-2 to Ex. P-10, Ex. P-18 to Ex.P29 and Ex.P-34 and also examined Suresh Kumar, Proprietor Ravindra Medicos to prove bills/cash memos Ex.P-18 to Ex.P-25. The abovesaid bills show that the claimant spent amount of ₹33,129/- on his medical treatment for which amount of ₹33,200/- was accordingly awarded by the Tribunal. In the absence of any cogent and reliable oral or documentary evidence to prove incurring of any further expenditure on his medical treatment, the amount awarded cannot be said to be inadequate. Since, the claimant has not examined any doctor to prove that he requires any future medical treatment, he is not entitled to payment of any compensation towards future medical treatment. The Tribunal awarded amount of ₹10,000/- towards conveyance charges and special diet which cannot also said to be inadequate. However, the Tribunal did not award any amount towards attendant. It is common knowledge that in such cases expenses are also incurred on attendant and in view of admission of the claimant in hospital for about 10 days and subsequent confinement to bed due to fracture of right leg it would be just and proper to award amount of ₹5,000/- towards attendant.

25. Claimant-Krishan Kumar examined himself as PW-2 and Pandit Shiv Kumar, President of Shiv Goshala as PW-4 and produced

Salary Certificate to prove his employment in the Shiv Goshala on salary of ₹3200/- per month at the time of the accident but in view of non production of record of attendance, payment of wages and account books this evidence could not be relied upon. In view of minimum wages of ₹2500/- per month notified by Labour Department to be payable to unskilled labourer, the claimant must be held to be having income of ₹2500/- per month at the time of accident. PW-2 Krishan Kumar and PW-4 Pandit Shiv Kumar both have stated that the claimant did not attend the Goshala for one year but in the absence of any record of medical treatment of the claimant after recovery period of about four months, their testimony, which is intrinsically untrustworthy, does not warrant credence. In view of the nature of injuries of the claimant which included fracture of right leg, the claimant must be considered to have remained on rest for the recovery period of about 4 months. Therefore, amount of ₹10,000/- awarded by the Tribunal towards loss of earnings during the period of treatment cannot be said to be inadequate.

26. The claimant has appeared as PW-2 and examined Dr. Reena Jain, Ortho Physician as PW-1 and produced Disability Certificate Ex.P-1 to prove that he suffered permanent disability to the extent of 9% in relation to his right lower limb. PW-1 Dr. Reena Jain stated that there were no chances of recovery. In the facts and circumstances of the case, the permanent disability of 9% in relation to right lower limb is liable to be accepted as partial functional permanent disability of the body. However, the Tribunal awarded amount of ₹18,000/- on account of loss of future earnings due to permanent

disability 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.**

27. The claimant was aged about 30 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 as per ratio of judgment of Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009.** In view of his age and observations in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Anr. 2009 (3) R.C.R. (Civil) 77,** multiplier of 17 was applicable. On application of the multiplier method, proportionate compensation payable to the claimant for loss of future earnings due to partial functional permanent disability to the extent of 9% comes to $(₹2500 + 1000(40\%) = ₹3500 \times 12 \times 17 = ₹7,14,000 \times 9\% = ₹64,260/-$.

28. The Tribunal awarded to the claimant amount of ₹5,000/- towards pain and suffering which is grossly inadequate. The Tribunal did not award any amount towards loss of amenities. In view of nature of his injuries, period of hospitalization and treatment, it would be just and proper to award to the claimant amount of ₹20,000/- towards pain and suffering and amount of ₹20,000/- towards loss of amenities. Since, the claimant cannot be said to have suffered from any shortening of longevity of life, the claimant is not entitled to any compensation under the head of loss of expectancy of life.

29. 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, hospitalization and medicines	₹33,200/-
2.	Future medical treatment	-nil-
3.	Expenses relating to Transportation, Special Diet and Attendant	₹15,000/-
4.	Loss of earnings during the period of treatment	= ₹2500/- x 4 = ₹10,000/-
5.	Loss of future earnings due to permanent disability	₹64,260/-
6.	Pain and suffering	₹20,000/-
7.	Loss of amenities	₹20,000/-
8.	Shortening of longevity of life	-nil-
9.	Total Compensation	₹1,62,460/-

30. It follows from the above discussion that the appellant is entitled to payment of amount of ₹1,62,460/- from the respondents No.1 and 2 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 ₹76,200/- 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.

31. In view of the above discussion, the appeal is dismissed with costs with modification of the award dated 12.01.2009 in terms discussed above.

(ARUN KUMAR TYAGI)
JUDGE

08.03.2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No