

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

FAO No.1903 of 2010 (O&M)

Date of decision: 13.12.2019

Naresh Kumar

....Appellant

Versus

Jai Ram Chaudhari and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sarvjit Singh Khurana, Advocate,
for the appellant.

Mr. Paul S. Saini, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

CM No.9032-CII of 2010

For the reasons mentioned in the application, same is allowed
and delay of 99 days in filing of the appeal is condoned.

FAO No.1903 of 2010

This appeal has been filed by the claimant-appellant seeking
enhancement of compensation awarded by Motor Accident Claims Tribunal,
Rewari (hereinafter referred to as 'the Tribunal') vide award dated
20.03.2009, on account of injuries received by him in a motor vehicular
accident which took place on 07.05.2006.

Brief facts of the case are that on 07.05.2006, at about 08.00
P.M., claimant-appellant (Naresh) was going from Neemrana to village
Khera on a Canter bearing No.HR-47-A-2676. When he reached near J.S.P.
Khera, Police Station Bawal, a trolly bearing No. HR-46-D-5051 being
driven by Jai Ram Chaudhari-respondent No.1 in a rash and negligent

manner was going ahead. Suddenly, the driver of said trollea stopped the same in the middle of the road. Claimant-petitioner tried to stop his canter, but the same rammed into the trollea, as a result of which, claimant received multiple injuries on both legs, hips, arm, hand etc. With regard to the accident, FIR No.68 dated 08.05.2006, under Sections 279/337 IPC was registered at Police Station, Bawal against respondent No.1-Jai Ram. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of contributory negligence of respondent No.1 and the claimant-appellant in the ratio of 75% and 25% respectively. The compensation was awarded by the Tribunal as under:-

Sr. No.	Heads	Amount
1.	Medical expenses	Rs.1,27,530/-
2.	Pain and suffering	Rs.40,000/-
3	Permanent disability	Rs.2,16,000/-
4	Attendant charges	Rs.8000/-
5	Transport & Misc. expenses	Rs.8470/-
	Total	Rs.4,00,000/-

Ultimately, the claimant was found entitled to a total compensation of Rs.4,00,000/-. However, due to contributory negligence on the part of claimant, he was awarded only Rs.3,00,000/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. A perusal of the

impugned award shows that as per deposition of Naresh Kumar-claimant (PW-1) and contents of FIR Ex.PA, the accident had taken place at about 8.00 P.M. due to striking of Canter No. HR-47-A-2676 being driven by Naresh Kumar-claimant on rear portion of trolly No.HR-46-D-5051 being driven by Jai Ram Chaudhari-respondent No.1. The accident had taken place when, suddenly, driver of trolly had stopped the same in the middle of the road. Even, the back brake lights of the trolly were not glowing. As per charge sheet Ex.P5, charges for rash and negligent driving were framed against respondent No.1. Even, respondent No.1-Jai Ram Chaudhari had confessed his guilt and was convicted as per judgment Ex.PC. Respondent No.1 did not appear before the Tribunal despite notice. Thereafter, the Tribunal held that the claimant was also responsible for the accident to the extent of 25%.

It is not the case of parties that in the judgment, any negligence was attributed to the claimant. Once, the driver/respondent No.1 had been convicted, there was no evidence to show that the claimant was responsible for the accident as the trolly had suddenly stopped in the middle of the road. Hence, it was 100% negligence of the driver of trolly (respondent No.1) in causing the accident. Accordingly, finding given by Tribunal on issue No.1 is being modified that the accident had taken place on account of sole negligence of respondent No.1, who had stopped the trolly in the middle of the road.

So far as quantum of compensation is concerned, income of the claimant has been taken as Rs.3000/- per month. As per disability certificate Ex.PW5/1, the claimant has suffered disability to the extent of 50%. In the income of claimant, addition of 40% is being made on account of future

prospects. By doing so, total income of claimant-appellant comes to Rs.4200/- per month (3000 + 1200). Claimant was 28 years of age at the time of accident. Accordingly, multiplier of 17 is applied. By applying the multiplier of 17, loss of income due to disability comes to Rs.4,28,400/- (Rs.4200 x 50/100 x 12 x 17). Accordingly, keeping in view the peculiar circumstances of the present case, compensation is hereby re-assessed as under:-

Sr. No.	HEADS	AMOUNT (In Rs.)
(i)	Medical expenses	Rs.1,27,530/-
(ii)	Pain and sufferings	Rs.50,000/-
(iii)	Permanent disability	Rs.4,28,400/-
(iv)	Attendant charges	Rs.15,000/-
(v)	Special diet	Rs.10,000/-
(vi)	Transportation and misc. Expenses	Rs.10,000/-
(vii)	TOTAL COMPENSATION AWARDED	Rs.6,40,930
(viii)	Enhanced amount of compensation	Rs.6,40,930 – 3,00,000 = Rs.3,40,930/-

The enhanced amount of compensation of **Rs.3,40,930/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

13.12.2019
ajp

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