

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

**FAO No.1809 of 2011
Date of Decision: 14.03.2019**

AnuradhaAppellant

Versus

Brij Lal Goyal and othersRespondents

Coram: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr. Namit Sharma, Advocate
for the appellant as Amicus Curiae.

Mr. Parampreet Singh Paul, Advocate
for respondent No.1.

None for respondent No.2.

Mr. Pardeep Goyal, Advocate for
respondent No.3-Insurance Company.

ARUN KUMAR TYAGI, J.

1. The claimant-injured (hereinafter referred to as the appellant) has filed the present appeal seeking enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal (S.A.S. Nagar), Mohali (for short 'the Tribunal') vide award dated 16.03.2010 passed in **MACT Case No.RT05 dated 26.05.2007/26.05.2009 titled Anuradha Vs. Brij Lal Goyal and others** on account of injuries suffered by her in a motor vehicle accident, which took place on 27.03.2005.

2. Briefly stated, the facts relevant for disposal of the present appeal are that the appellant filed claim petition under

Section 166 of the Motor Vehicles Act, 1988 (for short 'M.V. Act') on the averments that on 27.03.2005 she was going to Panchkula as pillion rider on scooter bearing registration No.CH-01W-5962 driven by her sister Pooja. When they were crossing Sector 45-46 roundabout, Santro Car bearing registration No.HR-09-F-0047, owned by respondent No.2 and insured with respondent No.3, came from opposite direction on wrong side driven by respondent No.1 at a very high speed, rashly and negligently without blowing horn and struck against their scooter due to which she suffered multiple injuries including fracture on right leg. DDR No.26 dated 28.03.2005 was registered in Police Post Burail, Chandigarh regarding the accident.

3. The appellant further averred in the petition that after the accident she was taken to Government Medical College & Hospital, Sector 32, Chandigarh where she remained admitted from 27.03.2005 to 30.03.2005. She was operated upon and plates were inserted in her right leg. She remained on bed for three months and had spent more than ₹50,000/- on her treatment. She would be again operated upon in future for removing the plates from her right leg on which huge amount is likely to be spent. She was working as staff nurse and getting a salary of ₹2,000/- per month and was earning ₹1,500/- per month from other sources. Due to the injuries suffered she became permanently disabled and is unable to walk properly. The appellant accordingly sought award of compensation of ₹5 lacs with costs and interest against respondents No.1 to 3.

4. Notice of petition was given to the respondents. On failure to appear despite service, respondent No.2 was proceeded against ex-parte. The petition was contested by respondents No.1 and 3. In his written statement respondent No.1 denied the accident and also the liability to pay compensation while pleading that the car in question was insured with respondent No.3. In its written statement respondent No.3 took preliminary objections as to respondent No.1 not having valid and effective driving licence and non-maintainability of the petition due to withdrawal of earlier petition filed in the Court of District Judge, Ropar. Respondent No.3 controverted the material averments made in the petition and denied its liability.

5. The Tribunal framed the issues and recorded the evidence produced by the parties. On perusal of the material on record and consideration of the submissions made by the learned Counsel for the parties, the Tribunal held that the appellant suffered injuries due to accident caused by rash and negligent driving of the Santro Car bearing registration No.HR-09-F-0047 by respondent No.1, awarded compensation of ₹15,000/- and directed respondents No.1 to 3 to pay the same jointly and severally within two months failing which appellant was to be entitled to interest at the rate of 7% per annum from the date of award till payment.

6. Feeling aggrieved, the injured-claimant has filed the present appeal.

7. I have heard the learned Amicus Curiae appointed for presenting the case of the appellant and learned Counsel for respondents No.1 and 3 and gone through the record.

8. Learned Amicus Curiae for the appellant has argued that the appellant remained hospitalized for 3 days. The Tribunal awarded ₹5000/- as compensation on account of medical expenses which is grossly inadequate. The Tribunal did not award any compensation towards conveyance, attendant, special diet, loss of earnings during treatment, future medical treatment and loss of future earnings on account of permanent disability. The Tribunal awarded meagre amount towards pain and suffering. The compensation awarded is not just and adequate. The interest awarded by the Tribunal is at very low rate and that too conditional. Therefore, the award may be modified and the compensation awarded may be enhanced.

9. On the other hand, learned Counsel for respondent No.1-Driver and learned Counsel for respondent No.3-Insurer have argued that the Tribunal has awarded just and adequate compensation to the appellant and she is not entitled for enhancement thereof. Therefore, the appeal may be dismissed.

10. It is now well settled that 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).

Reference in this regard may be made to decisions of Hon'ble Supreme Court in **Raj Kumar Versus Ajay Kumar and another (2011) 1 Supreme Court Cases 343** and **R. D. Hattangadi Versus Pest Control (India) Limited and others 1995 ACJ (SC) 366.**

11. So far as the claim of the appellant for expenses relating to treatment, hospitalization and medicines is concerned, the appellant testified as CW-1 that she remained on bed for three months and had to spend more than ₹50,000/- on her treatment. However, the appellant merely produced bills/receipts Ex.P-3 to Ex.P-8 showing that she incurred expenses of ₹3,470/- on her treatment and in view thereof amount of ₹5,000/- has been rightly awarded to the appellant by the Tribunal towards expenses incurred on her medical treatment.

12. The Tribunal did not award any amount towards future medical treatment. PW-7 Dr. Sandeep Gupta has testified that the appellant was operated upon and plates were inserted in her right leg. In view of this deposition, future medical treatment of the appellant would be necessary for removal of the said plates. In the facts and circumstances of the case, it would be just and proper to award amount of ₹10,000/- to the appellant towards future medical treatment.

13. In the present case, the Tribunal did not award any amount towards special diet, conveyance and attendant. It is common knowledge that in personal injury cases expenses are incurred on special diet, conveyance and attendant. In view of the nature of the injuries suffered by the appellant and the facts and circumstances of the case, it will be just and proper to award amount of ₹5,000/- towards special diet, ₹5,000/- towards transportation and ₹5,000/- towards attendant.

14. The Tribunal did not award any amount towards loss of earnings during the period of treatment. In her affidavit Ex.CW1/A the appellant pleaded that she was earning ₹2,000/- per month by working as staff nurse. Due to fracture on her right leg, the appellant would have suffered loss of earnings for three months during the period of treatment. Therefore, the appellant was entitled to award of an amount of (₹2000/- X 3) ₹6,000/- towards loss of income during the period of treatment.

15. So far as award of compensation for loss of future earnings due to permanent disability is concerned the appellant

has not produced any disability certificate to prove that she suffered any permanent disability due to the injuries suffered by her in the accident. Therefore, the Tribunal was justified in not awarding any amount under this head.

16. So far as the non-pecuniary general damages are concerned, the Tribunal merely awarded amount of ₹10,000/- towards pain and suffering as a consequence of the injuries and did not award any amount for loss of amenities. Keeping in view the nature of injury i.e. fracture on right leg, the amount awarded for pain and suffering was not just and adequate. In the facts and circumstances of the case, it would be just and proper to award amount of ₹20,000/- towards pain and suffering and ₹20,000/- towards loss of amenities. However, the injuries are not proved to have shortened the longevity of life and resulted in loss of expectation of life and the appellant is not entitled to any compensation therefor.

17. It follows from the above discussion that the appellant is entitled to payment of compensation as mentioned below:-

Sr. No.	Head	Compensation
1.	Expenses relating to medical treatment, hospitalization and medicines	₹5,000/-
2.	Future medical treatment	₹10,000/-
3.	Expenses relating to Conveyance, Special Diet and Attendant	₹15,000/-
4.	Loss of earnings during the period of treatment	₹6,000/-
5.	Loss of future earnings due to functional permanent disability	nil
6.	Pain and suffering	₹20,000/-

7.	Loss of amenities	₹20,000/-
8.	Shortening of longevity of life	-nil-
9.	Total Compensation	₹76,000/-

18. In the present case, the Tribunal directed the payment of compensation amount within two months failing which appellant was to be entitled to interest at the rate of 7% per annum from the date of award till payment which is challenged on both the counts of wrongful denial and low rate and the question which arises is as to what would be the appropriate rate of interest.

19. In claim petitions under Section 163-A or 166 of the M.V. Act, the Motor Accident Claims Tribunal is empowered by Section 171 of the M.V. Act to award interest, in the eventuality of claim petition being allowed, from the date of making the claim at such rate as may be specified by it.

20. In the present case, the accident took place on 27.03.2005. The claim petition was filed on 26.05.2007. Award was passed on 16.03.2010. The Tribunal was required to award interest from the date of filing of claim petition or give reasons justifying not awarding of the same. The Tribunal did not give any reason for not awarding interest on the amount of compensation awarded by it from the date of filing of claim petition till realization which constitutes material irregularity on the part of the Tribunal. In such like cases, interest is awarded not as return on investment but as compensation for loss of value and enjoyment of money denied to the claimant. Therefore, it will be just and reasonable

that interest is awarded to the appellant from the date of filing of the claim petition till realization.

21. In awarding interest, the Motor Accident Claims Tribunal is not bound by the provisions of Section 34 of the Code of Civil Procedure, 1908 to restrict the award of interest to 6% per annum and has to award interest at reasonable rate.

22. In **Puttamma and others Vs. K.L. Narayana Reddy and another 2014 (1) R.C.R. (Civil) 443**, Hon'ble Apex Court observed in para 60 as under:-

“This Court in **Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India and another (2003) 3 SCC 148** noticed that varying rate of interest is being awarded by the Tribunals, High Courts and this Court. In the said case, this Court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc.”

23. In **Supe Dei and others Vs. National Insurance Company Ltd. and another 2009 (4) SCC 513**, Hon'ble Apex Court held that 9% per annum would be the appropriate rate of interest to be awarded in Motor Accidents Claims compensation cases.

24. In **Sube Singh and another Vs. Shyam Singh (Dead) and others 2018 (2) R.C.R. (Civil) 131 (SC)** rate of interest of 6% per annum awarded by the Motor Accidents Claims Tribunal was modified by Hon'ble Supreme Court of India to 9% per annum.

25. In view of the observations in above referred judicial precedents, mercantile rate of interest prevalent, rate of interest allowed by Nationalized Banks on fixed deposit receipts and other relevant factors, it will be appropriate to modify the interest awarded by the Tribunal to 9% per annum.

26. It follows from the above discussion that the appellant is entitled to payment of compensation of ₹75,000/- by the respondents No.1 to 3 jointly and severally with costs and interest at the rate of 9% per annum from the date of filing of the claim petition till realization. Amount of ₹15,000/- already awarded to the appellant shall be liable to be deducted from the above-said enhanced amount.

27. In view of the above discussion, the appeal is allowed with costs and award dated 16.03.2010 is modified in terms discussed above.

(ARUN KUMAR TYAGI)
JUDGE

14.03.2019
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Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No