

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

FAO-1019-2012(O&M)

Date of decision:-25.4.2019

Sumer Singh

...Appellant

Versus

Sumer Singh and another

...Respondents

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

Argued by: Mr.Abhishek Yadav, Advocate
for the appellant.

Mr.Arun Sharma, Advocate
for respondent No.2.

H.S. MADAAN, J.

Petitioner/claimant Sumer Singh son of Gahar Singh, aged about 48 years, resident of village Dahina, Tehsil and District Rewari had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Sumer Singh – driver-cum-owner of motorcycle bearing registration No.HR34B-7327 and Reliance General Insurance Company Ltd., Mumbai insurer of the said motorcycle claiming compensation to the tune of Rs.10 lacs with interest.

According to the version of the claimant, on 9.10.2007 at about 6:00 p.m., he along with one Narender Kumar was returning to their houses on foot having bicycles carrying fodder; that when they reached on Kanina-Rewari road at a distance of 50 Sq.yard towards village Dahina, in

the meanwhile the offending motorcycle came from Kanina side being driven in a rash and negligent manner by respondent No.1 – Sumer Singh and struck against bicycle of claimant Sumer Singh from behind, resultantly claimant suffered multiple severe injuries on his left leg and head; that after receiving injuries in the accident, the claimant was taken to Arvind Yadav Hospital, where he was treated; that the accident was witnessed by Ajit Singh son of Ramphal; that formal FIR No.236 dated 12.10.2007 for the offences under Sections 279/337/338 IPC was registered against respondent No.1 – Sumer Singh with Police Station Khol. According to the claimant, he has spent Rs.1.5 lacs on his treatment, transportation and special diet etc.

On getting notice of the claim petition, both the respondents appeared and filed separate written statements contesting the petition. In the written statement submitted on behalf of respondent No.1, he had taken up a plea that no such accident involving his motorcycle had taken place and a wrong FIR was registered by the police in connivance with the claimant. Such respondent took various other objections challenging maintainability of the claim petition etc. and offered denial to the material assertions made in the petition, while craving for dismissal of the claim petition.

In the written statement filed on behalf of respondent No.2, it also denied the happening of incident as alleged by the claimant submitting that a wrong FIR had been got recorded by the local police; that the vehicle in question has been wrongly roped in; that the amount of compensation claimed is highly excessive; that respondent No.1 was not

holding a valid and effective driving licence. The answering respondent denied its liability to pay the compensation to the claimant.

On the pleadings of the parties, following issues were framed:

1. Whether the accident took place on 9.10.2007 at about 6:00 p.m. within the jurisdiction of PS Khol, village Dahina had occurred due to rash or negligent driving of motorcycle no.HR-34-B/7327 by Sumer Singh or any other person? OPP.
2. What is the amount of compensation to which the petitioner shall be entitled to on account of injuries sustained by him in the accident and from whom, if issue no.1 is decided in affirmative? OPP.
3. Whether the petitioner has no locus standi and cause of action to file present petition? OPR.
4. Whether the respondent no.1 was not holding a valid and effective driving licence at the time of accident, if so to what effect? OPR.
5. Whether the motorcycle was being driven in violation of terms and condition of insurance policy at the time of accident? OPR.
6. Relief.

Both the parties led evidence in support of their respective claims.

In order to prove his case, the petitioner/claimant got his statement recorded as PW1 besides examining Sh.Tilak Raj as PW2, Sh.B.K. Sharma as PW3, Sh.Manprit Singh as PW4, Sh.Mohit Kumar as PW5, Sh.Bala Krishan as PW6, Sh.Sanjay Sharma as PW7 and Sh.Vikrant Sharma as PW8.

On the other hand, respondent NO.1 tendered in evidence copy of driving licence as Ex.R1 and copy of registration certificate as Ex.R2, whereas respondent No.3 tendered in evidence copy of insurance policy as Ex.R3.

After hearing arguments, the Tribunal while allowing the petition vide award dated 13.6.2011, awarded compensation of Rs.2,91,868/- along with interest @ 6% per annum from the date of filing of the petition till its realization making liability of both the respondents to be joint and several.

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 respondent No.2 – insurance company, which put in appearance through counsel.

I have heard learned counsel for the appellant and learned counsel for respondent No.2 – insurance company besides going through the record.

Learned counsel for the appellant has contended that the claimant had suffered permanent disability to the extent of 45% and he had established that fact by placing on record disability certificate; that the Tribunal had accepted the factum of 45% disability suffered by the claimant awarding a sum of Rs.90,000/- in that regard, however, keeping in view the extent and nature of injuries suffered by him, which resulted in his long hospitalization and surgery with the result, there is restricted movement of the right ankle and shortening of leg besides partial loss of stability, he has become a permanent cripple, he deserved to be granted

much more compensation for 45% permanent disability.

Learned counsel for the appellant has referred to judgment by Hon'ble Supreme Court in that regard i.e. **Master Mallikarjun Versus Divisional Manager, The National Insurance Company Limited and another, 2013(4) RCR(Civil) 295** wherein dealing with a case when a child had suffered permanent disability in motor accident, it was observed that structured formula for awarding of compensation may not be followed and in addition to actual expenditure compensation be awarded as follows:

- (i) For permanent disability upto 10% Rs.One Lakh.
- (ii) Disability above 10% and upto 30% ₹3 lakhs.
- (iii) Disability upto 60% ₹ 4 lakhs.
- (iv) Disability upto 90% ₹ 5 lakhs.
- (v) Disability above 90% ₹ 6 lakh.

Whereas learned counsel for the respondent – insurance company has contended that the Apex Court in another judgment **Raj Kumar Versus Ajay Kumar and another, 2011 ACJ 1** had laid down the guidelines for calculation of the damages for permanent disability. He had contended that Master Mallikarjun's case (supra) related to the injuries suffered by a child aged about 12 years, whereas in the present case, the age of the claimant was about 48 years and the Tribunal has taken his avocation as that of helper in Haryana Tourism STC, Sohna receiving salary of Rs.10,714/- on the basis of statement of PW6 Sh.Bal Kishan, Senior Scale Stenographer, Haryana Tourism STC Sohna and there is nothing on record to show that his salary was reduced on account of

suffering injuries in the accident.

May it be so, however, on account of suffering 45% disability, the capacity of work of the claimant has definitely got reduced and after retirement the claimant may not be able to do any job requiring hard physical work and active movements and considering the nature and extent of injuries suffered by him, the period of his hospitalization and that his medical leave to the extent of 73 days was also exhausted, compensation of Rs.90,000/- awarded for permanent disability is appears to be on lower side. Thus, the compensation under the head permanent disability is enhanced to Rs.2,00,000/-.

The Tribunal on appreciation of evidence adduced before it has awarded medical and treatment charges of Rs.1,11,868/-, which does not call for any interference.

The Tribunal has awarded a sum of Rs.60,000/- under the head costs of transportation, special diet, attendant and loss of income etc., that amount also seems to be adequate.

For pain and suffering, a sum of Rs.30,000/- has been awarded, which in my view is sufficient.

However, the Tribunal has not awarded any compensation under the head loss of amenities and loss of expectation of life. The claimant deserves to be awarded a sum of Rs.30,000/- each under those two heads.

The total compensation comes out to Rs.4,61,868/-.

The Tribunal has awarded a total sum of Rs.2,91,868/- as compensation along with interest @ 6% per annum from the date of filing

of the claim petition till realization.

In that way, the enhanced amount comes to Rs.1,70,000/- (4,61,868 - 2,91,868). The appellant/claimant shall be entitled to recover the enhanced amount with interest at the rate of 7.5% per annum from the date of filing appeal till actual payment. The other terms and conditions shall remain the same as given in the original award.

With such modification, the appeal is allowed partly.

25.4.2019

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No