

FAO No. 568 of 2011 (O&M)

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

FAO No. 568 of 2011 (O&M)

Date of Decision: August 20, 2019

Baljeet Kaur Garg

..... Appellants(s)

Versus

Raghu Veer Singh and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sandeep Kumar Yadav, Advocate
for the applicant-appellant.

Mr. N.K. Manchanda, Advocate
for respondent no.3.

LISA GILL, J.

This appeal has been filed by the appellant-claimant seeking enhancement of compensation awarded to him vide award dated 28.09.2010, passed by learned Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal).

Brief facts of the case are that a claim petition under Section 166/144 of the Motor Vehicles Act, 1988 was filed by the injured-claimant seeking compensation on account of the injuries and disability suffered by him in the motor vehicle accident, which took place on 13.06.2009, due to the rash and negligent driving of the offending truck bearing registration No. RJ-21-GA-1719, by its driver. The claimant, it is stated, remained admitted in S.M.S. Hospital, Jaipur and being in a critical condition he was

shifted to Vijay Vergiya Hospital, Jaipur where he remained admitted till 25.06.2009. He was operated upon on 17.06.2009 and a rod was inserted in his thigh. It is claimed that Rs.3,00,000/- was incurred on his medical treatment. He suffered permanent disability to the tune of 7%. Claimant is stated to be 48 years old at the time of the accident and running a shop.

Learned Tribunal on considering the evidence on record concluded that the accident took place due to the rash and negligent driving of the offending truck bearing registration No. RJ-21-GA-1719, by its driver Raghu Veer Singh-respondent no.1 and the appellant-claimant suffered permanent disability to the extent of 7%. Learned Tribunal awarded a sum of Rs. 2,54,225/- as compensation, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Medical expenses	1,99,425/-
2.	Transportation charges	4,800/-
3.	Pain and suffering	50,000/-
	Total	2,54,225/-

The insurance company was exonerated from its liability to pay the compensation on the ground that the driver of the offending truck held a driving licence authorising him to drive a MMV/LMV only, whereas the offending vehicle was a truck.

Learned counsel for the appellant argues that learned Tribunal has grossly erred in absolving the insurance company from its liability to pay the compensation in as-much-as the driver of the offending truck was authorized not only to drive an MMV/LMV but a transport vehicle as well. It is further submitted that in another claim petition i.e. MACT No. RT31, filed by the

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present appellant seeking compensation on account of damage to his vehicle was allowed by the learned MACT, Narnaul on 12.08.2011 wherein the insurance company as well as the other respondents have been held jointly and severally liable to pay the said compensation. The said award has not been appealed against by the insurance company. It is further contended that meagre compensation has been awarded by the learned Tribunal which should be enhanced. It is specifically argued that compensation on account of the disability of 7% suffered by the appellant should also be awarded.

Learned counsel for the insurance company refutes the above said arguments while submitting that just and reasonable compensation has been awarded by the learned Tribunal, which calls for no enhancement. Moreover, the insurance company, it is urged, has been rightly absolved of all liability, though it is not denied that the insurance company has been held liable in MACT No. RT31 and the said decision has attained finality. Dismissal of this appeal is prayed for.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

There is merit in the argument raised by learned counsel for the appellant that the learned Tribunal has wrongly absolved the insurance company of its liability to pay the compensation. Learned counsel for the insurance company is unable to deny that the learned MACT, Narnaul vide award dated 12.08.2011 has held the insurance company as well as the other respondents jointly and severally liable to pay the compensation to the present appellant on account of the damage caused to his Maruti van in the

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accident which took place on 13.06.2009, in which the appellant has received injuries as well. Certified copy of the award dated 12.08.2011 has been taken on record of this appeal as C-1, on an application filed by the appellant, as learned counsel for the insurance company has verified the passing of the same and has further affirmed that no appeal has been preferred by the insurance company against the said award dated 12.08.2011, passed in MACT No.RT31, filed by the present appellant himself. Learned MACT, Narnaul has considered the entire matter and has specifically observed that the driver of the offending truck, as per the driving licence Ex. R4, was competent to drive not only a Medium Motor Vehicle/Light Motor Vehicle but a transport vehicle as well. Learned Tribunal has also taken note of award dated 28.09.2010, which is the subject matter of the present appeal. It is specifically observed in award dated 12.08.2011 that:-

8. The counsel for the respondent no.3 has submitted that as per the driving license Ex. R3/Ex.P7 the respondent no.1 was competent only to drive Medium Motor Vehicle/Light Motor Vehicle; Transport Vehicle. As per the Registration Certificate Ex.P6 the offending truck is a heavy vehicle, having gross weight of 16,200 kilograms. Therefore, at the time of the accident respondent no.1 was not having a valid and an effective driving license. Consequently, the respondent no.3 is not liable to pay any compensation to the petitioner. The counsel for the respondent no.3 in this regard has drawn attention of the court toward the judgment dated 28.9.2010

passed by the Motor Accident Claim Tribunal, Narnaul vide which the respondent no.3 was absolved of its liability to pay compensation viz a viz the accident in question, on the ground that the respondent no.1 was competent only to drive the MMV/LMV and the offending truck was a heavy motor vehicle.

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*12.A goods carriage vehicle, education institutional bus and a private service vehicle even if they are heavy goods vehicle would be deemed to be transport vehicle as per the mandate of Section 2(47) of the Motor Vehicle Act because a separate definition of good carriage, an education institutional bus and a private service bus has been given by Section 2(11), Section 2(14) and Section 2(33) of the Motor Vehicle Act. **The aforesaid mandate of the Motor Vehicle Act of treating the Transport Vehicle as a class apart is duly reflected in the driving license of the respondent no.1. Ex. P7/Ex.R3; in which it has been stated that the respondent no.1 was competent to drive MMV/LMV and Transport Vehicle. Therefore it is not disputed that as per the driving license Ex.R3/Ex.P7 the respondent no.1 was competent to drive a transport vehicle.** (emphasis added) Consequently, the material questions which require adjudication is whether the offending truck was a transport vehicle. In the absence of any evidence to the contrary the offending truck would be presumed to be a goods carriage vehicle as has been argued by the counsel for the petitioner because the respondent no.3 is not tendered any evidence to the effect that the offending truck was not a goods carriage vehicle.*

13. Consequently, the offending truck being a goods carriage vehicle was a Transport Vehicle and respondent no.1 was having a valid and an effective driving license Ex.R3/P7 to drive the offending truck. Therefore, respondent no.3 cannot be absolved of its liability to pay compensation to the petitioner viz a viz the accident in question.”

This finding has admittedly attained finality. Therefore, finding of the learned Tribunal absolving the insurance company from its liability in the present proceedings is set aside.

Perusal of the impugned award dated 28.09.2010 reveals that learned Tribunal has not awarded any compensation towards permanent disability suffered by the appellant. As per the disability certificate Ex.PW5/A, duly proved by PW-5 Dr. Dinesh Podar, the appellant suffered 7% disability on account of range of motion of the right knee joint to be reduced by 10% with deep complication. No argument has been raised regarding any loss of income being suffered by the appellant on account of the injuries/disability suffered by him. The appellant is thus entitled to a sum of Rs. 14,000/- (@ Rs.2,000/- per percent of the disability) for the permanent disability suffered by him. The appellant is also entitled to a sum of Rs.8,000/- each for attendant charges and special diet. He is further entitled to a sum of Rs.20,000/- for loss of amenities. Rest of the amount is maintained.

Appellant-claimant is, thus, entitled to compensation which is re-worked as under:-

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Sr. No.	Heads	Calculations
1.	Medical expenses	1,99,425/-
2.	Transportation charges	4,800/-
3.	Pain and suffering	50,000/-
4.	Permanent disability	14,000/-
5.	Attendant charges	8,000/-
6.	Special diet	8,000/-
7.	Loss of amenities	20,000/-
	Total	3,04,225/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimant shall be entitled to interest at the rate of 7.5% per annum instead of 7% on the entire amount from the date of filing of the petition till realization.

Appeal is accordingly disposed of.

August 20, 2019.
Sunil

(LISA GILL)
JUDGE

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