

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

(1)

**FAO No.4452 of 2012 (O&M)
Date of Decision: March 12, 2019.**

Gaurav Partap

.....APPELLANT(s).

VERSUS

Amit Kumar and others

.....RESPONDENT(s).

(2)

FAO No.4692 of 2012 (O&M)

Gaurav @ Monty

.....APPELLANT(s).

VERSUS

Amit Kumar and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Robin Dutt, Advocate
for the appellant (s).

Mr. Vinod K. Kanwal, Advocate for
Mr. Ashit Malik, Advocate
for respondent No.3.

SURINDER GUPTA, J.

The above captioned appeals have been filed against the common award passed by Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhari (later referred to as 'the tribunal') awarding compensation of ₹65,997/- to appellant Gaurav Partap and ₹1,08,710/- to appellant Gaurav @ Monty for the injuries suffered by them in the accident, which took place on

08.02.2011 allegedly due to rash and negligent driving of motorcycle bearing registration No.HR-02N-0600 (later referred to as 'the offending vehicle) by its driver Amit Kumar-respondent No.1.

The tribunal consolidated both the claim petitions vide order dated 07.09.2011 for recording the evidence, which was recorded in case titled as *Gaurav Partap Vs. Amit Kumar and others* bearing MACT No.169 of 2011. The facts of the case as described in para 23 of the aforesaid petition are enumerated as follows:-

“That on 8.2.11 the claimant has gone to Gym at Radaur from his house on motorcycle No.HR05-V/8509, but due to lock of door of Gym, the petitioner alongwith Gourav @ Monty s/o Gian Chand, r/o Vill. Radaur, who was already standing in front of the Gym, were going to bring key from the house of Gym Teacher situated at Khera Mohalla, Radaur. The petitioner was driving his motor cycle at slow speed and the said Gaurav @ Monty was on pillion of the said motor cycle. At about 5:15 A.M. when they reached near the shop of Rawal, Main Bazar Radaur, in the mean time the respondent No.1 while driving his motorcycle No.HR02-N/0600 in a rash and negligent manner and at a high speed came from opposite direction and hit the motor cycle of petitioner by coming to wrong side. By the impact both fell down along with motor cycle. The petitioner suffered injuries on his right leg, right thigh, right knee and left shoulder. The said Gourav @ Monty also sustained grievous injuries on his person. The respondent No.1 fled away from the spot along with offending motor cycle. The petitioner and Gourav Monty were taken to Goel Hospital, Jagadhri, where the petitioner is still under treatment. The Rukka was sent to the police and FIR

No.29 dated 12.2.2011 u/s 279, 337 IPC was recorded in P.S. Radaur on the statement of petitioner. The petitioner has become permanently disabled due to the injuries sustained in the accident.

That the accident in question and resultant injuries and disability to the petitioner, has happened due to the rash and negligent driving of motor cycle No.HR02-N/0600, and therefore, the respondent No.1 being driver and respondent No.2 being the owner and respondent No.3 being the insurer of motorcycle No.HR02-N/0600 are jointly and severally liable to pay compensation to the claimant/petitioner.”

The amount of compensation as awarded to claimant Gaurav Partap was computed as follows:-

Sr. No.	Heads	Compensation amount
1.	Compensation for pain and sufferings	₹20,000/-
2.	Compensation for expenses on treatment including medicines	₹40,997/-
3.	Compensation for attendant in the hospital, transportation and special diet	₹5,000/-
	Total	₹65,997/-

The amount of compensation as awarded to claimant Gaurav @ Monty was computed as follows:-

Sr. No.	Heads	Compensation amount
1.	Compensation for pain and sufferings	₹20,000/-
2.	Compensation for expenses on treatment including medicines	₹52,610/-
3.	Compensation for attendant in the hospital, transportation and special diet	₹36,100/-
	Total	₹1,08,710/-

Learned counsel for the appellants has argued that claimant

Gaurav @ Monty remained admitted in the hospital from 08.02.2011 to

20.02.2011 and again from 27.06.2011 to 10.07.2011. He had suffered multiple grievous injuries and fracture. He was operated for his fractured leg twice. Thereafter, he had to go to the hospital for follow up treatment and remained on bed for quite a long time as he was not in a position to walk on his legs and had suffered permanent disability. He was 21 years of age at the time of accident and was helping his father in his dry-cleaning business and was earning around ₹5000/- per month. He was student of MLN College, Radaur and could not continue his studies. He spent around ₹2 lakhs on his treatment but could not produce all the receipts. However, the tribunal could take note of the fact that he remained admitted in hospital quite a long time but the compensation awarded for expenses of attendant is on lower side. No compensation was awarded towards loss of income and anticipated future medical expenses.

Regarding claimant Gaurav Partap, learned counsel for the appellants has argued that he had also suffered multiple grievous injuries and fracture of leg and remained admitted in the hospital upto 20.02.2011 and thereafter, remained on bed for a quite long time. He was also student in MLN College and was managing affairs of agriculture, thereby earning about ₹5,000/- per month. Even after getting cured, he required continuous medical aid, physiotherapy etc. but the tribunal has not awarded any compensation towards future medical expenses and loss of income.

Learned counsel for respondent No.3 has argued that tribunal while awarding compensation had taken note of the injuries suffered by the claimants and has rightly allowed compensation towards medical expenses, pain and suffering, transportation charges and special diet. The accident

had taken place in the year 2011 and the compensation awarded by the tribunal is adequate as per the money value prevailing at that point of time.

The claimants examined Dr. Mahavir Goel of Goel Hospital, Jagadhari, who stated that on 08.02.2011 at about 6.45 a.m., Gaurav Partap son of Kamlesh Partap was admitted in his hospital with injuries suffered in a road side accident. On investigation and x-ray examination, he was diagnosed as a case of “fracture shaft femur right side with fracture both bones right leg with fracture medial malleolus right ankle with fracture scapula left side”. He was operated on the same day and inter-locking nailing of right femur and right tibia was done. Fracture medial malleolus was fixed with screw while fracture scapula was treated conservatively. He was discharged on February 20, 2011 as he was not having any post operative complication. He was advised to come to the hospital for follow up and high calcium-protein diet was recommended to him. He proved the medical bills of ₹26,450/- and receipts of charges during the follow up treatment. He has stated that patient will need another operation for removing of implant for which he had to incur expenditure of ₹20,000/-.

Regarding the injuries suffered by patient Gaurav @ Monty son of Gian Chand, Dr. Mahavir Goel PW3 has stated as follows:-

“On 08.02.2011, at 6.45 a.m., patient Gaurav son of Gian Chand aged about 19 years resident of Radaur, District Yamuna Nagar was admitted in my hospital with a history of road side accident. After routine investigation and x-ray examination, he was diagnosed as a case of fractures both bones right leg with lacerated wound on right leg with fracture pelvis with fracture ribs right side. He was operated on 09.02.2011 and closed

intramedullary nailing of tibia was done and fracture pelvis and ribs were treated conservatively. Patient did not have any post operative complication and was discharged on 20.2.2011 to be followed later on as OPD patient. Patient was advised high calcium and protein diet during the period of treatment. I charged ₹15950/- as per bill Ex.P6. Patient was again admitted on 27.06.2011 and he was again operated on 27.06.2011 and he was discharged on 10.07.2011. I charged ₹13,000/- as per bill Ex.P17. Ex.P18 is the discharge card of Mr. Gaurav. Ex.P19 to P37 are the receipts of the charges during follow up treatment. Patient was transfused two units of blood during the period of hospitalisation. Patient was advised application of brace on his right leg.”

Admittedly, both the injured did not suffer any permanent disability. From the evidence on record, it is evident that Gaurav @ Monty remained admitted in hospital for about 27 days. He was operated twice for the fractures in his leg and thereafter, he had to go for follow up treatment. It is well-known fact that a person who had suffered fracture injuries had to remain on bed for a quite long time. He was 21 years of age at the time of accident and during the period, he remained on bed, he suffered loss of income. A patient, who had suffered various fracture injuries, requires constant medical aid and physiotherapy, even after the joining of his fracture, to attain normalcy but the tribunal has not awarded any compensation towards the future medical expenses.

Dr. Mahavir Goel has deposed while appearing as PW3 that Gaurav Partap son of Kamlesh Partap required another operation for removal of implant and had to incur expenditure of ₹20,000/-. About other

claimant, Gaurav @ Monty son of Gian Chand, he has stated that he was transfused two units of blood during his admission in the hospital and advised application of brace on his right leg.

Keeping in view the period of hospitalisation of claimants, nature of injuries suffered by them resulting in consequent loss of income, services of attendant, special diet, transportation for their regular follow up, I am of the opinion that compensation awarded by the tribunal is not adequate and the same is reassessed as follows:-

Appellant-claimant Gaurav Partap son of Kamlesh Partap

Sr. No.	Heads	Compensation amount
1.	Compensation for pain and sufferings (as awarded by the tribunal)	₹20,000/-
2.	Compensation for expenses on treatment including medicines(as awarded by the tribunal)	₹40,997/-
3.	Compensation for expenses on attendant	₹5,000/-
4.	Compensation for transportation charges	₹5,000/-
5.	Compensation for special diet	₹5,000/-
6.	Loss of income (@₹5000/- per month for three months)	₹15,000/-
7.	Compensation of future medical expenses (including the expenses for operation for removing of implant).	₹30,000/-
	Total	₹1,20,997/-

Appellant-claimant Gaurav @ Monty son of Gian Chand

Sr. No.	Heads	Compensation amount
1.	Compensation for pain and sufferings (as awarded by the tribunal)	₹20,000/-
2.	Compensation for expenses on treatment including medicines(as awarded by the tribunal)	₹52,610/-
3.	Compensation for attendant in the hospital, transportation and special diet	₹50,000/-
4.	Loss of income (@₹5000/- per month for three months)	₹15,000/-

Sr. No.	Heads	Compensation amount
5.	Compensation of future medical expenses (including the expenses for operation for removing of implant).	₹25,000/-
	Total	₹1,62,610/-

As a sequel of my above discussion, both the aforementioned appeals have merits and are allowed. The award of the tribunal is modified and the compensation allowed to the claimant Gaurav Partap (FAO-4452-2012) is enhanced from ₹65,997/- to ₹1,20,997/- and to claimant Gaurav @ Monty (FAO-4692-2012) is enhanced from ₹1,08,710/- to ₹1,62,610/- for the injuries suffered by them. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the appeal till actual realisation. Liability to pay the amount of compensation shall be as per the award. Respondent-insurance company will deposit the shares of appellants-claimants in their bank accounts or pay the same through demand drafts. The claimants shall also be entitled to costs of this appeal.

March 12, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No