

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

FAO-1726-2013(O&M)

Date of decision:-15.7.2019

Surjit Kaur

...Appellant

Versus

Tirlochan Singh and others

...Respondents

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

Present: Mr.Vikram Bali, Advocate
for the appellant.

Mr.Naresh Kaushal, Advocate
for respondent No.1.

Mr.Vinod Pundir, Advocate for
Mr.Chander Kant Thakur, Advocate
for respondent No.3.

H.S. MADAAN, J.

On account of suffering injuries in a motor vehicular accident, petitioner/claimant – Surjit Kaur had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Tirlochan Singh – owner, Gaganesh – driver and Rajinder Singh Aulakh alleged owner of motorcycle bearing registration No.PB-12-D-5634 (hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.15 lacs along with interest.

As per the case of the claimant on 21.10.2006 at about 7:30 p.m., she was pillion riding scooter bearing registration No.CH-01-T-1107 being driven by Gaurav Saini coming from Shiv Mandir, Sector 23-D,

Chandigarh and going towards her House No.3434, Sector 23-D, Chandigarh; that when the scooter in question was in the process of taking a turn towards the house of the claimant, then the offending vehicle being driven by respondent No.2 – Gaganesh in a rash and negligent manner at a very high speed came from opposite side and struck against the scooter, resultantly, the claimant fell on the road and suffered multiple injuries; that she was taken to General Hospital, Sector 16, Chandigarh where she was medically treated; that an FIR No.459 dated 25.10.2006 was registered regarding the accident against respondent No.2 – Gaganesh with Police Station Sector 17, Chandigarh.

According to the claimant, she was aged about 45 years at the time of accident and was doing household work and as a result of suffering injuries in the accident including fracture of right femur shaft, she has become permanently disabled; that she had to spent a sum of Rs.1.5 lakhs on her treatment from General Hospital, Sector 16, Chandigarh and CMC Hospital, Sector 17, Chandigarh and she is still bedridden and under treatment.

On notice, respondents No.1 and 2 had put in appearance and offered a contest, whereas respondent No.3 did not appear despite service and as such he was proceeded against ex-parte.

In the written statement filed by respondent No.1, he had pleaded that he had sold his motorcycle No.PB-12-D-5634 to Rajinder Singh Aulakh son of Sh.Jasbir Singh, resident of village and Post Office Tajpur, District Ropar (Punjab) and necessary documents in that regard were executed; that the possession of the said motorcycle was handed

over to said Rajinder Singh by the answering respondent, in that way, he was not liable to pay any compensation.

In the written statement submitted on behalf of respondent No.2, he denied having caused any accident much less by his rash and negligent driving of the offending vehicle. According to him neither the motorcycle belongs to him nor he was driving it, as such, he is not liable to pay any compensation.

In the end, both the respondents prayed for dismissal of the claim petition.

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

1. Whether the accident caused due to rash and negligent driving of vehicle No.PB-12-D-5634 by respondent No.2, if so, whether Surjit Kaur suffered injuries in the accident in question? OPP.
2. If issue No.1 is decided in favour of claimant, whether claimant is entitled for compensation, if so, how much and from whom? OPP.
3. Whether respondent No.2 was not holding the valid and effective driving licence on the day of occurrence? OPR-3.
4. Relief.

Parties were afforded adequate opportunities to lead evidence.

After contest, the Motor Accident Claims Tribunal, Chandigarh while allowing the petition partly vide award dated 5.1.2013, awarded compensation of Rs.52,618/- along with interest @ 7.5% per annum from the date of filing of the petition till realization to the claimant

payable by respondents No.2 and 3 jointly and severally.

Feeling that the compensation awarded to her was on lower side, the claimant has filed the present appeal seeking enhancement of compensation, notice of which was given to the respondents and respondents No.1 and 3 have put in appearance through counsel, whereas issuance of notice to respondent No.2 was dispensed with.

I have heard learned counsel for the parties besides going through the record.

The Tribunal considering the facts and circumstances of the case and evidence adduced by the parties has decided issue No.1 in favour of claimant holding that respondent No.2 Gaganesh was author of the accident by his rash and negligent driving of the offending vehicle causing injuries to the claimant. Furthermore, issue No.2 has been decided in favour of the claimant and against respondents No.2 and 3 holding that the claimant is entitled to recover compensation from respondents No.2 and 3 jointly and severally, whereas respondent No.1 was not liable since in view of delivery receipt Ex.R1, the possession of the motorcycle had already been delivered by respondent No.1 to respondent No.3 Rajinder Singh Aulakh, which fact was further corroborated from copies of affidavits Ex.R2 and Ex.R3 showing sale of the motorcycle in question. Whereas issue No.3 was decided holding that this issue had become redundant.

The claimant is aggrieved on two counts. Firstly with regard to the quantum of compensation awarded to her and secondly respondent No.1 having been absolved of its liability to pay compensation.

Firstly coming to the quantum part. The compensation of Rs.52,618 was awarded to the claimant as per details below:

Sr.No.	Head under which amount awarded	Amount
1.	Compensation on account of 10% permanent disability	Rs.20,000/-
2.	Medical Expenses	Rs.22,618/-
3.	Pain and Suffering	Rs.5,000/-
4.	Expenses incurred on transportation	Rs.2,000/-
5.	Expenses incurred on nutritious diet	Rs.3,000/-
	Total	Rs.52,618/-

As per the own case of the claimant, she has been a housewife doing household work. From the disability certificate Ex.P32 duly proved by Dr.D.K. Pathak, it transpires that the claimant had suffered 10% permanent disability, which was with regard to left lower limb. The claimant has further examined PW1 Dr.Deepak Bakshi, Medical Officer, GMSH-16, Chandigarh, who deposed that injuries on the person of claimant were found to be grievous in nature. He had proved her MLR as Ex.P1.

Though the Apex Court in judgment **Master Mallikarjun Versus Divisional Manager, The National Insurance Company Ltd. and another, 2014(14) SCC 396** has provided the yardstick for award of compensation to a child, who suffered permanent disability in a motor vehicular accident providing that for permanent disability up 10%, Rs.1 lakh is to be awarded besides some more compensation under different heads. However, since in the present case the permanent disability is with

regard to left lower limb and not the entire body, though the claimant may not be entitled to Rs.1 lakh as compensation on that account but the compensation of Rs.20,000/- granted to her in that regard is somewhat on lower side and the same is enhanced to **Rs.40,000/-**.

The claimant remained admitted in the hospital from 22.10.2006 to 25.10.2006 and as per medical bills/receipts proved in evidence by her Ex.P3 to Ex.P31, she had spent a sum of Rs.22,618/- on her treatment. The Tribunal has awarded that amount to the claimant. However, as a matter of common knowledge many a times, the record of various amounts spent on purchase of medicines in the form of bills, receipts, cash memos etc. is not kept or at times it gets misplaced or lost. Thus, the compensation under that head is enhanced to **Rs.25,000/-**.

With such type of injuries suffered by the injured, claimant would be requiring further treatment and some arrangement for the same deserves to be made. I award a sum of **Rs.10,000/-** under that head.

As far as the compensation awarded by the Tribunal on account of pain and suffering to the tune of Rs.5,000/-, in my view the same is on lower side. In view of the number of injuries suffered by the claimant, period of hospitalization, it is very difficult to quantify the pain and suffering undergone by a person suffering injury requiring long hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, I enhance the said amount to **Rs.15,000/-** under that head.

The compensation granted to the claimant as transportation expenses is to the extent of Rs.2,000/- only, which in my view is a meagre

amount. With injured having remained hospitalized for several days and undergoing various tests and keeping in account the view the visits for follow-up treatment, the amount needs to be enhanced to **Rs.10,000/-** and it is ordered accordingly.

Similarly, the amount of Rs.3,000/- awarded towards nutritious diet is on lower side, which is enhanced to **Rs.10,000/-**.

The claim on account of charges for personal attendant has been rejected simply for the reason that any domestic help was required to look after the household affairs. The Tribunal fell in error in doing so. A person suffering such type of injuries and remaining hospitalized for several days and then going to hospital/doctor for follow up treatment does require assistance of somebody in being looked after and moving around. The household work, which the claimant was doing must have been got done by some other person. The efforts put in, in that regard cannot be simply ignored in such a manner. The claimant might not have employed a regular attendant but then she required help in looking after and assistance for doing household work. A sum of **Rs.10,000/-** is awarded to her in that regard.

No amount has been awarded to the claimant on account of loss of amenities and loss of expectation of life. The claimant on account of injuries suffered by her would not be able to walk, run or sit as she was prior to the accident and her life expectancy has also got affected. A sum of Rs.15,000/- each (total **Rs.30,000/-**) is awarded to her under that heads.

Thus, the total compensation comes out to Rs.1,50,000/-.

Now coming to the liability of respondent No.1, who was

admittedly registered owner of the motorcycle in question at the relevant time. The Tribunal has wrongly let him off observing that possession of motorcycle stood transferred to respondent No.3 and documents for sale had also been prepared. Admittedly respondent No.1 was registered owner of the vehicle at the time of accident. It being so, he cannot avoid liability to pay compensation stating that he was not in possession of the motorcycle at the relevant time having sold the same to respondent No.3, though the ownership stood transferred subsequent to the happening of the accident.

Learned counsel for the appellant has referred to judgment **Naveen Kumar Versus Vijay Kumar Ors** in Civil Appeal No.1427 of 2018 by the Apex Court. The relevant para No.13 of that judgment is reproduced as under:

13. The submission of the petitioner is that a failure to intimate the transfer will only result in a fine under Section 50(3) but will not invalidate the transfer of the vehicle. In Dr.TV Jose, this Court observed that there can be transfer of title by payment of consideration and delivery of the car. But for the purposes of the Act, the person whose name is reflected in the records of the registering authority is the owner. The owner within the meaning of Section 2(3) is liable to compensate. The mandate of the law must be fulfilled.

Therefore, respondent No.1 is found to be equally liable along with respondents No.2 and 3 and the verdict given by the Tribunal

is modified accordingly.

The Tribunal has awarded compensation of Rs.52,618/- along with interest @ 7.5% per annum from the date of filing of the petition till realization payable by respondents No.2 and 3 jointly and severally. The same is enhanced to Rs.1,50,000/-.The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount of Rs.1,50,000/-, payable by respondents No.1 to 3 jointly and severally.

With such modifications, the appeal is allowed partly with costs.

15.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No