

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 358 of 2013 (O&M)

Date of decision : 10.12.2019

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Ram Singh

.....Appellant

vs.

Kushal Kumar and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. S.S. Joshi, Advocate for the appellant

Mr.Punit Jain, Advocate for

Mr. M.B. Jain, Advocate respondent No. 3.

Mr. Banni Thomas, Advocate for respondent No.4

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H. S. Madaan, J.

Petitioner – claimant Ram Singh son of Kundan Lal, resident of Industrial Area, Chandigarh, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Kushal Kumar – driver, K.S. Joshi - owner and the New India Assurance Company, Patiala – insurer of Esteem car

bearing registration No. CH-03-8721 (hereinafter referred to as 'the offending car'), claiming compensation, on account of suffering injuries in the motor vehicular accident, involving such car. Earlier The Oriental Insurance company, Chandigarh, had been impleaded as respondent No.4, but it was deleted from the array of respondents vide order dated 28.5.2010.

As per version of the claimant, he has been doing a business earning Rs.30,000/- per month. On 26.5.2009, he was driving his Sunny vehicle, coming from the side of Sector 26, Chandigarh. When he reached near the light point of Sector 26, Chandigarh, near Bapu Dham Colony, an Esteem Car bearing registration No. CH-03-8721, being driven in a rash and negligent manner by respondent no.1 – Kushal Kumar, came and hit the scooter of the claimant. Resultantly, the claimant fell down and suffered multiple injuries, including on his right foot and left leg. The scooter was badly damaged. He was taken to Sector 32 Hospital, Chandigarh. The accident was witnessed by Genda Lal son of Malhan, resident of near Railway Crossing, Chandigarh. DDR No. 40 dated 26.5.2009 was recorded regarding the accident. According to the claimant, on account of suffering injuries in the accident, he could not work for a considerable time and had to spend a lot of money on his treatment. He prayed for grant of compensation amount of Rs.18.50 lacs with interest and costs.

On being put to notice, all the three respondents appeared and filed written replies, contesting the claim petition. Issues on merits were framed. Parties were given adequate opportunities to lead

evidence. On conclusion of trial, the Motor Accidents Claims Tribunal, Chandigarh, vide award dated 5.9.2012, accepted the claim petition and awarded the compensation of Rs.1,18,370/- with interest @ 7.5% per annum from the date of filing of claim petition till actual realization. The liability of all the three respondents, to pay this amount, was held to be joint and several.

The petitioner – claimant was not satisfied with the amount of compensation granted to him by the Tribunal, as such he has approached this Court by way of filing an appeal.

Notice of the appeal was given to the respondents, who have put in appearance through counsel.

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

The Tribunal, on analysis of the evidence adduced before it, has come to the conclusion that the accident in which the petitioner-claimant had received injuries, had taken place on account of rash and negligent driving of the offending car by respondent no.1- Kushal Kumar. That finding is proper and appropriate and does not call for any interference. For the said reason the driver, owner and Insurance company of the offending car are liable to pay compensation to the petitioner – claimant.

For the purpose of assessing the compensation, the Tribunal has noticed that though the disability certificate of the petitioner claimant had been placed on the file but the doctor who was member of the Board of Doctors, which had examined the petitioner -claimant

and issued the medical certificate, was not produced as a witness before the Tribunal, to prove the certificate. This is a serious omission on the part of the claimant. Otherwise, in the disability certificate, the petitioner -claimant has been diagnosed as an operated case of trimalleolar ankle with severe restrictions of ankle movements and was temporarily disabled by 30% with respect of right lower limb. It is to be taken note of that the disability has not been opined to be permanent in nature and disability certificate has not been proved by a competent person.

Nevertheless, as per version of the claimant, he has been working as a vegetable seller, earning Rs.30,000/- per month. The petitioner claimant would indeed face hardship in doing such business of vegetable selling and needs to be compensated on account of suffering disability, which is result of receiving injuries in the mishap. The Tribunal has awarded a sum of Rs.40,000/- to the claimant in that regard.

Although learned counsel for the appellant-claimant has submitted that on account of suffering injuries the earning capacity of the petitioner – claimant has been greatly reduced and the compensation awarded to him is on very lower side. He has referred to the following various judgments, in support of his contentions:-

1) Mohan Soni vs. Ram Avtar Tomar and others, 2012 (1)

SCC (Cri) 641;

2) Munusamy and others vs. Managing Director, Tamil

Nadu State Transport Corporation (Villupuram) Ltd.,

2018 (2) RCR (Civil) 31;

3) Anil Kumar vs. Branch Manager, National Insurance

Company Ltd. & another 2018 (4) RCR (Civil) 210;

4) Durga Prasad and another vs. Nilesh Kumar and others

2018 ACJ 2401;

5) New India Assurance Co. Ltd. vs. Manoj Kumar and

others 2018 ACJ 2409;

6) Subburah and others vs. P. Venkatakrishna Rajan and

others 2018 ACJ 2417;

7) Gopal vs. Manager, Reliance General Insurance Co. Ltd.

& another 2018 ACJ 2419;

8) Smt. Sarla Verma and others vs. Delhi Transport

Corporation and another 2009 (3) RCR (Civil) 77;

9) Dr. Gauri Shankar Prasad Verma and another vs.

Presiding Officer, Motor Accidents Claims Tribunal,

Ranchi and others 2011 ACJ 297;

10) Govind Yadav vs. New India Assurance Co. Ltd. 2012

ACJ 28;

11) Anita Devi and others vs. Shamsher Singh and others

2012 ACJ 153; and

12) Kashwi Aggarwal vs. United India Insurance Co. Ltd.

and others 2012 ACJ 296;

Whereas learned counsel appearing for the Insurance company has submitted that the petitioner -claimant has not suffered any permanent disability and amount of Rs.40,000/- granted to him

for suffering disability which is temporary in nature, is adequate. He has further contended that the judgments relied upon by learned counsel for the claimant, mainly deal with the cases where the petitioner-claimant had suffered permanent disability.

After hearing learned counsel for the parties and going through the record, I find that considering the fact that the petitioner claimant has suffered a serious injury in his right lower limb and is stated to have undergone surgery for the same, resultantly has suffered disability, which though is not proved to be permanent in nature, but one thing is there that for a pretty long time he would not be able to sit and squat and work with the same efficiency as he could do earlier. The authorities relied upon by the learned counsel for the claimant have been rightly distinguished by learned counsel for the Insurance company, since they relate to the cases of permanent disability.

Nevertheless, I find that the amount of Rs.40,000/- granted earlier by the Tribunal deserves to be enhanced and the same is enhanced to Rs.75,000/-.

According to the claimant, on account of suffering injuries in the accident, he could not do any work for two years. Though the period stated by him seems to be quite long. However, considering the nature of his work, the probable monthly income and the period for which he might not have been able to move out of the house on account of suffering injuries, I find that a sum of Rs.25,000/- awarded to him by the Tribunal on account of loss of earning is

proper and appropriate.

The Tribunal has awarded a sum of Rs.10,000/- to the claimant towards transportation charges. The said amount is on lower side. The same is enhanced to Rs.20,000/-.

The Tribunal has awarded a sum of Rs.30,000/- to the claimant under the head pain and suffering, loss of future enjoyment of life etc. However, the Tribunal fell in error in granting compensation clubbing various head. The claimant deserves to be granted Rs.30,000/- on account of pain and suffering and for the reason that he would not be able to lead life of a normal person as he could do prior to suffering of injuries, on account of loss of future enjoyment and future amenities, a sum of Rs.25,000/- is awarded to him under the said head. Another sum of Rs.20,000/- is awarded to him for special diet and Rs.20,000/- as attendant charges during the period of his hospitalization and going for follow up treatment.

The Tribunal has awarded a sum of Rs.13,370/- towards medical treatment considering the bills produced by him on the record. However, many a times the chemists do not issue bills for purchase of medicines and sometimes the bills/cash memos gets lost/misplaced. Further the Tribunal has not made any arrangement for future medical expenses for the injured. Therefore a sum of Rs.30,000/- is awarded towards medical expenses and future medical treatment.

Thus the claimant is entitled to get a total compensation of
Rs. 75,000 + 25,000 + 20,000 + 30,000 + 25,000 + 20,000 + 20,000

+ 30,000 = Rs.2,45,000/-.

The Tribunal has awarded a compensation of Rs.1,18,000/- to the claimant. Thus the claimant is held entitled to additional compensation of Rs.2,45,000 – 1,18,000 = Rs.1,27,000/-. The claimant would be entitled to get interest @ 7.5% per annum on this amount from the date of filing of appeal till actual realization. Liability to pay the additional compensation shall remain the same as mentioned in the original award.

With above modification in the impugned award, the appeal is allowed partly, with costs.

10.12.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No