

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

FAO-2177-2014

Date of decision:-11.7.2019

Avtar Singh and others

...Appellants

Versus

Balwinder Singh and others

...Respondents

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

Present: Mr.Amardeep Singh Mann, Advocate
for the appellants.

Mr.Sudhanshu Makkar, Advocate
for respondent No.3.

H.S. MADAAN, J.

Briefly stated facts of the case are that on 12.1.2011 at about 12:30 p.m., petitioner-claimant Avtar Singh aged about 26 years was going to Court Complex, Fatehgarh Sahib on his motorcycle bearing registration No.PB-23D-0998 and when he reached in front of shop of Ganpati Jewellers at bus stand of village Jakhwali, Police Station Mulepur, then a Maruti Alto car bearing registration No.PB-08-BP-2231(hereinafter referred to as the offending vehicle) came from Sirhind side and struck the motorcycle of Avtar Singh from front side; that the car in question was being driven in a rash and negligent manner by respondent No.1 – Balwinder Singh; that after hitting the motorcycle, the car dragged Avtar Singh to some distance, resultantly Avtar Singh

suffered multiple and grievous injuries including serious internal head injuries and became unconscious; that the accident was seen by Sh.Amrik Singh son of Balbir Singh, resident of village Saimfampur and Sh.Ravinder Singh son of Bhupinder Singh, resident of village Jakhwali, Tehsil and District Fatehgarh Sahib; that after the mishap, respondent No.1 – Balwinder Singh ran away from the spot; the injured/claimant Avtar Singh was taken to hospital where he was medically treated; that an FIR No.4 dated 13.1.2011 for the offences under Sections 279, 337, 338 IPC was got registered against respondent No.1 – Balwinder Singh with Police Station Muelpur.

As per the version of the claimant before suffering injuries in the accident, he was working as a typist earning Rs.10,000/- per month from that avocation as well as from his other occupation of dairy farming and as a result of suffering injuries in the accident, he is still unconscious and lost his memory and his brain has been affected on account of head injury; that an amount of more than Rs.5 lakhs has been spent upon his treatment and other ancillary charges.

The claim petition has been filed by claimant Avtar Singh through his father Sh.Jaipal and his father Sh.Jaipal and his mother Smt.Sarabjit Kaur also joined him as claimants in filing claim petition against respondents i.e. Balwinder Singh – driver, Sumeetpreet Singh – owner and National Insurance Company, New Delhi – insurer of the offending vehicle.

Notice of the claim petition was given to respondents, who put in appearance and offered a contest. Issues on merits were framed.

Parties were afforded adequate opportunities to lead evidence.

After contest, the Tribunal while allowing the petition partly vide award dated 4.9.2013, awarded compensation of Rs.2,43,966/- along with interest @ 7.5% per annum from the date of filing of the petition till realization payable by respondents No.1 to 3 jointly and severally.

Feeling that the compensation awarded to them was on lower side, the claimants have filed the present appeal seeking enhancement of compensation, notice of which was given to respondent No.3 – insurance company, which had put in appearance through counsel.

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

The claimants had examined Dr.Navdeep Singh Brar, Medical Officer, Civil Hospital, Fatehgarh Sahib as PW3, who proved the disability certificate of claimant Avtar Singh with regard to the head injury, who stated that the patient was a case of organic brain pathology with permanent disability of 71.99% disability as opined by Psychiatry Govt. Medical College vide a document dated 2.7.2012. This witness had proved the original disability certificate Ex.PW3/A. The claimants had further examined PW4 Sh.Gurbhai Singh, Clerk from Amar Hospital to prove that injured Avtar Singh remained admitted in that hospital. He proved bills Ex.PW4/A to Ex.PW4/Z and Ex.PW4/1 to Ex.PW4/32 besides other documents.

In view of the documentary evidence, the Tribunal granted compensation as under:

Compensation on account of expenditure incurred on medical treatment	Rs.3,02,933/-
Compensation on account of pain and suffering	Rs.20,000/-
Compensation on account of transport expenses	Rs.5,000/-
Compensation on account of extra nourishment	Rs.10,000/-
Compensation on account of loss of income and future prospectus	Rs.1,50,000/-
Total	Rs.4,87,933/-

As far as compensation under the first head is concerned, which is to the tune of Rs.3,02,933/-, the same is based upon the bills and other documents proved in evidence. 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 inadvertently or some of the bills/receipts etc. get lost or misplaced. Considering that fact, the compensation under that head is enhanced to **Rs.3,25,000/-**.

With such type of injuries suffered by the injured, claimant Avtar Singh would be requiring further treatment and some arrangement for the same deserves to be made. I award a sum of **Rs.50,000/-** under that head.

As far as the compensation awarded by the Tribunal on account of pain and suffering to the tune of Rs.20,000/-, 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 injuries including a serious

head 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.40,000/-** under that head.

The compensation granted to the claimant as transportation expenses is to the extent of Rs.5,000/- only, which in my view is a meagre amount. With injured having remained hospitalized for a considerable time and undergoing various tests and keeping in account the view the visits for follow-up treatment, the amount needs to be enhanced to **Rs.20,000/-** and it is ordered accordingly.

Similarly, the amount of Rs.10,000/- awarded towards extra nourishment and special diet is on lower side, which is enhanced to **Rs.25,000/-**.

No amount has been awarded to the claimant on account of attendant charges. The claimant Avtar Singh having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of **Rs.20,000/-** is accordingly awarded to the appellant/claimant on that score.

As per the version of the claimant Avtar Singh, he was working as a typist and running a dairy business, earning Rs.10,000/- per month. As deposed by PW3 Dr.Navdeep Brar, claimant Avtar Singh had suffered 71.99% permanent disability with regard to his brain, which means he would not be able to work as he could do earlier. The disability certificate is also there. Though the Tribunal has observed that claimant had been declared a case of organic brain pathology having suffered a head injury but has awarded a sum of Rs.1,50,000/- only, which is on

much lower side. 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 90%, Rs.5 lakhs is to be awarded besides some more compensation under different heads.

The claimant injured is stated to be aged about 26 years and prior to suffering injuries was working as a typist in District Courts, Fatehgarh Sahib, earning Rs.10,000/- per month. After suffering a serious head injury, which is permanent in nature, he would not be able to do that work. Even if we consider income of a manual worker that would be in the range of Rs.6,000/- to Rs.7,000/- per month. The claimant Avtar Singh with permanent disability of about 72%, suffered the loss of monthly income of Rs.5,000/- around per month and annual loss Rs.5,000 x 12 = 60,000/-. Considering age of the claimant/injured, multiplier of 18 is to be used. In that way the compensation comes out to Rs.10,80,000/-. Thus compensation of Rs.10,00,000 is awarded to him on that score.

No amount has been awarded to the claimant on account of loss of income during the period claimant Avtar Singh was unable to work as a result of suffering injuries. I award a sum of **Rs.25,000/-** under that head.

No amount has been awarded to the claimant Avtar Singh on account of loss of amenities and loss of expectation of life. The claimant Avtar Singh on account of injuries suffered by him would not be able to

walk, run or sit as he was prior to the accident. A sum of Rs.30,000/- each (total **Rs.60,000/-**) is awarded to him under that heads.

With such type of injury, claimant Avtar Singh may not be able to find a suitable life partner and would not be able to walk, run and lead life of a normal human being. Thus, I award a sum of **Rs.50,000/-** under that head.

Thus, the total compensation comes out to Rs.16,15,000/-.

The Tribunal has held to be case of contributory negligence and awarded compensation of Rs.2,43,966/- without their being sufficient material on record. Respondents No.1 and 2 in the written reply filed by them had completely denied the accident and had nowhere taken the plea of contributory negligence. Similarly respondent No.3 has nowhere taken the specific plea of contributory negligence. Furthermore, the claimants had brought enough oral as well as documentary evidence to show that respondent No.1 was author of the accident by his rash and negligent driving of the offending vehicle. Respondent No.1 had not stepped into the witness-box to rebut such evidence adduced by the claimants. Similarly respondent No.2 had not led any evidence to show that the offending vehicle belonging to him and driven by Balwinder Singh was not involved in the accident or that Avtar Singh was equally responsible for happening of the accident. The insurance company has also not adduced any evidence in that regard. Therefore, the Tribunal just on the basis of conjectures and surmises has held to be a case of contributory negligence, which verdict cannot be sustained and finding on issue No.1 in that regard is modified to that extent. Though while granting relief to

the claimants, the Tribunal has deducted 50% of the compensation amount on account of contributory negligence without specifically mentioning the percentage but in view of the above discussion, the Tribunal was not justified in doing so and verdict given in that regard is modified accordingly.

The Tribunal has awarded compensation of Rs.2,43,966/- along with interest @ 7.5% per annum from the date of filing of the petition till realization payable by respondents No.1 to 3 jointly and severally. The same is enhanced to Rs.16,15,000/-.

In this way, the enhanced amount comes out to Rs.13,71,034/- (16,15,000 - 2,43,966). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization. The other terms and conditions given in the award shall apply to the enhanced amount as well.

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

11.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No