

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

(1) FAO-2009-2015(O&M)

Ritim alias Rajan Sharma through his father Harbans Lal

...Appellant

Versus

Gurvinder Singh and others

...Respondents

(2) FAO-2051-2015(O&M)

Harbans Lal

...Appellant

Versus

Gurvinder Singh and others

...Respondents

Date of Decision:-16.5.2019

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

Present: Mr.Inderjit Singh, Advocate
for the appellants.

Mr.Sanjeev Kodan, Advocate
for respondent No.3 – Insurance company.

H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-2009-2015(O&M) filed on behalf of appellant – Ritim alias Rajan Sharma through his father Harbans Lal and FAO-2051-2015(O&M) filed on behalf of appellant – Harbans Lal, which have arisen out of the same accident.

Briefly stated, facts of the case are that on 8.2.2011, claimant Harbans Lal along with his children had gone to Panchmukhi Hanuman

Mandir in a three wheeler; that they alighted at place near Hanuman Mandir and then they went towards Bilaspur side; that Harbans Lal and his children were standing on correct side of the road to cross it so as to go towards Panchmukhi Hanuman Mandir (Dhakhwala) Basatianwala and time was about 2:15 p.m. when truck No.HR-64-9995 (hereinafter referred to as the offending vehicle) being driven by respondent No.1 – Gurvinder Singh in a very rash and negligent manner without blowing any horn came from Chhachhrauli side and without caring for traffic rules hit the claimant Harbans Lal and his son Ritim alias Rajan Sharma; that the claimant Harbans Lal fell down on the southern side of the road and son of the claimant fell down on the road and back tyre of the offending vehicle ran over the both legs of son of the claimant; that after the accident, respondent No.1 ran away from the spot leaving the offending vehicle behind; that claimant Harbans Lal had suffered serious, multiple injuries including fracture in right ankle whereas his son Ritim @ Rajan Sharma suffered serious multiple and grievous injuries on his whole body including crush injury on his both legs; that both the injured were taken to Civil Hospital by Ajay Kumar son of Sohan Singh after hiring a private vehicle; that first aid was given to the claimant and he was referred to Civil Hospital Yamuna Nagar from where he was taken to Kohli Hospital, Jagadhri and got admitted there; that he remained admitted in that hospital from 10.2.2012 to 12.2.2012, where he was treated; that his right ankle was plastered, whereas injured son of claimant was referred to PGI, Chandigarh. According to the version of the claimant after the accident, the claimant Harbans Lal has become permanently disabled and is unable

to walk properly; that formal FIR No.23 dated 9.2.2011 for the offences under Sections 279, 337 and 338 IPC was registered with Police Station Bilaspur, District Yamuna Nagar on the basis of statement of claimant Harbans Lal. It is stated that Harbans Lal was aged about 45 years doing labour work and was earning Rs.6,000/- per month, whereas claimant Ritim alias Rajan Sharma was aged about 7 years; his both legs were amputated.

Petitioner Harbans Lal had brought a claim petition bearing Claim Petition No.21 of 2012 against respondents i.e. Gurvinder Singh – driver, Naveen Rana – owner and Reliance General Insurance Company, Patiala - insurer of the offending vehicle, claiming compensation to the tune of Rs.50 lacs on account of injuries suffered by him in the motor vehicle accident.

Petitioner Ritim alias Rajan Sharma through his father Sh.Harbans Lal being natural guardian and next friend had brought a claim petition bearing Claim Petition No.111 of 2012 against the above-said respondents, claiming compensation to the tune of Rs.50 lacs on account of injuries suffered by him in the motor vehicular accident.

Since both the claim petitions arose out of the same accident, those were tried together by Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri.

On notice, all the three respondents had appeared. Respondents No.1 and 2 had filed a joint written statement, whereas respondent No.3 filed separate written statement.

In the joint written statement filed on behalf of respondents

No.1 and 2, they have controverted the material assertions in the claim petition raising various legal objections with regard to maintainability of the claim petition; locus standi of the claimants to file the claim petition; that the claimants have concealed the true and material facts from the Tribunal. On merits, such respondents denied the accident and pleaded that a false case had been registered against respondent No.1 involving the offending truck of respondent No.2 and that the claimants are not entitled to any compensation since the claimants were hit by some unknown vehicle due to fault of driver of that vehicle, as a result they might have sustained injuries. According to answering respondents when the claimants failed to trace the registration number of the vehicle, which had caused accident, they falsely got registered a wrong criminal case against respondent No.1 by implicating the truck in question. Such respondents prayed for dismissal of the claim petition.

In the written statement submitted on behalf of respondent No.3, it also took various legal objections, on merits contending that no such accident was taken place with the offending truck and such vehicle has been falsely involved in this case; that the claimants did not sustain any injury in any accident involving the offending vehicle. Without admitting the accident, the answering respondent contended that it had taken place on account of fault of the claimants, who were crossing the road without conforming to the traffic rules and they were hit by some unknown vehicle; that the offending vehicle had been falsely involved in this case by the claimants in collusion with respondent No.1; that respondent No.1 was unlicensed driver or he was not holding any valid

and effective driving licence at the time of alleged accident, which was in the knowledge of respondent No.1; in addition to that owner of the offending truck i.e. respondent No.2 was plying it without any route permit/valid and effective route permit and fitness certificate, which resulted in the wilful violation of the provisions of the Act and terms and conditions of the insurance policy. On merits, material assertions in the claim petition were controverted. In the end such respondent also prayed for dismissal of the claim petition.

On the pleadings of the parties following issues were framed:

1. Whether Harbans Lal and Ritim alias Rajan Sharma sustained injuries in an accident caused by vehicle No.HR64-9995 due to rash and negligent driving of respondent no.1, as alleged? OPP.
2. To what amount of compensation and if any, from whom the claimants are entitled? OPP.
3. Whether the insured has violated the terms and conditions of insurance policy as alleged, if so, its effect? OPR.
4. Relief.

The claimants led evidence in support of their respective claims. Whereas respondents did not lead any evidence.

After hearing arguments, the claim petitions were allowed partly by the Tribunal vide award dated 18.11.2014. Petitioner Harbans Lal, who had filed Claim Petition No.21 of 2012 was awarded compensation of Rs.46,000/-, petitioner Ritim alias Rajan Sharma, who had filed Claim Petition No.111 of 2012 was awarded compensation of Rs.8.06,000/- along with interest at the rate of 7.5% per annum from the

date of filing of the petitions till final realization payable by respondents No.1 to 3. The manner in which the compensation is to be apportioned was also given in the award.

Claimants Harbans Lal and Ritim @ Rajan Sharma were dissatisfied with the compensation awarded to them and they have filed separate appeals before this Court seeking enhancement of compensation.

Notice of the appeals was issued to the respondent No.3 only, which put in appearance through counsel.

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

First taking up FAO-2051-2015(O&M) filed by appellant/claimant Harbans Lal. Harbans Lal in his affidavit Ex.PW6/A has stated that he had received serious, grievous, multiple injuries including fracture in right ankle in the accident and he was taken to Civil Hospital, Jagadhri from where he was referred to Civil Hospital Yamuna Nagar and therefrom he was taken to Kohli Hospital, Jagadhri and got admitted there, where he remained from 10.2.2011 to 12.2.2011 and he was treated, his right ankle was plastered; that he is aged about 48 years and was doing labour work. PW1 Dr.Dinesh Kaushik deposed regarding admission of Harbans Lal in Kohli Hospital on 10.2.2011 as a case of road side accident having suffered injuries on right ankle joint and lacerated wound around medial melleolus and injury on left knee joint. He stated that he had suffered fracture on right ankle joint and fracture lateral condyle left knee joint; plaster was applied on right ankle joint and knee brace was applied on left knee joint; that the patient was discharged on

12.2.2011. While proving various medical documents, he had stated that the hospital had charged Rs.6,600/-. PW2 Brij Mohan, Salesman, Dhanda Medical Store had proved bills Ex.P9 to Ex.P17 for the medicines sold to patient Harbans Lal.

The Tribunal has awarded a sum of Rs.16,035/- towards medical expenses including purchase of medicines vide various bills. The Tribunal has not taken into view the fact that many a times, the record of very amount spent on purchase of medicines etc. cannot be kept and no amount has been awarded towards future medical expenses. Thus, the compensation under that head is enhanced to Rs.30,000/-.

The Tribunal has awarded a sum of Rs.5,000/- to the injured on account of loss of work. Keeping in view the multiple injuries suffered by him including fractures and the fact that plaster was applied on right ankle joint and knee brace was applied on left knee joint, it would not have been possible for him to work for a considerable time, though the period of his actual hospitalization is not much, the sum awarded as Rs.5,000/- is on the lower side and the same is enhanced to Rs.15,000/-.

The Tribunal has awarded a sum of Rs.20,000/- towards pain and sufferings which I find to be adequate.

However, a consolidate sum of Rs.5,000/- was awarded towards transportation, special diet etc., which is not justified.

Keeping in view the period of hospitalization and nature of injuries and that claimant would have gone to the hospital for follow up treatment also, a sum of Rs.10,000/- is awarded to him on account of transportation.

As regards special diet, a person suffering injuries does need special diet for early and proper recovery. A award a sum of Rs.15,000/- under that head.

The claimant 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.15,000/- is accordingly awarded to the appellant/claimant on that score.

The claimant 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.25,000/- is awarded to him on account of loss of amenities and loss of expectation of life.

Thus the total amount comes out to Rs.1,30,000/-

The Tribunal has awarded compensation of Rs.46,000/-.

In this way, the enhanced amount comes out to Rs.84,000/- (1,30,000 - 46,000). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.84,000/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

Now taking up **FAO-2009-2015(O&M)** filed on behalf of appellant/claimant Ritim @ Rajan Sharma, aged about 6 years, who account of crush injury on left foot and right leg had to be operated upon above knee, resulting in amputation of right lower limb and below knee amputation of left lower limb as it comes from the testimony of PW7 Dr.R.K. Kanoja, Associate Professor Department of Orthopedic, PGI, Chandigarh and discharge card Ex.P41 issued by PGI, Chandigarh. The

tribunal taking his notional income as 15,000/- per month, applying multiplier of 18 has granted compensation of Rs.2,70,000/-. The boy is of tender age and he has long life to live and he has almost been rendered a cripple. The notional income has taken as Rs.15,000/- per annum, less than Rs.1,300/- per month. With passage of time getting necessary education his income would have definitely increased.

Learned counsel for the claimant has referred to authority *Master Mallikarjun Versus Divisional Manager, The National Insurance Company Limited and another, 2014(14) SCC 396* by the Apex Court wherein the Apex Court had laid down parameters for award of compensation in case of permanent disability as follows:

- (i) For permanent disability upto 10% Rs. One Lakh.
- (ii) Disability above 10% and upto 30% ₹ 3 lakhs.
- (iii) Disability upto 60% ₹ 4 lakhs.
- (iv) Disability upto 90% ₹ 5 lakhs.
- (v) Disability above 90% ₹ 6 lakh.

PW4 Dr.Anul Mangla, who on 20.6.2012 along with other Members of the Board had medically examined Ritim @ Rajan, aged 8 years old male child had assessed permanent disability of 100% vide disability certificate Ex.P18. Therefore, the claimant Ritim @ Rajan Sharma is entitled to get Rs.6,00,000/- as compensation since his disability is up to 100%.

The Tribunal has awarded a sum of Rs.35,114/- towards medical expenses including purchase of medicines vide various bills. The

Tribunal has not taken into view the fact that many a times, the record of very amount spent on purchase of medicines etc. cannot be kept and no amount has been awarded towards future medical expenses. Thus, the compensation under that head is enhanced to Rs.50,000/-.

The Tribunal has awarded a sum of Rs.1,00,000/- under the head pain and suffering. In my view considering 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 enhanced the sum to Rs.2,00,000/-.

The Tribunal has awarded a sum of Rs.1,00,000/- on account of loss of amenities of life and loss of expectation of life. I find that the amount so awarded is on lower side. The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. I enhanced it to Rs.2,00,000/-.

The Tribunal has awarded a sum of Rs.1,00,000/- on account of damage for amputation of both his feet/legs and Rs.2,70,000/- on account of loss of earning capacity. Since a sum of Rs.6,00,000/- has been awarded to the claimant on account of disability, these heads would be taken to be covered by the amount so awarded and separate damages under that heads are not to be granted.

The Tribunal has granted a sum of Rs.1,00,000/- under the head loss of marriage prospects. I find that the amount so awarded is on lower side. On account of the injuries suffered by the claimant, it is

difficult to get a suitable marriage keeping in view his permanent disability. I enhanced the amount under that head to Rs.2,00,000/-.

The Tribunal has awarded compensation of Rs.1,00,000/- for implantation/fixation of artificial limb. I find the amount so granted to be just and adequate.

The total compensation comes out to Rs.13,50,000/-.

The Tribunal has awarded compensation of Rs.8,06,000/-.

In this way, the enhanced amount comes out to Rs.5,44,000/- (13,50,000 - 8,06,000). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.5,44,000/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modifications, both the appeals are allowed partly.

16.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No