

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

FAO-3965-2014(O&M)

Date of decision:-30.7.2019

Raj Kumar

...Appellant

Versus

Parmod Kumar and others

...Respondents

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

Argued by: Mr.S.K. Yadav, Advocate
for the appellant.

Mr.Gopal Mittal, Advocate for
Mr.Ravinder Arora, Advocate
for respondent No.3 – insurance company.

H.S. MADAAN, J.

On account of suffering injuries in a motor vehicular accident, which took place on 2.8.2011 at about 9:15 p.m. in the area of near M/s Shahid Hoshiyar Singh Petrol Pump, village Saharanwas statedly on account of rash and negligent driving of Maruti Alto car bearing registration No.HR-26AD-2132 (hereinafter referred to as the offending car) by respondent No.1 – Parmod Kumar, petitioner/claimant Raj Kumar had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Parmod Kumar – driver, Vinod Kumar – owner and IFFCO TOKIO General Insurance Company Ltd. – insurer of that car, claiming compensation to the tune of Rs.35 lacs.

On notice, all the three respondent had appeared and

contested the claim petition. Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

After trial, the Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as the Tribunal) while allowing the petition vide award dated 16.1.2014, awarded compensation of Rs.16,82,205/- along with interest @ 7.5% per annum from the date of filing of the petition payable by respondents No.1 to 3 jointly and severally.

Feeling that the compensation awarded to him was on lower side, the claimant has filed the present appeal seeking enhancement of compensation, notice of which was given to respondent No.3 only, which appeared through counsel. Service of notice to respondents No.1 and 2 was dispensed with.

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

The Tribunal on analysis of the evidence adduced before it considering the fact that FIR No.148 dated 3.8.2011 for the offences under Sections 279 and 337 IPC has been registered against respondent No.1 – Parmod Kumar with Police Station Rampura, on the basis of statement of claimant with regard to the accident and further that PW2 claimant had provided eye-witness account of the accident deposing in consonance with his case as given in the petition, coupled with eye-witness provided by PW7 Virender supporting case of the claimant and that respondent No.1 had not appeared to rebut the evidence adduced by the claimant, had returned a finding that respondent No.1 was author of the accident by his rash and negligent driving of the offending car,

resulting in causing hurt to the claimant and further claimant was entitled to recover compensation from the driver of the offending car, its owner and insurance company.

The Tribunal has awarded compensation to the claimant under the head pecuniary losses and non-pecuniary losses.

Under the head pecuniary losses considering the period of hospitalization of the claimant and documentary evidence produced by him with regard to the expenses borne by him on his medical treatment, a sum of **Rs.4,00,604/-** has been awarded. The same is just and proper.

Further a sum of **Rs.12,400/-** has been awarded for follow up treatment. However, on account of expenses for future treatment, no amount has been awarded to the claimant. In view of the nature and extent of injuries suffered by the claimant, which is likely to ask for treatment in future also, a sum of **Rs.35,000/-** is awarded to him in that regard.

The Tribunal has awarded a sum of Rs.10,000/- to the claimant for special diet, which seems to be on lower side and the same is enhanced to **Rs.20,000/-**.

As per the evidence available on the record in the form of disability certificate Ex.PW4/A proved by PW4 Dr.A.K. Saini, the claimant had suffered permanent disability to the extent of 100% on account of quadriplegia with indwelling catheter. As rightly observed by the Tribunal, this would adversely affect almost his total earning capacity. Though the claimant claimed himself to be a driver and milk vendor, earning Rs.11,000/- per month but in absence of any cogent and convincing evidence, the Tribunal considering the minimum wages

payable to a labourer assessed his monthly income to be Rs.4,800/- per month. While doing so, the factor of future prospects has not been considered by the Tribunal. Doing that and making an addition of 40% of the amount, the total monthly income of the claimant comes out to $\text{Rs.}4800 + 1920 = \text{Rs.}6,720/-$, annual to be $\text{Rs.}6,720 \times 12 = 80,640/-$. Considering the age of claimant to be 29 years at the time of accident, the Tribunal has correctly used multiplier of 17. As such the amount of compensation on account of loss of income comes out to **Rs.13,70,880/-** (80640×17).

An amount of **Rs.1,80,000/-** awarded by the Tribunal towards attendant charges is just and proper and does not call for any enhancement.

Therefore, the total amount awarded towards pecuniary losses comes out to **Rs.20,18,884/-**.

As far as the non pecuniary losses, the Tribunal has awarded a sum of Rs.50,000/- to the claimant 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. The amount awarded by the Tribunal is somewhat on lower side under this head. I enhance it to **Rs.1,00,000/-**.

Similarly, a sum of Rs.50,000/- awarded by the Tribunal on account of loss of amenities in life also seems to be on lower side and the same is enhance to **Rs.1,00,000/-**.

Thus, the total amount of compensation comes out to Rs.22,18,884/- (20,18,884 + 1,00,000 + 1,00,000).

The Tribunal has awarded compensation of Rs.16,82,205/- along with interest @ 7.5% per annum from the date of filing of the petition till actual realization, payable by respondents No.1 to 3 jointly and severally. The same is enhanced to Rs.22,18,884/-.

In this way, the enhanced amount comes out to Rs.5,36,679/- (22,18,884 - 16,82,205). The claimants would be entitled to get interest @ 7.5% per annum on this amount 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.

30.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No