

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

**FAO-5260-2014 (O&M)
Date of Decision: October 15, 2019**

Waseem

.....Appellant

VERSUS

Jamshed and others

.....Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ashish Gupta, Advocate for
the appellant.

Mr. Ashwani Talwar, Advocate
for the Insurance Company.

JAISHREE THAKUR, J.(Oral)

1. This is a first appeal that has been filed by the appellant seeking to challenge the award dated 30.03.2013 passed by the MACT, Nuh seeking enhancement of compensation on account of the injuries sustained by him in the motor vehicle accident which took place on 25.08.2011.

2. In brief, the facts of the case are that on 25.08.2011 at about 09.00 p.m., the claimant- Waseem along with Maqsood s/o Jumma were going to village Kameda from village Alipur Tigra on a motor cycle bearing registration No.HR-28B-2309 which was driven by the claimant at a moderate speed on left side of the road. When they reached near the stadium

of village Kameda, the offending truck bearing registration No. RJ-02/GA-4181 was being driven by respondent No.1 in a rash and negligent manner applied the emergency brakes without giving any signal and due to this reason the motor cycle of the claimant struck with the said truck and resultantly the claimant/appellant herein fell down on the road and received serious injuries. An FIR bearing No.272 dated 26.08.2011 was registered under Sections 279, 337 and 338 of IPC against the respondent No.1 at police station Ferozepur Jhirka. On account of multiple injuries suffered by him, the claimant filed a claim petition.

3. Upon notice, the respondents appeared and contested the claim petition. The driver of the offending vehicle denied the taking place of any accident and prayed for dismissal of the claim on the ground that the petitioner has no standi to file the present petition as the actual offending vehicle succeeded in running away from the spot after causing the alleged accident and the FIR has been falsely registered against him. Respondent No.2-the owner of the vehicle did not file his written statement and his defence was struck off vide order dated 21.09.2012. The claim was contested by the Insurance Company as well, stating that the claim petition is not maintainable as the accident did not take place with the alleged offending vehicle. The offending vehicle was deliberated and intentionally planted in collusion with respondent No.1 to take the compensation from the answering respondent. It was further averred that at the time of the alleged accident the driver of the offending vehicle was not holding valid and effective license to drive the vehicle and prayed that the claim petition

be dismissed as no such alleged accident took place.

4. On appreciation of the evidence led by the parties, the Tribunal awarded a compensation for a sum of ₹1,82,556/- to the claimant- Waseem, by allowing him a sum of ₹82,556/- for medical treatment, ₹60,000/- for disability and ₹40,000/- towards pain and sufferings and his disability was assessed at 30% permanent in nature. The claimant was also allowed interest @ 6% per annum from the date of filing the petition.

5. Aggrieved against the inadequate compensation, the instant appeal has been filed.

6. Per contra, learned counsel appearing on behalf of the respondent submits that adequate amount of compensation has been awarded by the Tribunal and no interference is called for.

7. In a judgment rendered in **Raj Kumar Vs. Ajay Kumar and others 2011 (1) SCC 343**, a formula has been prescribed for assessing compensation to be paid to a claimant who has suffered injuries resulting permanent disability, wherein it has been held that he has to be awarded compensation under the following heads namely:-

*“F. Motor Vehicles Act, 1998, Sections 147, 166 and 173-
Injury to a person in Motor accident- He is to be awarded
compensation under following heads:- Pecuniary damages
(Special Damages)*

*(i) Expenses relating to treatment, hospitalization, medicines,
transportation, nourishing food, and miscellaneous
expenditure.*

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :
(a) Loss of earning during the period of treatment;
(b) Loss of future earnings on account of permanent disability.
(iii) Future medical expenses.
Non-pecuniary damages (General Damages)
(iv) Damages for pain, suffering and trauma as a consequence of the injuries.
(v) Loss of amenities (and/or loss of prospects of marriage).
(vi) Loss of expectation of life (shortening of normal longevity)”

8. There is no dispute about the factum of accident which took place on 25.08.2011 in which the appellant herein was severely injured. The award of the Tribunal qua the accident having taken place has attained finality since the same has not been challenged either by the owner-driver or by the Insurance Company. Therefore, the only question that remains to be determined is whether adequate compensation has been allowed or not.

9. I have heard learned counsel for the parties and perused the award. In the opinion of the Court, apart from the attendant charges and special diet, the compensation towards hospitalization, loss of prospect of marriage and disfigurement and transportation should be increase. The compensation payable to the claimant is thus re-assessed as under:-

Sr. No.	Heads of claim	Amount
1	Medical expenses	₹82556
2	Compensation on account of loss of earning	₹5000/-
3	Loss of income due to permanent disability	₹60000/-
4	Compensation towards diet charges+ attendant charges	₹7000/-+5000/-= 12000/-
5	Compensation towards transportation	₹8000/-
6	Pain and suffering	₹40000/-
7	Compensation towards disfigurement	₹15000/-

Sr. No.	Heads of claim	Amount
8	Compensation towards loss of prospect of marriage	₹10000/-
9	Total	₹2,32,556

10. Consequently, the appeal is allowed. The appellant-Waseem shall be entitled to total compensation of ₹2,32,556/-. The amount in excess over and above what was awarded by the Tribunal will also attract interest @7.5% per annum from the date of the appeal till the date of payment.

October 15, 2019

(JAISHREE THAKUR)
JUDGE

seema

Whether speaking/reasoned

Whether reportable

Yes.
No.