

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 5569 of 2014 (O&M)

Date of decision : 16.10.2019

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Jatinder Singh, Retired Subedar

.....Appellant

vs.

Gurwinder Singh and others

.....Respondents

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

Present : Mr. A.S. Manaise, Advocate for the appellant

Mr. R.S. Sharma, Advocate for respondent No.3.

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H. S. Madaan, J.

Jatinder Singh, Retired Subedar from Indian Army, resident of village Bhoon, Tehsil and District Gurdaspur, on account of suffering injuries in a motor vehicular accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, (hereinafter to be referred to as 'the Act'), against respondents i.e. Gurwinder Singh – owner, Vijay Kumar - driver and Oriental Insurance Company Limited, Jammu – insurer of truck No. JK-02-T-2582, claiming compensation to the tune of Rs.25 lacs.

As per version of the claimant, on 23.7.2012 at about 7.00 P.M. he was going towards Gurdaspur, on his Hero Honda

motorcycle, bearing registration No. PB-06-8743. He was being followed by his father on his bicycle. When the petitioner - claimant riding his motorcycle reached on the bye-pass road near village Man Kaur Singh, then a truck bearing registration No. JK-02-T-2582 (hereinafter to be referred to as 'the offending truck'), came from Pathankot side, being driven in a rash and negligent manner and at a high speed by Vijay Kumar – respondent No.2 and had struck against the motorcycle of petitioner – claimant, with the result the petitioner – claimant was dragged to some distance and he received multiple grievous injuries. He was removed to Civil Hospital, Gurdaspur, by his father Karnail Singh, from where, keeping in view his serious condition, he was referred to hospital at Amritsar and he remained admitted in Amandeep Hospital, Amritsar till 24.8.2011. His right leg from its base was amputated and he suffered permanent disability to the extent of 94%. He was aged 43 years at the time of suffering injuries in the accident and was engaged in the avocation of dairy farming, earning Rs.45,000/- per month. The petitioner – claimant remained admitted in Amandeep Hospital, Amritsar from 23.7.2012 to 24.8.2012. He was operated upon and his right leg was amputated, which adversely affected his monthly income and presently he is unable to do any work. His family has suffered a lot.

On being put to notice, respondents No. 1 and 3 put in appearance through counsel and filed separate written statements, contesting the claim petition. Whereas respondent No.2 did not appear despite service and was proceeded against ex parte. In the

written statement filed by respondent No.1, all the assertions in the claim petition were denied and a prayer for dismissal of the claim petition was made. Whereas in the separate written statement filed by respondent No.3, it had taken up various legal objections and statutory defences, contending that driver of the truck was not having a valid driving license at the time of the accident and the truck was being plied in contravention of the terms and conditions of the insurance policy. Therefore, the Insurance company was not liable to pay any compensation and further the claim petition has been filed by the claimant in collusion with respondents No.1 and 2. In the end such respondent also prayed for dismissal of the claim petition.

From the pleadings of the parties, following issues were framed :--

1. Whether Jatinder Singh received injuries in an accident on 23.7.2012 in the area of village Man Kaur Singh, caused due to rash and negligent driving of truck No. JK-02-T-2582 by respondent No.1? OPA
2. If issue No. 1 is proved, whether the claimant is entitled to receive compensation, if so to what extent and from whom?
OPA
3. Whether respondent No.1 was not having a valid driving licence at the time of accident? OPR-3
4. Relief.

Parties were given opportunity to lead evidence in support of their respective claims. Petitioner-claimant in order to prove his case

examined Dr. S.K. Hans as PW-1, petitioner -claimant himself stepped into the witness box as PW2 and further examined Karnail Singh as PW-3, Baldev Singh as PW-4 and Kashmir Chand as PW-5.

On the other hand, respondents did not lead any oral evidence and relied on copies of Insurance policy as Exhibits R.1/R.7, fitness certificate as Exhibit R.2, registration certificate as Exhibit R.3, route permit as Exhibit R.4, driving license as Exhibit R.5 and driving license verification report as Exhibit R.8.

After hearing the arguments, the Motor Accident Claims Tribunal, Gurdaspur, vide detailed award dated 1.11.2013, decided issue No. 1 in favour of the petitioner – claimant and against the respondents, holding that it stood proved that claimant Jatinder Singh received multiple grievous injuries in the accident in question, which had taken place due to rash and negligent driving of the offending vehicle.

Issue No. 2 was decided in favour of the petitioner- claimant and against the respondents holding that he was entitled to get compensation of Rs.3,66,000/- payable by all the respondents jointly and severally. Whereas issue No.3 was decided against the respondents and in favour of the petitioner – claimant. Resultantly, the claim petition was accepted and compensation of Rs.3,66,000/- with interest @ 6% per annum from the date of filing of claim petition till actual realisation, was awarded to the petitioner- claimant payable by all the respondents jointly and severally.

However, the petitioner – claimant was not satisfied with the

quantum of compensation awarded to him and has approached this Court by way of filing the present appeal, notice of which was given to respondent no.3 – Insurance company, which has put in appearance through counsel.

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

Straightway coming to the quantum of compensation, the Tribunal considering the disability certificate of petitioner – claimant Exhibit P-1, coupled with evidence of Dr. S.K. Hans, PW-1, observed that the claimant has suffered permanent disability of 94%, but as admitted by Dr. S.K. Hans, in his cross examination, the disability pertains to right lower limb only and was not with regard to whole body. In that way, the claimant could do any job while sitting on the ground or on the chair. In that way the functional disability of the claimant was taken to be 40% only. His income was taken to be Rs.5,000/- per month. Loss of future earning was taken to be Rs.24,000/- per annum. Applying the multiplier of 14, in view of age of the claimant taken as 43 years, the total compensation was calculated as $\text{Rs.24,000/-} \times 14 = \text{Rs.3,36,000/-}$. No fault can be found with the Tribunal in doing so.

However, the Tribunal has not granted any amount towards medical treatment of the petitioner - claimant. Observing that the claimant and his counsel had admitted during the course of arguments that the claimant had already got all his expenses reimbursed from his department, the Tribunal was justified in not granting the amount

spent on medical treatment of petitioner -claimant to him for the said reason.

However, the Tribunal has been quite miserly while awarding compensation to the petitioner – claimant under various conventional heads. It has committed an error in clubbing two heads like pain and suffering on account of injuries suffered in the accident and special diet and awarded the compensation of Rs.30,000/- in that regard. It did not take into notice that the petitioner – claimant was entitled to get compensation under various different heads like attendant charges, transportation charges, compensation on account of loss of amenities and loss of expectancy of life. Keeping in view the nature and extent of injuries, the petitioner claimant is entitled to get Rs.30,000/- on account of pain and suffering only and considering that person suffering such type of injuries require special diet for early recovery, an additional sum of Rs.25,000/- is awarded to the petitioner – claimant in that regard. As it is borne out from the record that the petitioner claimant remained hospitalized for more than one month and even otherwise would have required assistance of an attendant in looking after him and helping him in taking bath, going to washroom and other related activities and further for moving out also, a sum of Rs.25,000/- is awarded to the petitioner -claimant in that respect.

A considerable sum of consumed in going from home to hospital and back in connection with treatment and follow up.

Another sum of Rs.25,000/- is awarded to the claimant in that regard.

As a result of suffering injuries, the claimant would not be able to walk, move around or run, as he could do earlier. A sum of Rs.25,000/- is awarded to him under the head loss of amenities and for loss of expectancy of life, due to injuries suffered in the accident, a sum of Rs.25,000/- is awarded to him. The petitioner claimant may requiring an artificial limb and that aspect has also to be taken into consideration, a sum of Rs.30,000/- is awarded to the petitioner claimant in that regard.

Thus total compensation comes out to Rs. 3,36,000 + 30,000 + 25,000 + 25,000 + 25,000 + Rs.25,000 + 25,000 + 30,000 = Rs.5,21,000/-

The Tribunal has awarded a sum of Rs.3,66,000/- to the petitioner -claimant. Thus the additional compensation of Rs.5,21,000 – 3,66,000 = Rs. 1,55,000/- is awarded to him with interest @ 7.5% per annum from the date of filing of appeal till actual realization. In that way the appeal is allowed partly.

16.10.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No