

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

F.A.O. No. 4163 of 2015

DATE OF DECISION :- October 31, 2019

Jarnailo Devi

...Appellant

Versus

Kanti Lal and others

...Respondents

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

Present:- Mr. Vikram Singh, Advocate for the appellant.

Mr. Aman Mittal, Advocate
for Mr. A.S. Sidhu, Advocate for the respondent No. 3.

Briefly stated the facts of the case are that on 19.11.2013 at about 1.00 P.M. petitioner claimant Jarnailo Devi along with her sister-in-law Smt. Sito were proceeding from their house towards Ambala City. They were going on foot. When they had reached bus stand of village Jalbehra, District Ambala and were waiting for boarding an auto rickshaw coming from Behbulpur side. It was signalled to stop The auto rickshaw stopped at some distance then petitioner Jarnailo Devi along with her sister-in-law Smt. Sito moved towards the auto rickshaw. In the meanwhile respondent No. 1-Kanti Lal-driving motor cycle bearing Chasis No.K03670, Engine No.K04283, make Hero Honda in a rash and negligent manner and hit

against the petitioner Jarnailo Devi. Resultantly she suffered multiple injuries. After the accident she was shifted to Civil hospital by her son Madan Lal. Respondent No. 1-Kanti Lal left the spot leaving behind motor cycle. Pillion rider was also left behind. In the meanwhile, F.I.R. No. 236 dated 20.11.2013 with regard to mishap against respondent No. 1-Kanti Lal was registered.

Claimant Jarnailo Devi, aged about 53 years had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Kanti Lal-driver, Atul-owner and ICICI Lombard, Ambala-insurer of motor cycle in question claiming compensation to the tune of Rs.10 lacs.

On notice all the three respondents appeared. Respondents No. 1 and 2 filed a joint written statements whereas respondent No. 3 came up with a separate written statement. All three of them opposed the claim petition and prayed for its dismissal.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

The Motor Accident Claims Tribunal, Ambala vide Award dated 2.1.2015 accepted the claim petition and awarded compensation of Rs.52,000/- payable by all the three respondents jointly and severally with interest at the rate of 7.5% per annum from the date of filing of claim petition till actual realization.

Petitioner claimant was dissatisfied with the amount of compensation awarded to her and has approached this Court by way of filing an appeal, notice of which was given to respondent No. 3-Insurance

Company and it has put in appearance through counsel.

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

Since the Tribunal on the basis of evidence adduced before it has come to the conclusion that respondent No. 1-Kanti Lal was responsible for the accident in which petitioner claimant Jarnailo Devi had suffered injuries and Kanti Lal was driving the motor cycle in question in a rash and negligent manner, the driver, owner and the Insurance Company of the motor cycle were rightly held to be liable to pay the compensation to petitioner claimant Jarnailo Devi on account of injuries suffered by her in the accident. As regards the quantum part, the Tribunal awarded a sum of Rs.4,000/- on account of expenses incurred on medical treatment. It has to be taken note of that PW1 Dr. Vikas Paul had stated that he had treated Jarnailo Devi for fracture of right leg. She was admitted in the hospital in an injured condition on 19.11.2013 and was discharged on 4.12.2013. Further more it transpires from the record that plaster was applied on her right leg where she had suffered fracture. In terms of testimony PW 1 Dr. Vikas Paul she has suffered 10% permanent disability. I find that keeping in view the fact that many a times the bills, cash memos and receipts for purchase of medicines and other related articles get misplaced and record thereof is not maintained either by ignorance or illiteracy and it is not possible to keep account of each and every penny spent on medical treatment, the amount of Rs.4000/- deserves to be enhanced and the same is increased to Rs.10000/-. With regard to pain and suffering the Tribunal has awarded a sum of Rs.35,000/- to her which in my view is adequate.

However, for nutritious diet only a meager amount of Rs.4000/- has been awarded which in view of the age of the claimant the nature of injuries suffered by her and period of her hospitalization is on the lower side, the same is enhanced to Rs.10000/-. Similarly an amount of Rs.4000/- awarded as attendant charges and Rs.5000/- for transportation charges are on very lower side and they deserve to be enhanced to Rs.10000/- each. It is ordered accordingly. The Tribunal has not granted any amount to the claimant on account of permanent disability of 10% suffered by her. The Apex Court in judgment Master Mallikarjun vs. Divisional Manager, The National Insurance Company Limited and another 2013(4) R.C.R. (Civil), 295 has issued guidelines for award of compensation to a child who had suffered permanent disability in a motor vehicular accident as follows :-

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

No doubt the case relates to compensation payable to a child suffering permanent disability but age in this case does not make much difference. Even if it is taken that the permanent disability in the case of claimant is qua her right leg only even then she deserves to be compensated in that regard. A sum of Rs.50000/- is awarded to her on account of permanent disability. The petitioner claimant shall not be able to walk and move around as she could do earlier. A sum of Rs.25000/- is awarded to her under the Head loss of amenities and for loss of expectation of life on

account of injuries suffered by her further a sum of Rs.25,000/- is awarded to her. Thus the total compensation amount comes out to Rs.1,75,000/-. The Tribunal has awarded a sum of Rs.52,000/-. In that way the claimant is entitled to get additional compensation of Rs.1,23,000/- with interest at the rate of 7.5% per annum from the date of filing of the appeal till actual realization.

With such modification, the appeal is allowed partly.

(H.S. MADAAN)
JUDGE

October 31, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No