

(1)	FAO-735-2013 (O&M)	
Anil		...Appellant
	Versus	
Raju @ Gulshan and another		...Respondents
(2)	FAO-948-2013 (O&M)	
Tej Ram		...Appellant
	Versus	
Raju @ Gulshan and another		...Respondents

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

Mr. Vinod Mahendroo, Advocate for respondent No.2
in both cases.

H.S. MADAAN, J.

Claim petition bearing No. MACT-14-2012 under Section 166 of the Motor Vehicles Act, has been filed by petitioner/claimant Anil minor son of Rajbir Singh, through his natural guardian and mother

Sumitra widow of Rajbir Singh against respondents i.e. Raju @ Gulshan-driver-cum-owner of Tata Safari bearing registration No.HR-11C-0636 (for short 'the offending vehicle') and the New India Assurance Company Ltd. Rohtak-insurer of the offending vehicle, whereas, connected petitioner No.MACT-16-2012 has been filed by Tej Ram son of Ram Lal against those very respondents.

According to the version of claimants, on 25.04.2009, petitioner/claimant Anil was returning from Akhara (wrestling centre) of Village Chhara to his village Beri on a motorcycle bearing registration No.PB-05H-9067 being driven by petitioner/claimant Tej Ram. Anil-claimant was pillion rider on that motorcycle. When the said motorcycle had reached at Dujana Chowk, then the offending vehicle being driven by respondent No.1 Raju @ Gulshan at a fast speed and in a rash and negligent manner came from Rohtak side and struck against motorcycle of the petitioners/claimants, resulting into multiple injuries to both the riders. They were immediately taken to PGIMS Rohtak by respondent No.1 Raju @ Gulshan. The matter was reported to the police and on the basis of statement of petitioner Tej Ram, FIR No.212 dated 29.04.2009, was registered against respondent No.1 under Sections 279 and 337 IPC.

As far as the claim petition brought by minor claimant Anil, he was aged about 14 years at the time of accident. He was continuing his studies and helping his mother in dairy farming and agricultural works and thereby earning Rs.6000/- per month. He remained hospitalized at PGIMS Rohtak for a period of 15 days and his treatment was still under

going at the time of filing of claim petition. An amount of about Rs.2 lacs has already been paid for treatment, medicines, special diet and attendant charges etc. and much more is required for future treatment; that he has become permanently disabled and cannot undertake any laborious physical work. As such, minor petitioner/claimant asked for grant of compensation Rs.15 lacs to him.

In the claim petition filed by Tej Ram, he has contended that he was aged about 52 years at the time of accident and was working as Contractor under the name of firm 'The Beri Cooperative Labour & Construction Society'. He was earning Rs.15,000/- per month and was maintaining income tax account. On account of accidental injuries, he remained hospitalized for 21 days as indoor patient in PGIMS Rohtak and for 11 days at Base Hospital, Delhi and had spent Rs.5 lacs on his treatment, medicines, transportation, special diet etc. and that his treatment is till undergoing; that he has become permanently disabled to perform even his daily routine work. He had claimed compensation of Rs.10 lacs.

Since both the claim petitions had arisen out of the same accident, they were tried together by Motor Accidents Claims Tribunal, Jhajjar.

On being put to notice, both the respondents appeared and filed separate written statements, contesting the claim petition. The stand taken, by the respondents in both the claim petitions is more or less the same. In the written statement filed by respondent No.1, he has admitted

the ownership of the offending vehicle, stating that on the day of accident, said vehicle was being driven by himself only.

Respondent No.2-insurance company in the written statement filed by it had taken up a number of legal objections and statutory defences, pleading that respondent No.1 had violated the terms and conditions of the insurance policy. Both the respondents prayed for dismissal of the claim petitions.

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

1. Whether accident under reference resulting into multiple & grievous injuries to both the petitioners Anil & Tej Ram is outcome of rash and negligent driving of vehicle bearing No.HR-11C-0636 driven by respondent No.1, as alleged ?OPP.
2. If issue No.1 is proved in affirmative, to what amount and from whom the petitioners are entitled to recover as compensation? OPP.
3. Whether respondent No.1 was not holding valid and effective driving licence at the relevant time of accident and, if so, to what effect? OPR-2.
4. Whether respondent No.1 willfully violated terms & conditions of the insurance policy, if so, to what effect? OPR-2.
5. Relief.

The parties led evidence in support of their respective claims. After hearing arguments, the Tribunal, vide award dated 14.09.2012, decided issue No.1 in favour of claimants and against the

respondents, holding that the accident had taken place due to rash and negligent driving of respondent No.1, issues No.2 to 4 were also decided in favour of the claimants and against the respondents. The total compensation amount awarded to claimant Anil was Rs.3 lacs, whereas, claimant Tej Ram was awarded Rs.3,67,600/- as per following break-ups:-

i. Loss of earnings	=	Rs.237600/-
ii. Expenditure over medicines	=	Rs.77,000/-
iii. Expenditure over hospitalization	=	Rs.33,000/-
iv. Expenditure over operations	=	Rs.10,000/-
v. On account of pain & suffering	=	Rs.10,000/-

The respondents were directed to pay the amount of compensation to both the claimants with interest @ 7.5% p.a. on the compensation amount from the date of filing of claim petition till actual realization. The directions with regard to mode and manner of payment and its disbursement are also given in the impugned award.

Both the claimants Anil and Tej Ram were dissatisfied with the amount of compensation awarded to them and have approached this Court, by way of filing separate appeals, notices of which were given to the respondents, who have put in appearance through counsel.

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

The Tribunal has observed that Anil was a student of 9th class and aged more than 13 ½ years. As per case of the claimant, he was a budding wrestler who was expected to win laurels for his area and family

in future, however, on account of suffering injuries in the accident, he has become a cripple, not only physically but mentally also, since, his mental faculty has been severely affected. The Tribunal while calculating the amount spent upon medical treatment of the injured has ignored various bills, receipts and cash memos for flimsy and unconvincing reasons, in the process, granting only Rs.7100/-, though the Tribunal has awarded a sum of Rs.10,000/- over and above those expenses. The whole approach of the Tribunal to say the least, was erroneous and misdirected. Considering the oral as well as documentary evidence brought on file by the claimant, the number and type of injuries suffered by him and the fact that he would be requiring follow up treatment also, a sum of Rs.1.5 lacs is awarded to him under the head expenses for medical treatment and future medical expenses.

Under the head, loss of earning, the Tribunal has awarded a sum of Rs.2,70,000/- but then in para No.17, the Tribunal itself has observed that in disability certificate Ex.PW2/A, mental faculty of petitioner Anil is shown to have been assessed by the specialized doctors at PGIMS, Rohtak and result thereof described in medical terminology. However, the accidental injury had adversely affected the mental faculty of petitioner and his physical disability is although assessed as 40% but when applied to his earning capacity, it would not be less than 100%, because a man with reduced intellectuality is usually a liability. Therefore, this amount awarded is on the lower side. Notional income of Rs.15,000/- p.a. has been taken, but with passage of some time, he would

have grown up and was expected to earn reasonable amount. Learned counsel for the claimant has referred to judgment **Sunita Devi and Anr. Vs. Vijay Pal & Ors., 2018(2) Law Herald 1659**, where a Co-ordinate Bench dealing with a death of a minor aged 4/5 years in a motor vehicular accident, had taken his notional income to be Rs.50,000/- and awarded compensation of Rs.7,65,000/-. He had further referred to judgment **V. Mekala Vs. M. Malathi & Anr., 2014(2) RCR (Civil) 880**, by the Apex Court when in a motor vehicular accident, bones of both the legs of a victim were fractured, she was a brilliant student and her academic career was affected, her notional income was taken to be Rs.10,000/- per month with 50% increase towards future prospects. Under the circumstances, I find it proper and appropriate to enhance this amount to Rs.5,00,000/-.

The Tribunal has awarded a meagre sum of Rs.2900/- as pain and suffering. Only a person suffering such type and number of injuries in a road side accident can feel the traumatic experience and pain and suffering undergone by him. It is very difficult to quantify that pain and suffering in terms of money but in any case, in my view, the amount deserves to be enhanced to Rs.50,000/- and it is ordered accordingly.

The claimant would definitely have required special diet for early recovery of injuries. No amount has been awarded to him under that head. A sum of Rs.25,000/- is now awarded under that head.

With such type of injuries, adversely affecting the claimant physically and mentally, he would be requiring help of an attendant in moving around and doing even basic things throughout his life. A sum of

Rs.1 lakh is awarded to him as attendant charges.

The Tribunal has not awarded any amount towards transportation charges i.e. for going from home to hospital and back. A sum of Rs.25,000/- is awarded to the claimant under that head.

Keeping in view the nature and extent of injuries suffered by the claimant, he would not be able to sit, walk and run as he could do so earlier. Therefore, a sum of Rs.1 lakh is awarded to him on account of loss of amenities. As life expectancy has also decreased due to suffering injuries, a sum of Rs.50,000/- is awarded to him under the head loss of expectation of life.

His marital prospects has also been adversely affected, since, normally, no girl would like to marry a person who is physically and mentally a cripple. A sum of Rs.50,000/- is awarded to the claimant. Thus, the total compensation comes out to Rs.10,50,000/-.

The Tribunal has awarded compensation of Rs.3,00,000/-. In that way, claimant Anil is entitled to get additional compensation of Rs.7,50,000/-. He would be entitled to get interest @ 7.5% p.a., on the additional amount of compensation from the date of filing of appeal till actual realization. The liability and other terms and conditions shall remain the same as given in the original award.

Now coming to the appeal filed by claimant Tej Ram, the Tribunal has wrongly not taken into consideration several bills, cash memos and receipts and no amount has been added towards future medical expenses, therefore, the expenditure over medicines and for future treatment is enhanced from Rs.77,000/- to Rs.1,00,000/-. The

Tribunal has quantified expenditure over operations as Rs.10,000/- which is on lower side and the same is enhanced to Rs.37,000/-.

The amount of Rs.10,000/- awarded under the head pain and suffering is quite low. Considering the number and type of injuries suffered by the claimant and period of his hospitalization to be 33 days and undergoing surgeries, the same is enhanced to Rs.50,000/-.

Furthermore, the Tribunal has calculated the loss of earnings of claimant to Rs.2,37,600/-. Considering his age and 45% disability, that amount requires a little enhancement and is increased to Rs.2,50,000/-.

No amount has been awarded under the head transportation charges, attendant charges and special diet. A sum of Rs.25,000/-, Rs.30,000/- and Rs.25,000/- respectively are awarded.

With such type of injuries, the claimant would not be able to move around and lead life as he could do earlier due to suffering injuries, Rs.40,000/- is being awarded to him on account of loss of amenities.

His life span has got affected on account of suffering injuries, a sum of Rs.30,000/- is awarded to him towards loss of expectation of life.

Thus, the total compensation comes out to be Rs.5,87,000/-. The Tribunal has awarded compensation of Rs.3,67,000/-. In that way, claimant Tej Ram is entitled to get

additional compensation of Rs.2,20,000/- (Rs.5,87,000 – 3,67,000).
He would be entitled to get interest @ 7.5% p.a., on the additional amount of compensation from the date of filing of appeal till actual realization. The liability and other terms and conditions shall remain the same as given in the original award.

Accordingly, both the appeals are partly allowed.

04.12.2019
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No