

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

F.A.O. No. 6145 of 2014

DATE OF DECISION :- October 29, 2019

Palwinder Singh

...Appellant

Versus

Sham Singh and others

...Respondents

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

Present:- Mr. Rajeev Dev Sharma, Advocate for the appellant.

Mr. Anshul Sharma, Advocate
for Mr. V.M. Gupta, Advocate , Advocate for respondent No. 3.

Briefly stated the facts of the case are that Palwinder Singh, working as a JCB operator and statedly earning Rs.10,000/- per month from that avocation had suffered injuries in a Motor Vehicular accident which took place on 14.6.2011 at about 11.45 A.M., in the area of village Durru Dhar Road, allegedly on account of rash and negligent driving of truck/tipper bearing registration No. JK-14-B-2687 by respondent No. 1 Sham Singh. He was hospitalized and underwent treatment. An F.I.R. No. 129 dated 14.6.2011 for offences under Sections 279, 337 RPC was registered. Pleading that he has become permanently disabled on account of suffering injuries in the accident and is unable to provide financial support to his wife , old parents and three daughters, he had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Sham Singh-driver, Mansa Ram-

owner and United India Insurance Company Ltd., Jammu-insurer of truck/tipper.

On being put to notice respondents No. 1 to 3 had appeared before Motor Accident Claims Tribunal, Pathankot and offered a contest wherein respondent No. 2 did not appear despite service and was proceeded against ex-parte.

On conclusion of trial the Motor Accident Claims Tribunal, Pathankot vide Award dated 5.2.2014 accepted the claim petition and awarded compensation of Rs.4,85,798/- to the claimant along with interest at the rate of 6% per annum payable by all the three respondents jointly and severally. The claimant was dissatisfied with the said amount of compensation awarded to him by the Tribunal and have approached this Court by way of filing an appeal, notice of which was given to the respondent-Insurance Company and such Insurance Company has put in appearance through counsel

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

The Tribunal, on basis of the evidence produced before it by the parties has concluded that the accident in which Palwinder Singh had suffered injuries had taken place on account of rash and negligent driving of truck Tipper bearing registration No. JK-14-B-2687 by Sham Singh-respondent No. 1, as such conclusion arrived at is well reasoned based upon evidence adduced by the parties before the Tribunal and does not call for any interference. It being so Palwinder Singh-claimant has a right to get compensation from Sham Singh-driver, Mansa Ram-owner and United India

Insurance Company Ltd., Jammu-insurer of truck/tipper. As per evidence brought on record by the claimant he was working as a JCB operator/driver. Though he claimed that he was getting Rs.10,000/- per month, the Tribunal has assessed his income to be Rs.6000/ per month. As per medical evidence brought on file by the claimant in the form of examining AW2 Dr. Tarsem Singh, Senior Medical Officer who deposed that on examination he found that Palwinder Singh was an old operated case of road side accident with compound fracture of shaft right femur and right tibia with stiff right knee and shortening of right lower limb by two inches and he was suffering from 60% permanent disability. The disability Certificate in that regard Ex. P2/A has been proved. The claimant has proved bills Ex. A3, Ex. A5 to Ex.A218 issued by Chauhan Medicity Hospital, Kotli to show that he has spent Rs.3,11,798/- for his treatment, purchase of medicines and investigations. The Tribunal has awarded that very amount to the claimant. However, it has to be taken into note that many a times bills and cash memos for purchase of medicines etc. get misplaced and record thereof is not kept on account of various reasons. Further more the Tribunal has not awarded any amount towards follow up and future treatment. Thus the amount so awarded is enhanced to Rs.3,50,000/- The Tribunal has observed that on account of suffering injuries the claimant would not have been able to move from bed for a period of three months as such awarding a sum of Rs.18,000/- for loss of work. However, this fact has not been considered that even after period of hospitalization he would not have been able to resume his normal work for a considerable time being required to go for follow up treatment etc. therefore the amount of Rs.18,000/- so awarded is enhanced to Rs.25,000/-.

The amount awarded towards expenses for engaging attendant as Rs.6,000/- is on very low side and the same is enhanced to Rs.25,000/-. Similarly for suffering pain and agony a meager amount of Rs.15,000/- has been awarded which considering the number and magnitude of injuries suffered by the injured claimant deserves to be enhanced to Rs.30,000/- and it is so done accordingly. Considering that claimant has suffered permanent disability of 60% the Tribunal has awarded a sum of Rs.1,20,000/- to him. i.e. Rs.2000 per percentage of permanent disability in view of judgment of this Court in FAO No. 3204 of 2002 titled 'Rajesh Sharma Vs. M/s Gati Desk To Desk Cargo' decided on 30.1.2013. However, the Apex Court in judgment Master Mallikarjun vs. Divisional Manager, The National Insurance Company Limited and another 2013(4) R.C.R. (Civil), 295 directed guidelines for award of compensation to a child who 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 injured in that case was a child and permanent disability was qua the entire body but taking guidelines from those principles the award of compensation of Rs.1,20,000/- for 60% permanent disability for shortening of leg of claimant is on lower side. The same is enhanced to Rs.2,50,000/-. Similarly the Tribunal has awarded a sum of Rs.15,000/- to the claimant on account of special diet which calls for

enhancement and the same is increased to Rs.25,000/-. No separate compensation has been awarded under the Head loss of amenities and loss of expectation of life. The claimant would definitely be not able to walk or run or otherwise do his normal work which he could do prior to the accident and he would not be able to lead life of a normal human being, a sum of Rs.30,000/- is awarded to him under the Head loss of amenities and another sum of Rs.30,000/- for loss of expectation of life. Therefore, the total compensation comes out to Rs.7,65,000/-. The Tribunal has awarded compensation of Rs.4,85,798/-. In that way the claimant is entitled to enhanced compensation of Rs.2,79,202/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till actual realization.

With such modification, the appeal is allowed partly.

(H.S. MADAAN)
JUDGE

October 29, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No