

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

FAO-3779-2016 (O&M)

Date of Decision: September 27, 2019

Mina Devi

.....Appellant

VERSUS

Krishan Kumar Mehta and another

.....Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Shakti Mehta, Advocate for
Mr. Vikram Bali, Advocate
for the appellant.

Mr. G.S. Randhawa, Advocate for
Mr. Nitin Jain, Advocate
for respondent No.1.

Mr. Gopal Mittal, Advocate
for respondent No.2.

JAISHREE THAKUR, J.(Oral)

CM-12889-2016

For the reasons mentioned in the application and as not opposed by the counsel opposite, the same is allowed. Copy of Disability Certificate is taken on record as Mark 'A'.

Main case

1. This is a first appeal that has been filed by the appellant seeking to challenge the award dated 04.03.2016 passed by the MACT, Chandigarh seeking compensation on account of the injuries sustained by

her in the motor vehicle accident which took place on 15.02.2015.

2. In brief, the facts of the case are that on 15th February 2015 at about 03.40 PM the claimant- Mina Devi and her daughter- Rinki Kumari were standing on a divider of road when the respondent No.1 driving his car at a high speed, jumped the red lights and hit the pedestrians, who were waiting and standing on the divider of the road on the light points. On account of multiple injuries suffered by her, the claimant filed a claim petition.

3. Upon notice, the respondents appeared and contested the claim petition. The driver stated that he was driving the vehicle at a normal speed. When the answering respondent approached the light point there was a green signal and as the vehicle was turned a cyclist suddenly appeared before him and in order to save the cyclist the answering respondent turned his vehicle, which led to the accident taking place. It was denied that the car was being driven in a rash and negligent manner. The claim was contested by the Insurance Company as well, stating that there is a collusion between the claimant and the driver-cum-owner of the vehicle while denying the fact that the claimant- Mina Devi suffered any injury.

On appreciation of the evidence, the Tribunal allowed compensation for a sum of ₹70,000/- to the claimant- Mina Devi by allowing her a sum of ₹25,000/- for hospitalization and healthy diet, ₹30,000/- towards pain and sufferings and ₹10,000/- for loss of income and ₹5,000/- towards transportation charges.

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

5. Learned counsel for the appellant contends that the compensation, as allowed, is wholly inadequate and not in consonance with the judgment rendered by the Supreme Court of India in ***Raj Kumar vs. Ajay Kumar, 2011(2) RCR (Civil) 101***. It is contended that the appellant had suffered a permanent disability of 20% as per the certificate issued and has not been allowed any benefit for attendant charges, loss of amenities etc.

6. Per contra, learned counsel appearing on behalf of the respondents contends that adequate compensation has been allowed but he is not in a position to dispute the fact that nothing has been awarded on account of attendant charges or permanent disability or for loss of amenities. It is argued that the Tribunal did not assess permanent disability on account of the fact that there was no disability certificate available.

7. I have heard the learned counsel for the parties and have perused the award and the pleadings.

8. There is no dispute about the factum of accident which took place on 15.02.2015 in which accident, the daughter of the claimant-Mina Devi died and the claimant 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. In order to prove the injuries, Dr. Robin Bohat appeared as PW-2 who deposed that the appellant suffered injuries including fracture of the pelvis, fracture of both bones of right hand and a surgery was performed and rods were inserted. He produced on record Ex.PW-2/1 and Ex.PW2/4

the medical record of the injured appellant. In the opinion of the Court, the Tribunal while allowing compensation did not award adequate compensation on account of attendant charges, special diet, pain and suffering and loss of amenities. It is an admitted fact that the appellant had undergone surgeries which was to set right the two fractures on her right hand as well as the pelvic bone. Apart from that, a metal plate was also inserted as per the evidence given by the Doctor. However, no medical bills were produced on the record and taking the fact that the appellant was admitted in a government hospital, the hospital charges have been assessed at ₹25,000/- along with special diet.

10. In the opinion of the Court, apart from the hospital charges of ₹25,000/- the compensation towards medical charges and special diet is also insufficient. Moreover, the amount as allowed for pain and suffering for the surgeries conducted is inadequate. The appellant herein have produced by way of an additional evidence under Order 41 Rule 27 C.P.C, Disability Certificate dated 2nd April 2016-Mark 'A' issued by the Civil Surgeon-cum-Chief Medical Officer, Sadar Hospital, Ranchi, which would reflect that she suffered a permanent disability of 20% and consequently would be entitled to an additional sum for the same along with loss of amenities. Since there is no proof on the record other than by a bald statement that the appellant herein was a tailor, this Court cannot interfere in the amount of compensation assessed for loss of income. The compensation payable to the claimant is thus re-assessed as under:-

Sr. No.	Heads of claim	Amount
1	Compensation on account of loss of earning	10000/-
2	Loss of income due to permanent disability	₹40000/-
3	Compensation towards attendant charges	₹5000/-
4	Compensation towards transportation	₹5000//-
5	Compensation for nutritious diet	₹ 5000/-
6	Medical expenses and hospital charges	₹ 25000/-
7	Pain and suffering	₹ 50000/-
8	Loss of amenities	₹ 5000/-
9	Total	₹1,45,000/-

11. Consequently, the appeal is allowed. The appellant-Mina Devi shall be entitled to enhanced compensation of ₹1,45,000/-, 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.

September 27, 2019

(JAISHREE THAKUR)
JUDGE

seema

Whether speaking/reasoned
Whether reportable

Yes.
No.