

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

FAO No.5333 of 2016 (O&M)

Date of decision: 17.12.2019

Mandeep Singh

... Appellant

Versus

Avtar Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. RK Shukla, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for the respondent.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 05.08.2015 passed by the Motor Accidents Claims Tribunal, Chandigarh whereby compensation has been assessed on account of injuries sustained by respondent/claimant-Avtar Singh, in a motor vehicular accident that took place on 09.08.2014.

The Tribunal awarded Rs.13,57,500/-, detailed hereunder:-

Loss of future income	Rs.9,75,000/-
30% of income as future prospects	Rs.2,92,500/-
Hospitalisation and healthy diet	Rs.15,000/-
Transportation expenses	Rs.5000/-
Disability	Rs.70,000/-

The case of the claimant/respondent is that on 09.08.2014 at about 6.00 pm, he was going from Panjab University, Chandigarh to his

village Thouna, District Rupnagar on motorcycle. When he reached near Verka Chowk, Phase-VI, Mohali, car bearing No.CH-04-E-0499 came at fast speed from the side of Balongi and struck against motorcycle of the claimant. As a result, he along with motorcycle fell on the road and received serious injuries. He was taken to Civil Hospital, Phase-VI, Mohali and from there referred to PGI, Chandigarh and then referred to Command Hospital, Chandimandir. He prayed for grant of compensation to the tune of Rs.30 lakh.

The appellant filed the written statement and denied averments raised in para 24 of the claim application.

A relevant extract from reply in para 24, reads as follows:-

xx The claimant himself is responsible for his injuries as he was in drunkard condition. The claimant himself lost his control over the vehicle and fell down over the road and sustained injuries. The respondent No.1 has been falsely implicated in the present case only to extract money in the form of claim. xx

The Tribunal framed issues to the following effect:-

1. Whether the accident dated 09.08.2014 resulting in injuries to claimant occurred on account of rash and negligent driving of vehicle No.CH-04-E-0499 by respondent No.1?OPP
2. Whether the claimant is entitled to compensation for the injuries suffered by him in the accident, if so, to what extent and from whom?OPR
3. Relief.

To prove his case, the respondent/claimant appeared in the witness box and examined Dr. Kapeesh Gupta-PW2, Medical Officer, GMSH, Sector 16, Chandigarh and Harjeet Singh-PW3, Senior Assistant, Establishment Branch, Panjab University.

To rebut evidence of the respondent/claimant, appellant examined himself as a witness.

Counsel for the appellant would argue that findings of the Tribunal on issue No.1 attributing rashness and negligence while driving the alleged offending vehicle is the result of failure to appreciate materials on record in right perspective, therefore, the same may be set aside. To bring home his contention, it is argued that FIR was lodged against unknown person after about one month of the accident and appellant has been acquitted in the criminal case. It is further argued that statement made by the respondent before the Tribunal in respect of material particulars contradicts his first version qua material particulars recorded in the FIR, therefore, his testimony is not worthy of credence and reliance. It is argued with vehemence that as findings of the Tribunal on issue No.1 cannot sustain, application for grant of compensation is liable to be dismissed.

Another submission made by counsel is that as per testimony of Dr. Kapeesh Gupta, claimant suffered disability to the extent of 35% but the Tribunal has wrongly assessed functional disability to 50% and awarded future loss of income to the tune of Rs.9,75,000/- by extending benefit of addition in income for future prospects. It is further argued that in case

findings of the Tribunal on issue No.1 are affirmed, compensation allowed by the Tribunal needs reduction.

Counsel representing the respondent, on the contrary, has supported findings of the Tribunal on issue No.1 and so also assessment of compensation.

I have heard counsel for the parties, perused the paper book and records.

Before adverting to the submissions made by counsel for the parties, it is pertinent to note that in view of averments raised in para 24 of the written statement/reply filed by the appellant, he has not denied that respondent sustained injuries in a motor vehicular accident. Rather, it can safely be inferred therefrom that the appellant was present at the spot and only then he could say that respondent lost control over his vehicle and sustained injuries. The respondent was cross examined at length but no such fact has been elicited that a false FIR was lodged on account of some hostility against the appellant. In the concluding lines of cross examination, the respondent was suggested to the following effect:-

It is wrong to suggest that I was coming from Kharar side towards Chandigarh and respondent No.1 was going from Chandigarh to Kharar and it is wrong to suggest that I was driving my motorcycle on a wrong side and struck into the car.

This suggestion to respondent goes a long way to prove that accident took place because of collision between motorcycle driven by

injured and car driven by the appellant. Even the FIR was lodged with particulars of the offending car. Counsel for the appellant has failed to point out any facts elicited in cross examination of Avtar Singh which gives slightest inkling that either his plea attributing rashness and negligence to driver of the offending vehicle is incorrect or the present is a case of contributory negligence of the injured himself. On due investigation of FIR, the appellant was put to trial though he is stated to have been acquitted by the criminal Court. Counsel for the appellant tried to draw some advantage by pointing out certain inconsistencies in testimony of the respondent vis-a-vis first version recorded in the FIR but admittedly, the respondent was not confronted with the first version recorded in the FIR, therefore, the appellant cannot derive advantage thereof. He has also failed to point out that testimony of Mandeep Singh can be given primacy vis-a-vis statement of the claimant/injured. In the given circumstances, I do not find any reason to interfere in findings of the Tribunal upholding plea of the claimant that accident is the result of rash and negligent driving of offending vehicle by the appellant.

This brings the Court to quantum of compensation assessed by the Tribunal. Dr. Kapeesh Gupta PW2 was examined to prove disability suffered by the victim and disability certificate is Ex.P7. The medical board assessed disability to the tune of 35%. A relevant extract from testimony of Dr. Kapeesh Gupta, reads as follows:-

There is post traumatic AVN(R) hip with shortening of

right lower limb with painful restricted movement with difficulties in squatting and sitting cross legs and there is scarring on right leg (cosmetic deformity) so permanent physical disability is 35%, Ex.P7 is the disability certificate issued by the medical board which bears my signature and other members of the medical board. He will not be able to run. In continuous standing he may find pain in the right hip joint. He will find difficulty in running. This is a functional disability.

Harjeet Singh-PW3, a witness from Panjab University has proved that the injured was working as Security Guard with the University on daily basis and last extension was from 27.05.2011 to 09.10.2014. He stated that there is no sanction after 09.10.2014 but there is nothing in the statement of the witness that extension was not granted because of the injured having suffered disability. Taking into consideration the testimony of Dr. Kapeesh Gupta coupled with statement of Harjeet Singh, functional disability of the injured shall be taken at 35% and he will be entitle to loss of future income without benefit of future prospects. Accordingly, loss of income on account of disability to the extent of 35% and by applying multiplier of 13 comes to Rs.7,33,660/- ($13,437 \times 12 \times 13 \times 35\%$).

The Tribunal has awarded Rs.70,000/- towards disability. As the claimant has been awarded loss of future income by applying multiplier method, he is not entitle to compensation with regard to disability. However, he is awarded Rs.35,000/- for loss of amenities of life.

The Tribunal has not awarded any compensation for services

of an attendant and loss of income during the period of treatment and recovery. The claimant is awarded Rs.15,000/- in this regard. The claimant is awarded Rs.20,000/- for pain and sufferings. The sum of Rs.15,000/- for hospitalisation & healthy diet and Rs.5000/- for transportation expenses is affirmed.

Total compensation is Rs.8,23,660/- and compensation assessed by the Tribunal is reduced to the extent of Rs.5,33,840/- (13,57,500 – 8,23,660). The appellant shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

17.12.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No