

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

FAO-7751-2015

Date of decision:-10.7.2019

Sonika

...Appellant

Versus

Virender and others

...Respondents

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

Present: Mr.S.K. Chauhan, Advocate
for the appellant.

Ms.Sheenu Sura, Advocate
for respondent No.4

H.S. MADAAN, J.

On account of suffering injuries in a motor vehicular accident, petitioner/claimant Sonika, aged about 19 years, daughter of Sh.Rajbir, resident of village Mansarwas, Tehsil Tosham, District Bhiwani had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Virender – driver, Pawan Kumar – registered owner, Rajender Kumar – transferee/owner and Reliance General Insurance Company Ltd. - insurer of pick-up Mahindra vehicle bearing registration No.HR-61/1549 (hereinafter referred to as the offending vehicle).

As per the case of the claimant on 5.11.2009, the claimant

was standing at bus-stand village Dulheri waiting to board some vehicle; that many other persons were also standing there; in the meanwhile, the offending vehicle being driven by respondent No.1 Virender in a rash and negligent manner and at a very high speed came towards Tosham side and hit Maruti Zen car bearing registration No.DL-LCX-3020 and thereafter hit the claimant and several other persons standing at the spot, resultantly the claimant suffered multiple grievous injuries on her person; that after the accident, the driver of the offending vehicle ran away leaving the vehicle behind; that formal FIR No.363 dated 5.11.2009 for the offences under Sections 279 and 304-A IPC was registered with police of Police Station Tosham. In the accident, the claimant Sonika had suffered multiple injuries. She was taken to Jindal Institute of Medical Sciences, Hisar on 5.11.2009 where she remained admitted till 12.11.2009 and several operations were conducted upon her. She had suffered permanent disability. One person by name of Bajrangi Chaudhary had also suffered injuries in the mishap and had expired.

Notices of the claim petitions filed by petitioner/claimant Sonika and legal representatives of Bajrangi Chaudhary were given to the respondents, who put in appearance filing written statements contesting the claim petitions. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After contest, the Tribunal allowed both the petitions partly vide award dated 16.4.2015 and in claim petition No.229 of 2013 titled 'Sonika Versus Virender alias Birender and others', the Tribunal awarded compensation of Rs.75,000/- along with interest @ 6% per annum from

the date of filing of the petition till the actual payment, payable by respondents No.1, 2 and 4 jointly and severally.

Feeling that the compensation awarded to her was on lower side, the claimant has filed the present appeal seeking enhancement of compensation, notice of which was given to respondent No.4 – insurance company, which appeared through counsel.

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

It needs to be mentioned here that the whole approach of the Tribunal and procedure adopted by it in awarding compensation to claimant – Sonika has been wrong and improper. The Tribunal should have assessed pecuniary as well as non-pecuniary damages suffered by the claimant taking the conventional heads one by one, which has not been so done.

As it comes out petitioner/claimant Sonika was 16 years of age at the time of accident and was a school student. As a result of suffering injuries, she was hospitalized for about a week and was medically treated. Surgery was also performed upon her. According to her case, her parents had spent a sum of Rs.2 lakhs on her treatment etc. Claimant Sonika appearing as PW2 had deposed in that regard, whereas PW Dr.Vikram Jain, Consultant Orthopedics, N.D. Hospital, Hisar had stated that on 5.11.2009, he had examined patient Sonika, who was a case of road side accident having suffered injuries on 5.11.2009; that she had suffered fracture shaft right side, as such she was operated for her injuries on 7.11.2009 and nailing was done; that she was discharged in satisfactory

condition on 12.11.2009. He had proved the copy of bed head ticket as Ex.P6, copy of discharge card as Ex.P7, copy of x-ray report as Ex.P8 and Ex.P9, copy of hospital bill Ex.P10 and other bills of x-ray and investigation as Ex.P11 to Ex.P26. He further proved the follow up OPD slips as Ex.P27 to Ex.P32.

Considering the nature of injuries suffered by her, period of hospitalization, surgery performed, various investigations carried out and medicines purchased, the amount spent on her treatment could safely be taken to be around **Rs.40,000/-**. I award the said amount to her on that account.

She would be requiring follow up treatment also and she deserves to be compensated for that. I award a sum of **Rs.15,000/-** to her on that account.

As regards special diet, a person suffering injuries does need special diet for early and proper recovery. A sum of **Rs.20,000/-** is awarded to her under that head.

Keeping in view the period of hospitalization and nature and extent of injuries and that claimant would have gone to the hospital for follow up treatment also, a sum of **Rs.20,000/-** is awarded to him on account of transportation charges.

The claimant having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of **Rs.20,000/-** is accordingly awarded to the appellant/claimant on that score.

As per the case of claimant, she had been helping her family

in household work and she could not attend to her studies for a considerable period for the reason of having suffered injuries. She deserves to be compensated on that account. I award a sum of **Rs.15,000/-** under that head.

In my view considering the number of injuries suffered by the claimant, period of hospitalization, it is very difficult to quantify the pain and suffering undergone by a person suffering injury requiring long hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, I award a sum of **Rs.20,000/-** to the claimant Sonika under that head.

The claimant on account of injuries suffered by her would not be able to walk, run or sit as she was prior to the accident. A sum of **Rs.15,000/-** each (total **Rs.30,000/-**) is awarded to her under the heads loss of amenities and loss of expectation of life.

With such type of injury, the appellant/claimant may not be able to find a suitable life partner and lead life of a normal human being and her marital prospects have been affected. Her life expectancy is also likely to be affected. Thus, I award a sum of **Rs.20,000/-** under that head to the claimant.

The total compensation comes out to Rs.2,00,000/-.

The Tribunal has awarded compensation of Rs.75,000/-.

In this way, the enhanced amount comes out to Rs.1,25,000/- (2,00,000 - 75,000). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.1,25,000/-. The other terms and conditions

given in the relief clause shall apply to the enhanced amount as well.

With such modification, the appeal is allowed partly with costs.

10.7.2019

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No