

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

FAO-6863-2016(O&M)

Date of decision:-18.9.2019

Chaman Lal

...Appellant

Versus

Kuldeep Singh and others

...Respondents

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

Present: Mr.Sudhir Rana, Advocate
for the appellant.

Mr.V.K. Garg, Advocate
for respondent No.3.

H.S. MADAAN, J.

Petitioner/claimant Chaman Lal had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Kuldeep Singh – driver, Narinder Sharma – owner and Oriental Insurance Company Ltd. - insurer of Indica car bearing registration No.HR-01-K-6251(hereinafter referred to as the offending vehicle), claiming compensation on account of injuries suffered by him in the motor vehicular accident caused due to stated rash and negligent driving of the offending vehicle by respondent No.1 – Kuldeep Singh.

As per the version of the claimant on 20.4.2015, he was going from Raipur Rani towards village Amrala, Tehsil and District Panchkula by driving Honda motorcycle bearing registration No.HR-03-

K-0535; he was going on correct left hand side of the road at a moderate speed; at about 7:00 p.m., when he had covered some distance towards Panchkula on Raipur Rani via Mankar Tabra-Mattanwala, Panchkula Road after crossing petrol pump situated at village Manak Tabra, in the meanwhile, the offending vehicle came from opposite side being driven by respondent No.1 – Kuldeep Singh in a rash and negligent manner at a very fast speed and by going on the wrong side of the road, had hit against the motorcycle of the claimant; resultantly, the claimant fell down on the road along with his motorcycle and suffered multiple injuries on his person; respondent No.1 – Kuldeep Singh stopped the car at a distance of about 20 yards from the place of accident and alighted from it; the accident was witnessed by Kamal Singh, who was following the motorcycle of the claimant. The claimant/injured was rushed to Civil Hospital, Raipur Rani where he was provided first aid and then referred to Government Medical College and Hospital, Sector 32, Chandigarh and from there he was referred to PGI, Chandigarh; he remained admitted there from 20.4.2015 to 22.4.2015 and was operated upon for amputation of right leg above knee and other fracture injuries suffered in the accident; formal FIR No.54 dated 23.4.2015 for the offences under Sections 279, 337 and 338 IPC was registered against respondent No.1 – Kuldeep Singh at Police Station Raipur Rani. According to the claimant, he had spent more than Rs.1 lakh on his treatment, operation charges, medicines, transportation and special diet etc. etc. and is still getting treatment. He prayed that compensation of Rs.30 lakhs be granted to him.

On being put to notice, all the respondents had appeared and

filed written statements. In the joint written statement filed by respondents No.1 and 2, they had taken up various legal objections. On merits, they denied the assertions in the claim petition contending that the car in question has been falsely involved in the accident with a view to get compensation; as a matter of fact it was not involved in the mishap resulting in causing injuries to the claimant. Such respondents prayed for dismissal of the claim petition.

In the separate written statement filed on behalf of respondent No.3 – insurance company, it also took up various legal objections and statutory defences contending that the driver of the alleged offending vehicle was not having a valid and effective driving licence at the time of accident; that the car in question was not having a valid registration certificate and it was being plied in violation of the terms and conditions of the insurance policy. Material assertions in the claim petition were denied coming up with a prayer for its dismissal.

Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, the Motor Accidents Claims Tribunal, Panchkula (hereinafter referred to as the Tribunal) while allowing the petition partly vide award dated 23.5.2016, awarded compensation of Rs.7,74,700/- along with interest @ 7.5% per annum from the date of filing of the petition till actual realisation payable by respondents No.1 to 3 jointly and severally. It was observed that out of the compensation amount 25% be paid in cash to the claimant, whereas remaining amount be deposited in some nationalized bank in his name for a period of three

years. The details of the heads under which compensation was awarded are as follows:

Pain and mental suffering	Rs.25,000/-
Diet, transportation	Rs.5,000/-
Attendant charges	Rs.50,000/-
Disability	Rs.6,42,600/-
Loss of amenities of life and loss of expectation of life	Rs.50,000/-
The expenses on medicines	Rs.2,100/-

Feeling that the compensation awarded to him was on lower side, the claimant has filed the present appeal seeking enhancement of compensation, notice of which was given to respondents, and respondent No.3 – insurance company has appeared through counsel.

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

The Tribunal on appreciation of the evidence adduced before it, has returned a finding that respondent No.1 – Kuldeep Singh was author of the accident by his rash and negligent driving of the offending vehicle in which Chaman Lal had suffered injuries. Such finding recorded by the Tribunal is correct and does not call for any interference.

Now coming to the quantum of compensation awarded to the claimant. The Tribunal has given a sum of Rs.25,000/- to the claimant towards pain and mental suffering. In the accident, the claimant had suffered multiple injuries including crush injury on right leg. A surgery was performed and his right leg was amputated above knee and he remained hospitalized for quite some time. In my view, considering the number of injuries suffered by the claimant, period of hospitalization and

the fact that it is very difficult to quantify the pain and suffering undergone by a person suffering injuries requiring long hospitalization, surgery and follow up treatment, the amount of compensation granted under that head is on the lower side and it deserves to be enhanced. The same is increased to **Rs.50,000/-**.

The Tribunal has awarded a sum of Rs.5,000/- to the claimant under the head diet and transportation. The amount in my view is meagre. The Tribunal should have award the compensation separately under the two heads rather than clubbing those under one head.

A person suffering injuries of such magnitude and type undergoing surgery resulting in amputation of part of his leg does need special diet for early and proper recovery. A award a sum of **Rs.25,000/-** is awarded under that head.

Furthermore, considerable money is spent on going from home to hospital and back for a considerable time. The injured in this case was firstly taken to PHC Raipur Rani, then to Government Medical College and Hospital, Sector 32, Chandigarh and from there he was referred to PGI, Chandigarh. He deserves to be granted **Rs.25,000/-** towards transportation charges.

Since the claimant has become disabled on account of amputation of his right leg above knee, he does require help of an attendant. Furthermore, after suffering injuries in the road side accident during period of his hospitalization and then even at home while recovering from injuries and then going to hospital for follow up treatment, services of the attendant were required. The Tribunal has

granted a sum of **Rs.50,000/-** to the claimant under that head, which is quite sufficient and proper.

Considering the age of the deceased to be 28 years, the minimum wages prevalent in the year 2015, monthly income of the deceased was assessed to be Rs.7,000/-, annual income Rs.84,000/-, his disability to be 70% and functional disability to be 45%, the total loss was calculated to be **Rs.6,42,600/-**. This has been properly done and no interference therewith is called for.

The Tribunal has awarded a sum of **Rs.50,000/-** to the claimant towards loss of amenities of life and loss of expectation of life. I find this amount to be sufficient and adequate.

However, the claimant has been awarded a sum of Rs.2,100/- only towards expenses on medicines. This amount is on very low side. The Tribunal has not taken into view the fact that many a times, the record of various amounts spent on purchase of medicines in the form of bills, receipts, cash memos etc. is not kept or at times it gets misplaced or lost and no amount has been awarded towards future medical expenses. Thus, the compensation under that head is enhanced to **Rs.50,000/-** .

The Tribunal has not granted any compensation to the claimant for purchase of artificial limb mentioning the reason that there was no evidence available on the record to show that the doctor had recommended use of artificial limb and that its maintenance would cost him some amount. The Tribunal clearly fell in error in arriving at such conclusion. A young person having lost his leg and rendered a cripple does require an artificial leg to facilitate his movements and to lead

normal life. The regular maintenance of such artificial limb is also expected to require some expenditure. A sum of **Rs.1 lakh** is awarded for expenses towards artificial limb and its maintenance.

Thus, the total compensation comes out to Rs.9,92,600/-

The Tribunal has awarded compensation of Rs.7,74,700/- along with interest @ 7.5% per annum from the date of filing of the petition payable by respondents No.1 to 3 jointly and severally. Thus the enhanced amount comes out to Rs.2,17,900/-(Rs.9,92,600 – 7,74,700). The appellant/claimant shall be entitled to recover the enhanced amount with interest at the rate of 7.5% per annum from the date of filing of appeal till actual payment, payable by respondents No.1 to 3 jointly and severally. The amount deposited by the insurance company in the account of the claimant can be withdrawn by the claimant without any rider as imposed by the Tribunal in the original award.

With such modification, the appeal is allowed partly.

18.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No