

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

**FAO No.8012 of 2015 (O&M)
Date of decision: 03.12.2019**

Lakhwinder Singh alias Billa

....Appellant

Versus

Mahender Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Gourav Jain, Advocate,
for the appellants.

Mr. Rahul Vats, Advocate,
for respondent No.1.

Mr. P.S. Saini, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as 'the Tribunal') vide award dated 10.08.2015 on account of injuries received by him in a motor vehicular accident which took place on 04.07.2013.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 04.07.2013, Jaswant Kaur (since deceased) along with claimant-Lakhwinder Singh @ Billa (appellant) was coming from the side of village Kullan on a motorcycle bearing registration No.HR-23-D-2077. The said motorcycle was being driven by

Lakhwinder Singh @ Billa. At about 11.30 A.M., when they reached near bus stop of village Dharsul, in the meantime, a Toyota Innova bearing No.CH-04-J-3666 being driven by Mahender Singh-respondent No.1 in a rash and negligent manner, came from the opposite side and struck against motorcycle, as a result of which, both the occupants of motorcycle i.e. Jaswant Kaur and Lakhwinder Singh @ Billa fell down and received multiple grievous and serious injuries. Unfortunately, Jaswant Kaur succumbed to the injuries. Lakhwinder Singh @ Billa was taken to the hospital. With regard to the incident, FIR No. 151 dated 04.07.2013, under Sections 279/337/304-A IPC was registered against respondent No.1. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver. This finding was rightly given on the basis of deposition of Bhura Singh (PW-1) and claimant-appellant Lakhwinder Singh @ Billa (PW-2). Apart from this, claimants have also proved on record copy of FIR Ex.P367, report under Section 173 Cr.P.C. Ex.P368, charge sheet Ex.P369 and postmortem report of Jaswant Kaur Ex.P372. Ultimately, the claim petition was allowed and the compensation was assessed as under:-

Sr. No.	Heads	Amount
1	Pain and sufferings	Rs.20,000/-
2	Permanent disability	Rs.50,000/-
3	Medical expenses	Rs.5,70,000/-

4	Loss of amenities of life, loss of earning capacity and future income etc.	Rs.50,000/-
5	Special diet, transportation and attendant charges	Rs.10,000/-
	Total	Rs.7,00,000/-

Hence, the claimant was found entitled to a total compensation of Rs.7,00,000/- along with interest at the rate of 7.5% per annum from the date of filing of petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

Learned counsel for the appellant contends that compensation, in the present case, should have been assessed by applying the multiplier method keeping in view the disability suffered by the claimant (appellant).

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. Parties are not in dispute with respect to the finding given by the Tribunal on issue No.1 that the accident took place on account of rash and negligent driving of offending vehicle by its driver. In this case, the disability certificate Ex.P1 has been duly proved on record by Suraj Kamboj, SMO, General Hospital, Fatehabad (PW-2). This witness has deposed that as per certificate Ex.P1, disability of patient Lakhwinder Singh was assessed to be 40% on account of fracture right shaft of femur with multiple fracture metatarsal right foot with painful movement at right hip and right knee. During cross-examination, PW-2 deposed that **'the nature of disability was temporary and can be reduced with the passage of time.'** He further deposed that as per certificate Ex.P365, functional disability of patient Lakhwinder Singh was to the extent of 12%. After going through the evidence led by the

claimant, disability certificate Ex.365 has to be made basis for assessing the compensation, as per which, he has suffered permanent disability to the extent of 12%. Before the accident, claimant-appellant was running a shop under the name and style of M/s Khalsa Electronic at Tohana Road, Kullana, District Fatehabad. After the accident, his earning capacity has been reduced and he has been compelled to spend his remaining life as a disabled person. In these circumstances, compensation in the present case, has to be assessed by applying the multiplier method. At the time of accident, he was aged about 40 years. Keeping in view the minimum wages, income of the claimant-appellant is being taken as Rs.6500/- per month as that of a skilled labourer. In this income, 40% addition is made on account of future prospects, which comes to Rs.9100/- (6500 + 2600). At the time of accident, claimant-appellant was aged about 40 years. Accordingly, multiplier of 15 is to be applied. After applying the multiplier of 15, compensation, on account of 12% permanent disability, comes to Rs.1,96,560/- (Rs.9100 x 12/100 x 12 x 15). So, keeping in view the peculiar circumstances of the case, compensation is hereby re-assessed as under:-

Sr. No.	HEADS	AMOUNT (In Rs.)
(i)	Pain and sufferings	Rs.50,000/-
(ii)	Permanent disability (12%)	Rs.1,96,560/-
(iii)	Medical expenses	Rs.5,70,000/-
(iv)	Loss of amenities of life, loss of earning capacity and future income etc.	Rs.50,000/-
(v)	Special diet, transportation and attendant charges	Rs.20,000/-
(vi)	Loss of income during treatment	Rs.20,000/-
(vii)	TOTAL COMPENSATION AWARDED	Rs.9,06,560/-
(viii)	Enhanced amount of compensation	Rs.9,06,560 – 7,00,000 = Rs.2,06,560/-

be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “**Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and others**, Civil Appeal No.4528 of 2019 (arising out of SLP (C) No.5720 of 2019) (decided on 01.05.2019). Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

03.12.2019
ajp

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