

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 9757 of 2014 (O&M)

Date of decision : 24.7.2019

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Bimla Devi

.....Appellant

vs.

Baljeet Singh and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Ajay Jain, Advocate for the appellant

Mr. Suvir Dewan, Advocate for respondent No.2.

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H. S. Madaan, J.

Petitioner-claimant Bimla Devi wife of Ram Kishan, resident of village Satrod Khurd, Tehsil and District Hisar, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Baljeet Singh – driver and owner, as well as The Oriental Insurance Company Limited, Hisar – insurer of Indica car bearing registration No. HR-13-B-6000 (hereinafter referred to as 'the offending car'), claiming compensation on account of suffering injuries in a motor vehicular accident.

One Santosh Kumar who had also suffered injuries in the same accident had also filed a claim petition against those very respondents and those two claim petitions were tried together and

decided by Motor Accident Claims Tribunal, Hisar, vide award dated 19.8.2004.

As per version of the petitioner-claimant, on 28.2.2011, she was pillion riding on motorcycle, which was being driven by Santosh Kumar son of Krishan Kumar, resident of village Rawalwas Kalan, Tehsil and District Hisar. The motorcycle was being driven on left side of the road and when it reached near Hanuman Mandir of village Satrod Khas, towards Hisar, then a white colour Indica car bearing registration No. HR-13-B-6000, being driven by respondent No.1 Baljeet Singh in a rash and negligent manner, at a very high speed, came from Hisar side and struck the motorcycle, as a result Santosh Kumar and Bimla Devi fell down and received serious, grievous and multiple injuries. The injured were shifted to Jindal Institute of Medical Sciences, Model Town, Hisar, where they were medico legally examined and treated. FIR No. 152, dated 28.2.2011 with regard to the accident was registered with Police Station Sadar, Hisar against respondent No.1 Baljeet Singh.

According to the petitioner- claimant Bimla Devi at the time of accident, she was aged 38 years and was working as a labourer with Indo Furnish Company, situated at Sector 9-11, Hisar, earning Rs.5,500/- per month. After receiving injuries in the accident she remained admitted in Jindal Institute of Medical Sciences, Model Town, Hisar from 28.2.2011 to 1.4.2011 and she is still receiving treatment therefrom as an outdoor patient and has not been fully cured; that an amount of Rs.5 lacs has been spent on her treatment and much more money is required for future treatment.

On notice, both the respondents appeared and filed separate written statements contesting the claim petition.

In the written statement filed by respondent No.1, he had denied having caused the accident by rash and negligent driving of Indica car bearing registration No. HR-13-B-6000, contending that a false case has been registered against him. The Indica car was however, insured with respondent No.2 – The Oriental Insurance company Limited, at the relevant time. According to such respondent, the offending vehicle is the motorcycle bearing registration No. HR-20K/9517. This respondent prayed for dismissal of the claim petition.

In the separate written statement filed by respondent No.2, the Insurance company, it has also raised various legal objections, further contending that petition has been filed by the claimants in collusion with respondent No.1; that the claim petition is bad for mis-joinder and non-joinder of necessary parties; that the petition is not maintainable in the present form; that the driver of the car in question was not holding a valid and effective driving license at the time of the accident and the car in question was being driven in contravention of the terms and conditions of the insurance policy. On merits, the averments made in the claim petition were denied. In the end, such respondent also prayed for dismissal of the claim petition.

From the pleadings of the parties, following issues were framed on 27.2.2013:-

1. Whether the accident in question took place on 28.2.2011 causing serious, grievous and multiple injuries to

petitioners on account of rash and negligent driving of respondent No.1 while driving the vehicle bearing registration No. HR 13B/6000? OPP

2. If issue No.1 is decided in favour of petitioners, then, what amount of compensation to which the petitioners are entitled and from whom? OPP
3. Whether the petitions are not maintainable in the present form ? OPR
4. Whether the respondent No.1 was not holding valid and effective driving license at the time of accident? OPR-3
5. Relief.

The parties were afforded opportunities to lead the evidence in support of their respective claims.

After hearing the arguments, the Motor Accident Claims Tribunal, Hisar, vide impugned award dated 19.8.2014, accepted the petition and granted compensation of Rs.13,53,000/- with interest @ 7.5% per annum, from the date of filing of the petition till actual realization. Out of the awarded amount, a sum of Rs.3,50,000/- was ordered to be paid to her in cash and the remaining amount was ordered to be deposited in her name in the form of Fixed Deposit in some nationalized bank for a period of three years.

Claimant – petitioner Bimla Devi was however not satisfied with the compensation awarded and she has approached this Court by way of filing the present appeal, notice of which was given to respondent No.2 Insurance company.

Said Insurance company has appeared through counsel.

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

The Tribunal while assessing the compensation payable to the petitioner claimant – Bimla Devi, has taken into consideration affidavit of Bimla Devi which was submitted while appearing as PW-7, i.e. PW 7/A, supporting her case on material points stating that she remained admitted in the hospital from 28.2.2011 to 1.4.2011 and she had undergone surgery and she is still under treatment as an outdoor patient; that she is unable to stand, sit and move properly and is unable to do her daily routine work and has been advised complete rest; that an amount of Rs. 5 lacs has already been spent on her treatment and more amount is being spent; that she has become permanently disabled due to injuries sustained by her in the accident.

The Tribunal on the basis of oral and documentary evidence, calculated the amount spent upon treatment of claimant to be Rs.1,87,075/- rounded off to Rs.1,87,000/- . During the long period of treatment many times it is not possible to keep record of bills, cash memos and vouchers for purchase of medicines and other medical equipment for the patient. This fact is also to be taken into consideration while granting the compensation for medical treatment. Accordingly, I enhance the amount of Rs.1,87,000/- to Rs. 2,00,000/-.

The Tribunal has not granted any compensation towards future medical treatment for the type of injuries suffered by the petitioner-claimant and in view of her statement, some compensation

towards future treatment also needs to be granted. A sum of Rs.25,000/- is granted to her on that count.

The Tribunal has granted a sum of Rs.90,000/- under the Head compensation on account of hospitalization, i.e. on account of wages of attendant, expenses on special diet, miscellaneous expenses and for loss of income of family members who remained in the hospital with the petitioner. I find the amount to be quite adequate and no increase there in is called for.

Under the Heading of compensation on account of pain and suffering, the Tribunal has awarded a sum of Rs. 1,00,000/- to the petitioner claimant. That amount is also adequate and do not call for any enhancement.

Under the Head compensation on account of disability, of 83% in terms of statement of Dr. Reena Jain, PW-8, who had proved disability certificate stating that it was to the extent of 83% and patient was not having control over her lower and upper limbs and she was unable to walk due to head injury, a sum of Rs.1,66,000/- was given to her as compensation on that account. In my view that amount is quite sufficient and do not require any enhancement.

However, on account of disability the Tribunal has awarded a sum of Rs.8,10,000/- to the claimant on account of future loss, which is quite sufficient.

Though learned counsel for the appellant submitted that as a result of suffering injuries, the claimant has been rendered cripple and would be dependent upon others, requiring attendant to look after her, therefore some compensation be awarded to her on that

account.

However, learned counsel for the Insurance company has contended that the compensation awarded to her is adequate and from the circumstances it cannot be said that she would be requiring assistance of an attendant throughout her life and furthermore, there is no such Head under which this compensation can be awarded.

After hearing learned counsel for the parties, I find that no compensation for hiring an attendant to help the claimant during her remaining life needs to be granted. This Court has to see as to whether the compensation awarded to her on account of suffering injuries in the accident is just or is on the lower side. Here except for some addition, which is being made now, otherwise, the compensation awarded by the Tribunal is just and adequate.

Thus the claimant petitioner is entitled to total compensation of Rs.2,00,000 + 25,000 + 90,000 + 1,00,000 + 1,66,000 + 8,10,000 = Rs.13,91,000/-. The claimant-appellant shall be entitled to get interest @ 7.5% per annum on the additional compensation (Rs. 13,91,000 – 13,53,000 = Rs.38,000/-) from the date of filing of appeal till actual realization. The apportionment and other terms and conditions shall remain the same as in the original award.

Accordingly, the appeal is allowed partly.

24.7.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes/ No

Whether reportable

Yes/ No