

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

FAO-2048-2017(O&M)

Date of decision:-12.3.2019

Shakuntla Devi

...Appellant

Versus

Sandeep Kumar and others

...Respondents

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

Present: Mr.Rajesh Goyal, Advocate for
Mr.Pritam Saini, Advocate
for the appellant.

Mr.Vinod Gupta, Advocate
for respondent No.3.

H.S. MADAAN, J.

Petitioner/claimant Shakuntla Devi had filed a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Sandeep Kumar – driver, Mr.Tejvir Maan – owner and New India Assurance Co. Ltd. - insurer of Alto K-10 car Model VXi bearing registration No.HR-99UW(T)-0632 (hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.30 lacs on account of suffering injuries in the road side accident on the allegations that on 5.4.2015 at about 12:00 p.m.(noon) while the claimant was going to a doctor for getting treatment and medicines for her grandson Vansh son of Sh.Som Nath and had reached at the distance of 50 paces from her house on Beri road near the house of Shishpal Grewal, then the offending

vehicle in question came from behind being driven at a very high speed by respondent No.1 – Sandeep Kumar and hit the claimant, resultantly the claimant suffered serious multiple injuries over her body; that Suresh son of Sh.Kishan Chand and other family members were standing outside the house; they witnessed the accident and removed the claimant/injured to Civil Hospital, Meham from where due to her critical condition, she was referred to PGIMS, Rohtak; the claimant was admitted in the said medical institute, where she remained from 5.4.2015 to 20.4.2015 and thereafter from 23.5.2015 to 27.5.2015. According to the claimant as a result of suffering injuries in the motor vehicular accident, she has become permanently disabled; that an FIR No.115 dated 6.4.2015 for the offences under Sections 279, 337, 338 IPC was got recorded at Police Station Meham, Rohtak.

On getting notice of the petition, all the three respondents put in appearance. Respondents No.1 and 2 filed a joint written reply denying that Alto car in question was involved in the accident, rather contending that a false FIR was got registered against respondent No.1 involving the Alto car in question by the claimant in connivance with the local police; that the claimant is hale and hearty doing her daily routine work; that the respondent No.1 was having a valid driving licence, therefore the claimant was not entitled to get any compensation.

In the separate written reply submitted on behalf of respondent No.3 – insurance company it has also denied involvement of Alto car in question in the accident submitting that a wrong FIR was got recorded involving the said car. Other assertions made in the petition were

denied submitting that respondent No.1 was not having a valid and effective driving licence at the relevant time and driver of the offending vehicle himself violated the terms and conditions of the insurance policy.

All the respondents prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:

1. Whether the present accident had taken place due to rash and negligent driving of vehicle bearing registration No.HR-99UW(T)-0632 by respondent No.1, in which petitioner suffered injuries? OPP.
2. If issue No.1 is proved in affirmative, to what amount and from whom the petitioner is entitled to recover, as alleged? OPP.
3. Whether the respondent No.1 was not holding a valid and effective driving licence on the date of alleged accident and that respondents No.1 & 2 have violated the terms and conditions of the insurance policy? OPR.
4. Relief.

Both the parties led evidence in support of their respective claims.

In order to prove her case, the petitioner/claimant had examined Sh.Prikshit, Medical Record Clerk, PGIMS, Rohtak as PW1, Sh.Narender Kumar, Ahlmad as PW2, Dr.Saquib Siddiqui as PW3, Sh.Kuldeep Singh, Clerk as PW4 whereas got recorded her statement as PW5 besides examining her son Sh.Suresh as PW6.

On the other hand, respondents have examined respondent

No.1 as RW1 besides tendering documents Ex.R1 and Ex.R2.

After hearing arguments, the Tribunal while allowing the petition vide award dated 5.9.2016, awarded compensation of Rs.2,45,800/- along with interest @ 9% per annum from the date of filing of the petition till recovery holding respondent No.3 liable to pay the amount of compensation.

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.3 – insurance company, which put in appearance through counsel.

I have heard learned counsel for the appellant and learned counsel for respondent No.3 – insurance company besides going through the record.

Learned counsel for the appellant has referred to authorities **K. Suresh Versus New India Assurance Co. Ltd. and another, 2013(1) RCR(Civil) 312** and **Sanjay Verma Versus Haryana Roadways, 2014(1) RCR(Civil) 914.**

The Tribunal on the basis of evidence adduced before it and arguments advanced had decided issue No.1 in favour of the claimant against respondents that the accident in which the claimant had suffered injuries was result of rash and negligent driving by respondent No.1. Issue No.2 with regard to entitlement of compensation to the claimant, was decided awarding a sum of Rs.70,936/- to claimant towards medical expenses after scrutinizing the bills and other medical documents proved in evidence by the claimant; whereas towards permanent disability a sum

of Rs.58,000/- has been awarded besides attendant charges of Rs.20,000/-, Rs.20,000/- towards special diet, Rs.56,900/- towards transportation charges and Rs.20,000/- towards pain and suffering, making the total of Rs.2,45,836/-.

No compensation has been awarded towards loss of income during the treatment. Though age of claimant has been taken to be 60 years but then an aged woman of 60 years does contribute to the family by doing some household work. The claimant Shakuntla Devi appearing as PW5 in her affidavit Ex.PW5/A has contended that she has suffered pecuniary loss being unable to perform household and agriculture work. Some amount should have been awarded by the Tribunal considering the nature and multiple injuries suffered by her, the period of her hospitalization and the fact that as claimed by the petitioner/claimant she has not fully recovered from the injuries till date. An amount of Rs.25,000/- is awarded to her under the head loss of income during treatment and subsequent to the accident.

As regards the amount awarded as cost of medicines, the aspect of future medical treatment has not been taken into consideration more particularly when as per affidavit furnished by the claimant and her son Suresh, she has not fully recovered from the injuries suffered by her in the motor vehicular accident. I find it proper and appropriate to award a sum of Rs.20,000/- to her in that regard.

With respect to the compensation awarded under the head of attendant charges, special diet, transportation charges, pain and suffering as well as permanent disability, I find that the amount so awarded is

proper and appropriate.

Under the head loss of earning capacity that has been taken care of while awarding compensation under the head of permanent disability. Whereas no compensation has been awarded under the head of loss of amenities, happiness and enjoyment of life. The claimant in her affidavit Ex.PW5/A has contended that she has suffered multiple grievous injuries all over her body and has become permanent disabled; her whole nervous system has been damaged and she has become bed-ridden; that she even cannot sit, stand, walk and eat without the help of a assistant; that she has become paralysed; that she has suffered mental and physical agony as well as pecuniary loss. Therefore, towards loss of amenities, she deserves to be compensated and a sum of Rs.30,000/- is awarded to her under this head.

The total compensation comes out to Rs.3,20,800/-(2,45,800 + 25,000 + 20,000 + 30,000).

The Tribunal has awarded a total sum of Rs,2,45,800/- as compensation along with interest @ 9% per annum from the date of filing of the claim petition till recovery.

In that way, the enhanced amount comes to Rs.75,000/- (3,20,800 - 2,45,800). 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 appeal till actual payment. The other terms and conditions shall remain the same as given in the original award.

As regards the authorities referred to by learned counsel for the appellant, those do not find application to the present case due to

different facts and circumstances and the context in which such observations had been made.

With such modification, the appeal is allowed partly.

12.3.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No