

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

FAO-2268-2017(O&M)

Date of decision:-14.5.2019

Ashish

...Appellant

Versus

Satish and another

...Respondents

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

Present: Mr.Parminder Singh, Advocate
for the appellant.

None for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that on 10.7.2013, Sanjay son of Sh.Ved Parkash, resident of Ward No.13, Gudha, Indri, District Karnal was driving motorcycle bearing registration No.HR-08H-1322 on which Ashish son of Sh.Takan, resident of Ward No.13, Gudha, Indri District Karnal was pillion riding; that they were returning to their village on the said motorcycle; that at about 1:00 p.m., when they reached in between villages Gumto and Doongra, in the meanwhile a tractor having registration No.HR-75-0832 (hereinafter referred to as the offending vehicle) having harrow and *suhaga* attached therewith being driven by respondent No.1 – Satish at a fast speed in a rash and negligent manner came from opposite side and harrow attached with the offending vehicle struck against the motorcycle in question, as a result both the riders fell

down and received multiple injuries including grievous ones on their persons; that the motorcycle was badly damaged; that respondent No.1 – Satish, who was driving the offending vehicle ran away from the spot leaving the the offending vehicle with attachments behind; that formal FIR No.258 dated 10.7.2013 for the offences under Sections 279 and 337 IPC was registered against respondent No.1 – Satish with Police Station Indri and both the injured were removed to hospitals and were medically treated.

Petitioner Sanjay had brought a claim petition bearing MACP No.115-2014 against respondents i.e. Satish – driver-cum-owner and Oriental Insurance Company - insurer of the offending vehicle, claiming compensation to the tune of Rs.5 lacs on account of injuries suffered by him in the motor vehicular accident.

Petitioner Ashish had brought a claim petition bearing MACP No.265-2013 against the above-said respondents, claiming compensation to the tune of Rs.20 lacs on account of injuries suffered by him in the motor vehicular accident.

Since both claim petitions arose out of the same accident, those were tried together and after contest disposed of vide a single Award dated 31.8.2016 passed by Motor Accidents Claims Tribunal, Karnal.

After hearing arguments, the Tribunal allowed the claim petitions. Claimant Sanjay was awarded compensation of Rs.1,12,000/- and claimant Ashish was awarded compensation of Rs.7,60,000/- along with interest at the rate of 9% per annum from the date of filing of the

petitions till final realization payable by the respondents jointly and severally.

Feeling that the compensation awarded to him was on lower side, the claimant Ashish has filed the present appeal seeking enhancement of compensation, notice of which was given to respondents. However, there was no representation on behalf of the respondents.

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

Before the Tribunal, the appellant/claimant had contended that as a result of suffering injuries in the accident, he was unable to do daily routine work and had become permanently disabled; that prior to that he was working as Home Guard in Haryana Government and used to earn Rs.15,000/- per month. The Tribunal on analysis of the evidence adduced before it had awarded reimbursement of Rs.6,25,712/- towards medical treatment; Rs.12,000/- as attendant charges; Rs.12,000/- for special diet and Rs.50,000/- on account of mental and physical shock, pain and suffering and loss of enjoyment of life, especially, in view of the fact that for treatment of multiple fractures, he was operated upon five times. It was noticed that claimant Ashish had suffered fractures of right forearm both bones, right femur lower and right tibia upper for which he had received treatment from various hospitals and had suffered 25% disability which regarding the whole body was calculated to 12 ½ %. The claimant was awarded a sum of Rs.60,000/-. In that way, the total compensation payable come out to be Rs.7,60,000/-. However, the Tribunal has not awarded any compensation for permanent disability of

12 ½ %.

Learned counsel for the claimant has referred to authority *Master Mallikarjun Versus Divisional Manager, The National Insurance Company Limited and another, 2014(14) SCC 396* by the Apex Court wherein the Apex Court had laid down parameters for award of compensation in case of permanent disability as follows:

- (i) For permanent disability upto 10% Rs. One Lakh.
- (ii) Disability above 10% and upto 30% ₹ 3 lakhs.
- (iii) Disability upto 60% ₹ 4 lakhs.
- (iv) Disability upto 90% ₹ 5 lakhs.
- (v) Disability above 90% ₹ 6 lakh.

Thus, in view of the abovesaid authority, compensation of Rs.3 lacs should be awarded on that account and I award the said amount to the claimant under that head.

While granting reimbursement of Rs.6,25,712/- towards medical treatment, the Tribunal has not taken into view the fact that many a times, the record of very amount spent on purchase of medicines etc. may not be kept and no amount has been awarded towards future medical expenses. Thus, the compensation under that head is enhanced to Rs.7,00,000/-

The compensation awarded under the other head i.e. attendant charges and special diet is also inadequate. The same is enhanced to Rs.25,000/- under each head.

Rs.50,000/- on account of mental and physical shock, pain and suffering and loss of enjoyment of life is found adequate.

No amount was awarded for loss of amenities and loss of expectation of life. The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. A sum of Rs.50,000/- is awarded to him on account of loss of amenities and loss of expectation of life.

The total compensation comes out to Rs. 11,50,000/-.

The Tribunal has awarded compensation of Rs.7,60,000/-.

In this way, the enhanced amount comes out to Rs.3,90,000/- (11,50,000 - 7,60,000). 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.3,90,000/-. The other terms and conditions given in the award shall apply to the enhanced amount as well.

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

14.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No