

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

FAO-256-2017 (O&M)

Date of Decision: November 16, 2019

Pankaj

..... Appellant

Versus

State of Haryana and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vishwajeet Malik, Advocate for
Mr. Vikram Singh, Advocate for
the appellant.
Mr. Pramjit Singh, AAG, Haryana.
Mr. Lalit Garg, Advocate
for the Insurance Company.

JAISHREE THAKUR, J.(Oral)

1. This is a first appeal that has been filed by the appellant seeking to challenge the award dated 09.09.2016 passed by the MACT, Karnal seeking enhancement of compensation on account of the injuries sustained by him in the motor vehicle accident which took place on 28.01.2015.

2. In brief, the facts of the case are that on 28.01.2015 at about

05.00 p.m., the claimant- Pankaj along with his friends Kashish, Lalit Sharma, Krishan, Akash and Nitish Bhardwaj was going in a car bearing No. HR-05AN-3029 from Daya Nand Colony towards NDRI Chowk for his personal work. At about 05.15 PM, when they reached near Red Carpet a three wheeler was found going slow just ahead to their car and the driver of the car had given indicator to overtake said three wheeler. In the meantime, a Haryana roadways bus bearing No.HR-58A-7343 came in a rash and negligent manner, hit against their car. As a result, all the occupants of car fell down on the road and received serious and multiple injuries on vital parts of their bodies. Thereafter a criminal case bearing FIR No.55 dated 29.01.2015 under Sections 279, 337 and 427 IPC was registered in Police Station, Civil Lines, Karnal. On account of multiple injuries suffered by him, the claimant filed a claim petition.

3. Upon notice, the respondents appeared and contested the claim petition. Respondents No.1 and 2 filed their joint written statements admitted the factum of accident but denied the negligence of respondent No.3-driver. The driver of the offending vehicle denied the taking place of any accident and took preliminary objections of maintainability, locus standi and cause of action. He further averred that a false case has been registered against him by the police in collusion with the claimants and prayed for dismissal of the claim. The claim was contested by the Insurance Company as well, took preliminary objections of maintainability, locus standi, cause of action, misjoinder and non-joinder of necessary parties. It was averred that the driver of the bus was not holding valid driving license at the time of

the accident. It was prayed by the Insurance company that it is not liable to pay any compensation and sought dismissal of the claim petition.

The MACT, Karnal framed issues to settle the claim. On appreciation of the evidence, the Tribunal awarded compensation for a sum of ₹2,94,145/- to the claimant- Pankaj by allowing him a sum of ₹2,51,145 towards medical expenses, ₹25,000/- towards pain and sufferings and ₹18,000/- towards disability and his disability was assessed at 9% permanent in nature qua whole body.

4. Aggrieved against the inadequate compensation, the instant appeal has been filed.

5. Per contra, learned counsel appearing on behalf of the respondent submits that adequate amount of compensation has been awarded by the Tribunal and no interference is called for.

6. In a judgment rendered in **Raj Kumar Vs. Ajay Kumar and others 2011 (1) SCC 343**, a formula has been prescribed for assessing compensation to be paid to a claimant who has suffered injuries resulting permanent disability, wherein it has been held that he has to be awarded compensation under the following heads namely:-

“F. Motor Vehicles Act, 1998, Sections 147, 166 and 173- Injury to a person in Motor accident- He is to be awarded compensation under following heads:- Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

- (a) Loss of earning during the period of treatment;*
- (b) Loss of future earnings on account of permanent disability.*
- (iii) Future medical expenses.*
- Non-pecuniary damages (General Damages)*
- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.*
- (v) Loss of amenities (and/or loss of prospects of marriage).*
- (vi) Loss of expectation of life (shortening of normal longevity)”*

7. There is no dispute about the factum of accident which took place on 28.01.2015 in which the appellant herein was severely injured. The award of the Tribunal qua the accident having taken place has attained finality since the same has not been challenged either by the owner-driver or by the Insurance Company. Therefore, the only question that remains to be determined is whether adequate compensation has been allowed or not.

8. In the opinion of the Court, apart from the loss of income which has not been given and ought to be given @ ₹20,000/-, the compensation towards attendant charges, special diet and transportation is also insufficient. The compensation payable to the claimant is thus re-assessed as under:-

Sr. No.	Heads of claim	Amount
1	Compensation on account of loss of earning	₹20,000/-
2	Loss of income due to permanent disability	₹18000/-
3	Compensation towards attendant charges	₹15000/-
4	Compensation towards transportation	₹10,000/-
5	Compensation for nutritious diet	₹10000/-
6	Medical expenses and hospital charges	₹2,51,145/-
7	Pain and suffering	₹25000/-
8	Total	₹3,49,145/-

9. Consequently, the appeal is allowed. The appellant- Pankaj shall be entitled to compensation of ₹3,49,145/-, the amount in excess i.e. over and above what was awarded by the Tribunal will also attract interest @7.5% per annum from the date of the claim petition till the date of payment.

November 16, 2019
seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No