

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

**F.A.O. No.2956 of 2018 (O&M)
Date of Decision: 17.07.2019**

The New India Assurance Company Limited

..... Appellant.

Versus

Sahil Parwal and others

..... Respondents.

AND

F.A.O. No.7117 of 2018(O&M)

Sahil Parwal

.....Appellant.

Versus

Kulvinder Singh and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Vinod Gupta, Advocate
for the appellant (in FAO No. 2956 of 2018) and
for respondent no.4 (in FAO No. 7117 of 2018).

Mr. Ajit Sihag, Advocate
for respondent no.1 (in FAO No. 2956 of 2018) and
for the appellant (in FAO No. 7117 of 2018).

Mr. Rajbir Singh, AAG., Haryana
for respondents no.3 and 4 (in FAO No. 2956 of 2018) and
for respondents no.2 and 3 (in FAO No. 7117 of 2018).

LISA GILL, J.

This judgement shall dispose of FAO No.2956 of 2018 and
FAO No. 7117 of 2018 as both these appeals arise from award dated
04.12.2017, passed by the learned Motor Accident Claims Tribunal,

Bhiwani (for short 'tribunal').

FAO No. 2956 of 2018, has been filed by the appellant-Insurance Company, challenging their liability, to pay the compensation as well as the quantum of compensation awarded by the learned tribunal.

FAO No. 7117 of 2018, has been filed by the appellant-claimant, seeking enhancement of the compensation awarded by the learned tribunal, on account of the injuries received by him, in a motor vehicle accident. It is noticed that formal notice has not been issued in this appeal, though, it was filed in March/August, 2018. Notice of motion was issued in FAO No. 2956 of 2018 filed by the Insurance Company. FAO No. 7117 of 2018 was taken up along with the appeal filed by the Insurance Company.

Notice is accordingly issued in the applications for condonation of delay of 59 days in re-filing and 3 days in filing of FAO No. 7117 of 2018, as well in the appeal. The same is accepted by Mr. Vinod Gupta, Advocate, for respondent no.4-Insurance Company and Mr. Rajbir Singh, AAG., Haryana for respondents no.2 and 3. Service upon respondent no.1, who is the driver and an employee of the Haryana Roadways, is dispensed with on request. For the reasons mentioned in the applications and arguments addressed, delay in re-filing and filing of this appeal is condoned. Delay of 74 days in filing of FAO No. 2956 of 2018, already stands condoned on 31.05.2018.

For the sake of convenience, facts are being extracted from FAO No. 2956 of 2018. As per the averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'M.V.Act'), appellant-claimant, on 02.02.2013, was going from Rohtak Chowk, Bhiwani to Hansi

Chowk, Bhiwani, on a motorcycle bearing registration no. HR-12-Q-5459. In the meantime, a bus, bearing registration no. HR-57-3076 of Haryana Roadways, driven by respondent no.1-Kulvinder Singh, in a rash and negligent manner, struck against the motorcycle of the claimant from behind. As a result thereof, the claimant fell on the road. The bus dragged him up-to twenty steps. As a result thereof, the claimant received grievous injuries and he remained admitted at PGIMS, Rohtak from 02.02.2013 to 07.02.2013. A tubular rod was inserted in his right leg and the claimant was shifted to Medanta Hospital, Gurgaon, where he remained admitted from 07.02.2013 to 01.03.2013 and was operated upon 7-8 times. Due to this accident, the claimant has become permanently disabled. FIR no.44 dated 02.02.2013, under Sections 279,337, 338 IPC, Police Station Civil Lines, Bhiwani, was registered against respondent no.1-Kulvinder Singh, in this respect. Compensation was thus claimed.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent no.1-Kulvinder Singh.

Learned tribunal while considering the fact that the claimant suffered amputation of the left lower limb below the knee and LPN palsy of the right lower limb with inability to walk independently, suffered 85% permanent disability, awarded a total sum of ₹26,33,862/-, which is detailed as under:-

1.	Medical bills	₹12,35,362/-
2.	Pain and suffering	₹25,000/-
3.	85% disability on account of below knee amputation left lower limb with painful neuroma with soft tissue contracture and LPN palsy right	₹8000/- x 25/100= ₹2000x12x18= ₹4,32,000/-

	lower limb with muscle wasting with inability to walk independently. His functional disability is assessed as 25% of the whole body as he is a B.Tech student and would be in a position to work while sitting.	
4.	Transportation	₹1,71,500/-
5.	Loss of income during treatment	₹20,000/-
6.	Attendant charges	₹50,000/-
7.	Amenities of life	₹50,000/-
8.	Loss of marital prospects	₹1,50,000/-
9.	Expenses on account of future treatment	₹5,00,000/-
	Total	₹26,33862/-

Aggrieved therefrom, two appeals have been preferred, one by the appellant- Insurance Company, and another by the appellant-claimant, both challenging quantum of compensation, one seeking reduction and the other for enhancement of the aforesaid compensation. Appellant-Insurance Company also challenges its liability to deposit the compensation.

Learned counsel for the appellant-Insurance Company, vehemently argues that initially, the FIR in this case was lodged against an unidentified driver. There is no evidence on record as to how the name of the driver came to the fore. It is after one month of the accident, that a cousin of the injured introduced himself as an eye witness to the accident and disclosed the identity of the alleged bus driver and the bus. It is thus submitted that the evidence on record does not prove that the accident took place due to the rash and negligent driving of the offending vehicle by its driver-respondent no.1. It is further argued that the learned tribunal has grossly erred in awarding excessive compensation to the claimant. In particular, reference is made to the compensation of ₹1,71,500/- awarded for transportation charges. It is further submitted that functional disability has

been wrongly assessed as 25% as the claimant being a B.Tech student, could easily carry out his vocation successfully while being seated. It is thus prayed that this appeal be allowed and the appellant-Insurance Company be absolved of its liability to pay the compensation. In the alternate, compensation awarded to the claimant be reduced.

Per contra, learned counsel for the claimant argues that there is ample evidence on record to prove that the accident in question was caused due to the rash and negligent driving of the offending bus by its driver-respondent no.1. It is further proved on record that the claimant suffered 85% disability. Learned tribunal, it is submitted has awarded meagre compensation, which should be enhanced. It is thus prayed that the appeal filed by the appellant-claimant be allowed and that of the Insurance Company be dismissed.

I have heard learned counsel for the parties and have gone through the record with their assistance.

Learned counsel for the appellant-Insurance Company, is unable to deny that FIR No. 44 dated 02.02.2013, Ex.P-151, was lodged promptly. The accident in question took place on 02.02.2013 and the FIR was registered on the same day at 1.50.p.m. A perusal of the FIR reveals that it was registered on the statement of Ashok Kumar son of Ram Kumar Verma, who has given a graphic description of the manner in which the accident took place. The registration number of the Haryana Roadways bus is specifically mentioned in the said FIR. Therefore, the contention that the name of the driver disclosed at a later stage, is devoid of any merit. The offending vehicle is duly identified. Just because the driver was not named

in the FIR, is not a ground to doubt the credibility of the claimant's case. Similarly, non-examination of the propounder of the FIR, is of no avail to the Insurance Company. The injured claimant has clearly deposed in respect to the accident as it took place. Respondent-driver, is admittedly facing trial in the FIR and he has not even stepped in the witness box. There is nothing on record to indicate that he was not driving the offending vehicle at the relevant time. The Hon'ble Supreme Court in **Mangla Ram v. Oriental Insurance Company Ltd. and others, 2018 (5) SCC 656** and **Sunita v. RSTRC** has held that the claimants in proceedings under this Act are required to prove their case on the touchstone of preponderance of probabilities and not beyond reasonable doubt. The claimant in the instant case has successfully done so. Learned tribunal has thus rendered a correct finding on this issue and the same is upheld.

The claimant, who was admittedly 22 years old at the time of the accident, examined PW-3-Dr. Nitin Vinayak Ghag, Senior Resident, Department of Plastic Surgery, Medanta Hospital, Gurgaon, who produced the record regarding the treatment of the claimant to prove the injuries received by the claimant. PW-3 stated that the claimant was admitted in their hospital on 07.02.2013 after being referred from PGIMS Rohtak. Initially surgery was conducted at PGIMS Rohtak. Amputation of the left leg below knee was carried out on 08.02.2013 by Dr. Balwinder Rana as the entire left leg of the claimant was infected with exposed bones. Right leg debridement with skin grafting was done by their Plastic Surgery Team on 09.02.2013. Multiple surgeries were carried out on 11.02.2013, 12.02.2013, 15.02.2013, 18.02.2013, 20.02.2013 and 23.02.2013. Claimant was discharged on

28.02.2013. The claimant was advised to purchase prosthesis. PW-3, proved the discharge summary, Ex.P-9 as well as OPD slips and the bills regarding treatment.

PW-4-Vikram, MRC, PGIMS, Rohtak, produced the relevant record in respect to the treatment of the claimant at PGIMS Rohtak w.e.f. 02.02.2013 to 07.02.2013. Treatment file, Ex.PW4/A, of PGIMS Rohtak, was duly proved by him.

Dr. Dr. Hemant More, Medical Officer, G.H.Rohtak, proved the disability certificate, Ex.PW5/A. PW-5, deposed that a board was constituted under the chairmanship of Dr. Amarjeet Rathi, Deputy Civil Surgeon, Rohtak, to assess the disability of the claimant and he was a member of the board. PW-5 testified that the claimant suffered '85% permanent disability on account of below knee amputation left lower limb with painful neuroma with soft tissue contracture and LPN palsy right lower limb with muscle wasting with inability to walk independently.' He further stated that said disability due to lower limbs, is effectively for the whole body.

PW-6-Mukul Vats, Associate Prosthetic & Orthotist, Ottobock, Healthcare India Private Limited, South Patel Nagar, New Delhi, proved that the claimant purchased lower limb prosthesis for ₹3,40,000/-. He further testified that the prosthesis generally need to be changed after 4-5 years. The expenses to be incurred in future were also detailed by him. The claimant himself testified as PW-8, while stating that he was a student of B.Tech, 3rd year and was earning ₹10,000/- per month from computer work.

Learned tribunal assessed income of the claimant to be ₹8000/- per month. No serious arguments have been raised by either side in respect

to the same. Therefore, income of the claimant as assessed by the learned tribunal i.e., ₹8000/- is maintained.

Learned tribunal has assessed the functional disability of the claimant to be 25%. Keeping in view the evidence on record, I find that the learned tribunal has erred in this regard. A perusal of the disability certificate, Ex.PW5/A, wherein a photograph of the claimant is duly appended as well as the other medical evidence on record clearly reveals that the functional disability of the claimant, who was 22 years old at the time of accident can reasonably be assessed to be 50%. To say that as the claimant was a student of B-Tech, his functional disability is only 25%, because he could carry on his work while being seated is erroneous in the factual matrix of the case. Thus, functional disability of the claimant is assessed as 50% instead of 25%.

Compensation to the appellant-Sahil Parwal is thus required to be worked out in view of the judgement of the Hon'ble Supreme Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765**. Loss of income is ₹8000 x 50/100 i.e., ₹4000/- per month.

While affording an increase of 40% in the income of the appellant on account of future income, the amount comes to [(4000/- + (4000 x 40%)] = ₹5600/- per month i.e., ₹67,200/- per annum. Age of the injured/claimant-Sahil Parwal, was 22 years as on the date of the accident, therefore, multiplier of 18 has to be applied. Loss of earnings is, thus, assessed as ₹12,09,600/- [67,200 x 18].

The amount of compensation on the medical treatment, as

awarded by the learned tribunal i.e., ₹12,35,362/-, is maintained. The claimant is however, entitled to a sum of ₹1,00,000/- instead of ₹25,000/-, on account of pain and suffering. Keeping in view the calculation of loss of income, as above, there is no occasion for an additional amount of ₹20,000/- being awarded for loss of income during the treatment.

There is however, merit in the argument raised by learned counsel for the appellant-Insurance Company, that compensation awarded towards transportation charges i.e. ₹1,71,500/-, is excessive. A perusal of the statement of PW-9-Dalvir Singh and PW-10-Anil Kumar, reveals that both these witnesses have been examined to project that their vehicle had been hired by the claimant when he went on various occasions for his treatment at Rohtak and Medanta Hospital Gurgaon. However, PW-9 and PW-10, have clearly admitted that they do not have any permit to ply their vehicle on hire. Moreover, there is no record regarding the receipts issued by them. At the same time, it cannot be ignored that the claimant must necessarily have made various trips to take the medical treatment. Therefore, he is entitled to a sum of ₹1,00,000/- instead of ₹1,71,500/- towards transportation charges.

Compensation towards attendant charges, loss of marital prospects, expenses on account of future treatment, is maintained. Appellant is entitled to a sum of ₹1,00,000/- towards loss of amenities of life instead of ₹50,000/-.

Compensation towards the claimant-Sahil Parwal on account of the injuries and disability suffered by him is thus re-worked as under:-

Sr. No.	Heads of Claim	Amount
1.	Loss of earnings	₹12,09,600/-

2.	Medical treatment	₹12,35,362/-
3.	Pain and suffering	₹25,000/-
4.	Transportation charges	₹1,00,000/-
5.	Attendant charges	₹50,000/-
6.	Loss of marital prospects	₹1,50,000/-
7.	Expenses on account of future treatment	₹5,00,000/-
8.	Loss of amenities	₹1,00,000/-
	Grand Total	₹33,69,962/-

Amount already awarded by the Tribunal to claimant-Sahil Parwal Kumar shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of petition till realization.

With the abovesaid modification in the amount of compensation, both the appeals, are disposed of.

17.07.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.