

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

FAO No.3805 of 2018 (O&M)

Date of decision: 22.10.2019

Asif

....Appellant

Versus

Irfan and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashish Gupta, Advocate,
for the appellant.

Mr. Arjun Atri, Advocate,
for respondent Nos. 1 and 2.

Mr. Amit Kundra, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Mewat (hereinafter referred to as 'the Tribunal') vide award dated 16.03.2018 on account of injuries received by him in a motor vehicular accident which took place on 03.06.2016.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 03.06.2016, at about 12.00 noon, claimant-appellant (Asif) along with Irfan-respondent No.1 was going to village Jamalgarh on a motorcycle bearing registration No. HR-28-C-1015. The said motorcycle was being driven by Irfan-respondent No.1 in a rash and negligent manner and the claimant was pillion rider. Claimant-appellant requested respondent No.1 to drive the said motorcycle at a

moderate speed, but he did not listen to his requests. When they reached 6-7 killas before village Jamalgarh, then the said motorcycle struck against the bicycle, which was coming from the opposite side, as a result of which, claimant as well as rider of the bicycle suffered injuries. With regard to the accident, FIR No.321 dated 11.06.2016, under Sections 279/337/338 IPC was registered at Police Station, Punhana, against the driver of offending vehicle i.e. respondent No.1. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of offending vehicle by its driver and thus, returned finding on issue no.1 in favour of the claimant. This finding was rightly given on the basis of deposition of Asif-claimant (PW-1). Apart from this, claimant has also proved on record report under Section 173 Cr.P.C. Ex.P192 and MLR Ex.P189. Ultimately, the claim petition was allowed and the compensation was assessed as under:-

Sr. No.	Heads	Amount
1	Medical bills	Rs.1,83,441/-
2	Pain and sufferings	Rs.50,000/-
3	Transportation charges	Rs.15,000/-
4	Service of attendant	Rs.25,000/-
5	Nutritious diet	Rs.15,000/-
6	Loss of future earnings	Rs.1,35,000/-
	Total	Rs.4,23,441/-

The claimant was found entitled to a total compensation of Rs.4,23,441/- along with interest at the rate of 7% per annum from the date of filing of petition till realization. Feeling dissatisfied with the impugned

award, the claimant-appellant has preferred the present appeal.

Learned counsel for the appellant contends that the claimant was 15 years of age when he had received accidental injuries and had suffered disability to the tune of 30% qua his right eye. In this regard, disability certificate Ex.P3/A was issued by the Medical Board, Mandikhera. This certificate was proved on record by Dr. Naseem Ahmed, Medical Officer, MBBS MS (Ortho), Civil Hospital, Mandikhera (PW-3), who deposed that on 16.08.2017, the members of Medical Board at Civil Hospital, Mandikhera had examined Asif and found him suffering from disability to the extent of 30% on account of right eye phthisis with no perception of light.

Learned counsel refers to the judgment passed by Hon'ble the Supreme Court in **Master Mallikarjun vs. Divisional Manager, The National Insurance Company Limited and another**, 2013 (4) RCR (Civil) 295 and to contend that compensation on account of permanent disability suffered by the claimant, is liable to be enhanced.

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. Parties are not in dispute with regard to finding given by the Tribunal on issue No.1 to the effect that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver. Hon'ble the Supreme Court in **Master Mallikarjun's** case (supra), has laid down the structured formula for awarding the compensation towards permanent disability. In para No.12, it has been observed as under:-

“12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents

and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent ability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick.”

In the present case, the claimant has lost vision of his right eye and as per deposition of Dr. Naseem Ahmed, Medical Officer (PW-3), he has suffered disability to the extent of 30% in respect of his right eye. Applying the ratio of judgment passed in *Master Mallikarjun's* case (supra), compensation for suffering disability of 30% qua right eye is being assessed as Rs.3,00,000/-. Accordingly, keeping in view the peculiar circumstances of the present case, compensation is hereby re-assessed in the light of the judgments passed in *Master Mallikarjun's* case (supra), as under:-

Sr. No.	HEADS	AMOUNT (In Rs.)
(i)	Compensation on account of permanent disability of right eye to the extent of 30%	Rs.3,00,000/-
(ii)	Medical expenses	Rs.1,83,441/-
(iii)	Pain and suffering	Rs.50,000/-
(iv)	Transportation charges	Rs.20,000/-
(v)	Services of attendant	Rs.30,000/-
(vi)	Nutritious diet	Rs.15,000/-
(vii)	Loss of marriage prospects, future earnings	Rs.2,00,000/-
(viii)	TOTAL COMPENSATION AWARDED	Rs.7,98,441/-
(ix)	Enhanced amount of compensation	Rs.7,98,441 – 4,23,441 = Rs.3,75,000/-

The enhanced amount of compensation of **Rs.3,75,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall

carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “**Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and others**, Civil Appeal No.4528 of 2019 (arising out of SLP (C) No.5720 of 2019) (decided on 01.05.2019). Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

22.10.2019
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No