

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

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FAO No.5488 of 2016 (O&M)

Date of decision: 08.01.2020

Surinder

... Appellant

Versus

Vijender Singh and anr.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Narender Kaajla, Advocate for the appellant.
Mr. Satish Jain, Advocate for insurance company.

REKHA MITTAL, J. (Oral)

CM No.18872-CII of 2016

Prayer in this application is for condonation of delay of 245 days in filing the appeal.

In view of averments made in the application supported by an affidavit of the appellant coupled with that provisions of the Motor Vehicles Act, 1988 providing for compensation are benevolent social legislation, application is allowed and delay of 245 days in filing the appeal is condoned subject to the condition that the claimant shall forgo interest for the period of delay, in case compensation is enhanced.

Main Case

The claimant is in appeal seeking enhancement of compensation on account of injuries sustained in a motor vehicular accident that took place on 05.10.2014.

The Tribunal assessed compensation of Rs.1,50,179/-, detailed hereunder:-

Loss of income and permanent disability	Rs.26,000/-
Medical expenses	Rs.89,179/-
Special diet	Rs.5000/-
Transportation charges	Rs.5000/-
Pain and sufferings	Rs.25,000/-

However, as 40% negligence has been attributed to the injured, he has been paid compensation to the tune of Rs.90,000/-.

Counsel for the appellant would argue that findings of the Tribunal attributing 40% negligence to the injured for want of driving

licence are erroneous and liable to be set aside. It is argued that at the time of occurrence, motorcycle bearing No.HR-20-C-5738 was stationary and accident was caused due to rash and negligent driving of offending car No.HRT-7 driven by Vijender Singh. Another submission made by counsel is that the injured suffered disability to the extent of 8% and remained hospitalised for a period of 9 days but Tribunal has awarded inadequate compensation for special diet, transportation and loss of income etc.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal attributing contributory negligence to the injured who had been driving the motorcycle without any licence. He has also supported assessment of compensation by the Tribunal.

The plea of claimant is that on 05.10.2014, he along with his uncle Sher Singh was coming from Village Khalsa Mahajanana towards their fields on aforesaid motorcycle driven by him. At about 9.00 pm, when they reached near waterworks of village Khalsa Mahajanana, one Pawan Kumar met them. He stopped the motorcycle on extreme left side of the road and his uncle Sher Singh was talking with Pawan Kumar. He was sitting on his stationary motorcycle. The offending vehicle in a rash, negligent manner and at a high speed came from opposite side and struck against his motorcycle resulting in grievous injuries to him.

The injured appeared in the witness box and reiterated his version set-forth in the claim application. Counsel for the insurance company has failed to point out any materials elicited in his cross examination to shatter evidential value of his testimony that accident took place when the injured was sitting on a stationary motorcycle. Even otherwise, the mere fact that the injured did not have a driving licence *ipso facto* is not a ground to attribute contributory negligence to him unless proved otherwise. In this view of the matter, findings of the Tribunal attributing contributory negligence to the injured for want of driving licence cannot sustain and accordingly set aside. As a natural corollary, the appellant shall be entitled to entire compensation assessed by the Tribunal and additional compensation, if any, allowed by this Court.

This brings the Court to computation of compensation by the Tribunal. The injured suffered moderate head injury with facial injury and

fracture on right leg proved by Dr. Shantanu Rawat PW3. He was operated for fracture right leg and fracture facial bones. He got treatment as an indoor patient from 05.10.2014 to 13.10.2014. The Tribunal has not allowed any specific compensation for loss of income during the period of treatment and recovery. The claimant is awarded Rs.20,000/- for loss of income during the period of treatment and recovery. Compensation of Rs.26,000/- allowed by the Tribunal shall be appropriated towards permanent disability to the tune of 8% and loss of amenities of life. Compensation allowed by the Tribunal under other heads is affirmed. The additional amount of Rs.80,179/- $[(1,50,179 - 90,000) + (20,000)]$ shall be payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 245 days in filing the appeal.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

08.01.2020

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No