

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

FAO-288-2019 (O&M)

Date of decision: December, 03 2021

Karanvir Gandotra

.....Appellant

Versus

Sanjay Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Pranav Chadha, Advocate for the appellant.

Mr. R.S. Sharma, Advocate for respondent No.2/OIC.

ARUN MONGA, J

Appellant, before this Court, is the claimant/victim of an accident that took place on 28.10.2010 seeking enhancement of compensation payable by the Insurance Company of the offending vehicle and to that extent assailing the award dated 06.07.2018 rendered by learned Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as 'MACT').

2. Before adverting to the claim of the appellant, facts are being reproduced from the award itself as below:-

“that on 28.10.2010, he was coming from the side of Sector 46 and going to Sector 20-A, Chandigarh on his scooter bearing No.CH-03U-2468 for his personal work. When he reached near Sector 20-A, Chandigarh, a maruti car bearing registration No.CH-03N-8274 came which was being driven at a very high speed, in a rash and negligent manner, from opposite side and hit the scooter of the claimant. Resultantly, he fell down and sustained injuries on hands, legs and other parts of his body. He sustained fracture on his right femur. Respondent No.1 took him to PGI, Chandigarh in the offending vehicle where he remained admitted from 07.11.2010 to 22.11.2010 and incurred expenditure of Rs.1,50,000/- on his treatment beside paying amount of Rs.29,000/- on attendant. It is claimed that at the time of accident, he was 53 years old, earning Rs.15,000/- per month

from home tuitions. Ever since the accident, he has been on wheelchair and there is none to look after him.”

3. Respondent No.1, owner-cum-driver of the offending vehicle in his written statement contested the claim saying that he was not liable to pay any compensation since he had valid driving licence and the vehicle was duly insured with respondent No.2-Insurance Company. Respondent No.2, on the other hand, contested the validity of the licence and the same being ineffective etc. and therefore, refuted its liability on account of the insurance contract.

4. Based on rival pleadings, following issues were framed by the learned MACT:-

- “1. Whether accident dated 28.10.2010 resulting in injuries to claimant occurred on account of rash and negligent driving of vehicle No.CH-03N-8274 by respondent No.1? OPP*
- 2. Whether the claimant is entitled for compensation for causing injuries to him, if so, to what extent and from whom? OPP*
- 3. Whether the driver of offending vehicle was not holding a valid and effective driving license on the date of accident and the vehicle was being driven in violation of the terms and conditions of the insurance policy? OPR3.*
- 4. Relief.”*

5. Based on the rival pleadings, learned MACT observed that present claim petition was earlier decided vide award dated 03.04.2015 by virtue of which, on issue No.1, it was held that respondent No.1 was rash and negligent in driving car bearing registration No.CH-03N-8274. Issue No.2 was also decided in favour of the claimant by virtue of which it was held that claimant was entitled to Rs.79,802/- as compensation. Both the respondents were held jointly and severally liable to pay compensation to the claimant along with interest @ 7.5% per annum from the date of filing the claim

petition till actual realization. Issue No.3 concerning violation of the terms and conditions of the Insurance Policy having not been pressed, was decided against respondent insurance company. Issue No.1 was decided in favour of the claimant.

Award dated 03.04.2015 was challenged by the applicant-claimant-Karanvir Gandotra vide FAO-4983-2015, which was disposed of and findings recorded on issue No.2 were set aside with a direction to make assessment afresh on the basis of the material already on record and additional evidence to be adduced by the claimant to prove the disability certificate dated 18.03.2016 in accordance with law.

Learned Tribunal recorded fresh findings only on issue No.2 and observed that since issues No.1 & 3 were neither challenged nor touched by this Court, therefore, there was no necessity of dealing with those issues all over again. Therefore, Issue No.2 was decided in favour of the applicant-claimant and against respondents No.1 & 2.

6. After hearing the rival contentions of learned counsel for the parties, I am of the view that the compensation deserves to be enhanced for the reasons stated hereinafter.

7. Challenge in appeal is only to the finding of the learned Tribunal on issue No.2. There is no appeal or cross objection from the respondents. During arguments also, learned counsel for the respondents did not urge anything against the findings of the learned Tribunal on other issues. The same are in consonance with the record and are, therefore, affirmed.

8. The learned Tribunal noted that it had been proved that the claimant had sustained fracture of the right femur, injuries on his hands, legs

and other parts of the body in the accident, which took place on 28.10.2010; that in an earlier accident which took place in 2006, he had already been 70% disabled; that after this second accident, his disability had increased to 90%; that at the time of accident, the claimant was aged 53 years and had monthly income of Rs.6,000/- from home tuitions. The learned Tribunal held that only 20% of the claimant's disability was attributable to the injuries sustained in the accident which took place on 28.10.2010. On this basis and by applying the multiplier of 11, it calculated the compensation for permanent disability and loss of future earnings of the claimant at Rs.1,58,000/- ($6,000 \times 12 \times 11 \times 20 / 100$). The learned Tribunal awarded for the expenditure on medicines Rs. 36,802/-; special diet Rs. 5,000/-; transport Rs. 1,500/-; mental pain and suffering Rs. 12,500/-, discomfort and compensation for loss of earnings during recuperation i.e. Rs. 24,000/- . Thus, the total compensation of Rs. 2,38,202/- was awarded by the learned Tribunal alongwith interest @ 7.5% from the date of the claim petition till actual realization.

9. As regards issue No. 2, I am of the opinion that the findings/conclusions of the learned Tribunal are erroneous. Its approach, besides being contrary to record, is unrealistic.

10. Claimant's age is mentioned as 53 years in his affidavit dated 27.08.2014 supporting the claim petition. Disability certificate dated 18.03.2016 issued by the Post-Graduate Institute of Medical Education & Research, Chandigarh shows his date of birth as 27.10.1961. They indicate that at the time of accident on 28.10.2010, he was aged 49 years. In the

absence any material to the contrary, the learned Tribunal obviously erred in holding that at the relevant time, he was aged 53 years.

11. Vide its order dated 02.03.2015, the learned Tribunal had allowed the claimant's application for production of additional evidence including his income tax return for assessment year 2010-11 corresponding to the accounting year 2009-10. The document bears e-filing acknowledgement number 128591720130710 dated 13.07.2010. Its genuineness is not in dispute. This return was filed more than three months before the accident giving rise to the claim petition. The claimant's net income for the financial year 2009-10 was mentioned in this return as Rs.1,58,000/- i.e. Rs. 13,166/- per month as on 31.03.2010. Obviously, the claimant had no motive or malafide intention, when he filed this return, to inflate or overstate his income. In the face of this uncontroverted piece of documentary evidence, it would be reasonable and fair to hold that at the time of accident on 28.10.2010, the claimant was earning about Rs. 14,000/- per month from home tuitions. To be noted here, this was his income on 28.10.2010, even after and despite the 70% disability suffered in the accident of 2006. In my opinion, the learned Tribunal wrongly held that at the time of accident on 28.10.2010, the monthly income of the claimant was Rs. 6,000/-.

12. In the peculiar facts of this case, the proportion of the claimant's disability attributable to injuries sustained in the second accident of 28.10.2010 ought to be worked on a scale of 100 points for full physical ability prior to the first accident of 2006. In the first accident of 2006, he had lost 70 points and was thus left with 30 out of 100 points of the physical

ability. In the second accident of 28.10.2010, he lost another 20 out of the then available 30 points of his physical ability. Viewed in this manner, the loss of physical ability attributable to the injuries of second accident of 28.10.2010 was 20 out of 30 points, which he had before accident on 28.10.2010. Thus, the disability suffered by the claimant due to the injuries sustained on 28.10.2010 was 20 out the then available of 30 points of his physical ability. In other words, it was 66.6 % i.e. $\frac{2}{3}^{\text{rd}}$ of his available physical ability before accident on 28.10.2010.

13. As noted above, the claimant was aged about 49 years and was earning about Rs. 14,000/- per month at the time of accident. A Constitution Bench of the Apex Court held in **National Insurance Company Ltd. Versus Pranay Sethi and Others, (2017) 16 SCC 680** that in case of self employed or fixed income persons, **an addition of 25% of the established income should be the warrant where the victim of the accident is between age of 40 to 50 years. In terms of the judgment of the Apex Court in *Sarla Verma and others v. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77* multiplier of 13 is to be applied where the age the accident victim is 46 to 50 years. The said multiplier is applicable herein. To my mind, the learned Tribunal thus erred in applying the multiplier of 11.**

14. The claimant was already 70% disabled in the earlier accident 2006. Despite that, somehow, he was by and large self-reliant, able to drive a scooter and was visiting the houses of students to give home tuitions. Due to second accident in question, his overall disability increased from 70% to 90% leaving him with only 10% of his physical ability. There seems substance in the submission on his behalf that after the second accident, the claimant

cannot stand on his own feet or walk and he is and has to be on wheel chair. Obviously, this has virtually made him a cripple for the rest of his life. Firstly, it has seriously affected his ability to earn. More than that it has deprived him of the sense of self-confidence and self-reliance and made him almost dependent on others even for his routine body movements and activities. The claimant remained under treatment at the PGI, Chandigarh from the date of accident till 22.11.2010. Considering the nature of his injuries and disability, it seems that he will have to visit the Hospital on regular intervals for review/advice. In my opinion, amount awarded by the learned Tribunal for special diet Rs. 5,000/-; transport Rs. 1,500/-; mental pain and suffering i.e. Rs.12,500/-, discomfort and compensation for loss of earnings during recuperation i.e. Rs. 24,000/- was grossly inadequate. To my mind, it would be fair and reasonable to award a lump sum amount of Rs.1,00,000/- on these counts.

15. In the light of above discussion, the compensation payable to the claimant would be as under:

Claimant	Karanvir Gandotra
Age at the time of accident	49 years
Monthly income	Rs.14,000/-
Add 25% increase for future prospects	Rs.3,500/-
Monthly income inclusive of increase for future prospects	Rs.17,500/-
Loss of monthly 2/3 rd of the monthly income due to accident	Rs.11,667/-
Applicable multiplier	13
Total loss of future earnings (11,667x12x13)	18,20,052/-
Cost of medicines	Rs.36,802/-
Mental pain, suffering, discomfort; and special diet, transport etc.	Rs.1,00,000/-
Total	Rs.19,56,854/-

Compensation awarded by the Tribunal	Rs.2,38,202/-
Amount of enhancement of compensation	Rs.17,18,652/-

16. It may be noted here that compensation of Rs.10 lakhs had been claimed by the claimant/appellant. That would not prevent the Tribunal or the appellate Court from awarding the higher amount of reasonable compensation payable to the victim of the accident as per applicable multiplier of 13 in terms of Apex Court judgment in *Sarla Verma ibid.*

17. Accordingly, the appeal is allowed and the award is modified to the extent that the amount of compensation shall stand enhanced to Rs.19,56,854/-.

(ARUN MONGA)
JUDGE

December 03, 2021

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No