

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 1321 of 2004(O&M)

Date of Decision: October 25 , 2021.

Abhishek Kumar

..... APPELLANT

Versus

Harjeet Singh and others

..... RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Aparna Jain, Advocate
for the appellant.

None for respondents No.1 and 2.

Mr. R.N.Singal, Advocate
for respondent No.3 – Insurance Company.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This appeal has been filed by the injured-claimant seeking enhancement of compensation awarded to him by the learned Motor Accident Claims Tribunal, Sirsa (for short, the 'Tribunal') vide impugned award dated 25.11.2003 on account of the injuries and disability suffered by him in a motor vehicle accident.

Brief facts necessary for adjudication of the case are that, petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') was preferred by the appellant seeking compensation on account of the injuries and disability

suffered by him in a motor vehicle accident, which took place on 10.03.2002. It is pleaded that the claimant, aged 23 years, was a final year student pursuing engineering (B.E.) in Sant Longowal Institute of Engineering and Technology, Longowal (for short, the 'SLIET') at the relevant time. Appellant alongwith one Vikrant on 10.03.2002 was going to the Institute on a motorcycle and was proceeding on correct side of the road at normal speed. When they were a little away from Gaushala Chowk, the offending vehicle being driven by its driver, Harjeet Singh @ Kala in a rash and negligent manner came from the opposite direction at a very high speed and struck against the motorcycle of the claimant. As a result thereof, the appellant/claimant and Vikrant sustained grievous injuries. Vikrant succumbed to his injuries. FIR No.9 dated 11.03.2002 under Sections 304A/279/337/338/427 IPC, Police Station Longowal (Ex.PH) was registered against the respondent-driver in respect to the incident. Appellant/claimant was initially taken to General Hospital, Longowal thereafter, shifted to Civil Hospital, Sangrur. The doctors at Civil Hospital, Sangrur referred him to some higher centre on 11.03.2002. Appellant/claimant was treated at DM Bone and Joint Hospital, Bathinda. It is pleaded that the claimant had very bright prospects before the accident, but due to disability he is now unable to move or to do any physical work. Compensation was thus prayed for.

Respondents contested the claim petition filed by the claimant. Various preliminary objections were raised and averments on merit were controverted. Respondents No.1 and 2 denied involvement of the offending Jeep No.PB-13E-3113 in the accident. Respondent No.3-Insurance company while admitting that the offending vehicle was insured with it, pleaded violation of

terms and conditions of the insurance policy. It was also contended that respondent-driver did not hold a valid driving license. Dismissal of the claim petition was prayed for.

Following issues were framed by the learned Tribunal on the basis of pleadings of the parties:-

- “1. Whether the petitioner received injuries in a road accident which took place on 10.3.2002 near Gaushala Chowk, Longowal, Distt. Sangrur (Punjab) within the jurisdiction of Police Station Longowal due to rash and negligent driving on the part of respondent No.1 the driver of jeep No.PB-13E/3113 as alleged? OPP
- 2. Whether respondent No.1 did not hold a valid driving licence and if so to what effect? OPR3
- 3. Whether the petitioner is entitled to an award of compensation and if so how much and from whom? OPP
- 4. Relief.”

Learned Tribunal on considering the evidence on record concluded that the claimant was injured in the motor vehicle accident which took place on 10.03.2002 due to the rash and negligent driving of jeep bearing No.PB-13E/3113 by its driver, respondent no.1 – Harjeet Singh. Learned Tribunal while accepting that the appellant suffered a permanent disability of 15%, awarded compensation of ₹1,50,000/-, which is detailed as hereunder:-

1.	Expenditure incurred on medical treatment including transportation and and special diet.	60,000/-
2.	Pain and sufferings	15,000/-
3.	Permanent disability and loss of income	75,000/-

Aggrieved from the quantum of compensation, this appeal has been filed by the injured/claimant.

Learned counsel for the appellant argued that meagre compensation has been awarded by the learned Tribunal. Appellant, at the time of the occurrence of the accident was a student, pursuing his final year of engineering (B.E.) in the SLIET, Longowal. Proper method of computation of compensation, it is asserted, has not been followed by the learned Tribunal. Learned counsel for the appellant submits that due to injury to his lungs, appellant is likely to face medical problem throughout his life. Furthermore, compensation under all heads has also not been awarded. It is thus prayed that compensation awarded to the appellant be enhanced.

Learned counsel for respondent No.3 – Insurance Company while refuting the arguments addressed, submits that just and reasonable compensation has been awarded to the appellant, which requires no enhancement of any sort. Dismissal of the appeal is prayed for.

Heard learned counsel for the parties and have gone through the file as well as record of this case.

There is no dispute regarding the injuries suffered by the appellant in motor vehicle accident occurred on 10.03.2002, which was caused due to rash and negligent driving of the offending vehicle by its driver. Finding of the learned Tribunal on Issue Nos.1 and 2 are not under challenge.

Appellant was admittedly 23 years old at the time of the accident and was pursuing final year of engineering (BE) at SLIET, Longowal. Appellant after the accident on 10.03.2002 was firstly taken to the General Hospital,

Longwal, thereafter referred to the higher centre and then got treated at DM Bone and Joint Hospital, Bathinda, where he remain admitted upto 28.03.2002. He suffered grievous injuries including fracture of the left ankle, compound fracture of both bones of left leg and fracture of ribs on the left side. It is further borne out from the record that appellant's ribs after breaking, tore into his left lung on account of which his left lung collapsed. Appellant underwent major surgeries and on account of puncture wound of the lung, there is collection of pleural fluid, for which the appellant had to undergo three operations. A part of the bone of left leg was removed, which left the appellant with permanent limping and shortening of the leg. PW3 Dr. Kailash Goyal of DM Bone and Joint Hospital, Bathinda has testified regarding the injuries suffered by the appellant as well as the operation in regard to nailing of left leg and screw fixation of left ankle on 16.03.2002. There was development of pleural fluid in the chest cavity on account of the ribs fracture.

Disability certificate (Ex.PB) issued to the appellant proves that the appellant has suffered permanent disability to the extent of 15%. Record of the medical treatment received by the appellant is on record and has not been denied by learned counsel for Insurance company, neither is there any denial of the fact that the appellant was a final year student pursuing engineering (BE) at SLIET, Longowal.

Dr. S.K.Batta, Chairman of the Medical Board issuing the Disability Certificate, testified that 'there were fractures of both bones of left leg with interlocking nail with union of the fracture. There was fracture medial malleolous

left side with screws with union of the fracture. There was restriction of knee joint movements. There was fracture of multiple ribs of left side. Disability was assessed as 15%. It was permanent disability. The certificate issued by the board is Ex.PB, which bears my signatures'.

Keeping in view the factual matrix of the case as well as clear-cut evidence on record, it is evident that the appellant has indeed suffered functional disability, which cannot be assessed to be less than 15%.

In such a situation it was incumbent upon the learned Tribunal to assess loss of income as per the guidelines set down by the Hon'ble Supreme Court in Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765.

As noted in the foregoing paras, the appellant was a final student pursuing engineering at the time of the accident. Learned counsel for the appellant has relied upon judgment of the Hon'ble Supreme Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd., 2010 (1) SCC 254, to submit that income of a final year engineering student was assessed as ₹60,000/- per annum with respect to his prospective employment in relation to an accident which took place in the year 1993. Accident in the present case took place in March, 2002. It has been asserted that the appellant was offered a job on a salary of ₹8,000/- per month during probation at a Paper Mill at Mukerian and thereafter, he would definitely have earned ₹15,000/- per month. However, there is no such conclusive evidence to substantiate this plea. Appellant while testifying as PW1 has stated that the same was an oral offer. However, it cannot

be denied that the appellant was a final year student of Bachelor of Engineering in SLIET, Longowal and he successfully completed the said course in First Division. His income is, thus, assessed as ₹7,500/- per month. Loss of income is, thus, assessed as ₹1,125/- per month (15% of 7,500).

It is not in dispute that the appellant was about 23 years old at the time of the accident. Increase in income on account of future prospects at the rate of 40% has to be afforded taking the amount to $[1125 + (40\% \text{ of } 1125)] = ₹1,575/-$ per month i.e., ₹18,900/- per annum. Multiplier of 18 is to be applied in this case. Loss of earnings is, thus, assessed as **₹3,40,200/-** $[18,900 \times 18]$.

In view of the compensation as calculated above, appellant is not entitled to ₹75,000/- as awarded by the learned Tribunal on account of loss of income and permanent disability.

Medical expenses of ₹58,000/- have been awarded by the learned Tribunal as per the bills proved on record and the same are upheld.

Instead of ₹15,000/-, the appellant is held entitled to a sum of ₹50,000/- towards pain and sufferings. Appellant is also held entitled to loss of amenities and marriage prospects, which is assessed as ₹75,000/-. ₹5,000/- awarded towards conveyance charges and ₹10,000/- each is awarded on account of special diet as well as attendant charges.

Appellant is, thus, entitled to compensation detailed as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Loss of earnings	₹3,40,200
2.	Loss of amenities and loss of marriage prospects	₹75,000
3.	Pain and sufferings	₹50,000

4.	Attendant charges	₹10,000
5.	Medical expenses	₹58,000
6.	Special diet	₹10,000
7.	Conveyance charges	₹5,000
Grand Total		₹5,48,200/-

Amount already awarded by the Tribunal to the appellant/claimant under various heads shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest at the rate of 6.5% per annum on the enhanced amount from the date of filing of petition till realization.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

October 25 , 2021.
'om'

(LISA GILL)
JUDGE

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