

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

FAO-3815-2004(O&M)

Date of decision:-2.12.2021

Alisha

...Appellant

Versus

Ram Sarup and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Mohit Sadana, Advocate
for the appellant.

Mr.Paul S.Saini, Advocate with
Mr.Vipul Sharma, Advocate
for the respondent No.5 – insurance company.

H.S. MADAAN, J.

On 24.4.2002, a motor vehicular accident took place statedly on account of rash and negligent driving of bus bearing registration No.CH-01U-2664 by respondent No.1 - Ram Swarup, in the area of jurisdiction of Police Station Dhanaula, in which several persons including Baby Alisha, who was of tender age at that time, had suffered injuries; then Baby Alisha aged about 4 years had filed a claim petition under Section 166 of the Motor Vehicles Act against driver, owners and insurance company of the bus in question as well as against owner, driver and insurance company of Maruti Car bearing registration PB-31-B-0547, the other vehicle involved in the accident.

After contest Motor Accident Claims Tribunal, Sangrur had accepted the claim petition granting compensation of Rs.1 lakh to her vide award dated 17.3.2004.

Finding the compensation awarded to be inadequate, the minor claim through her mother and natural guardian Smt.Minakshi had approached this Court by way of filing an appeal, notice of which was given to respondents. However, only respondent No.5 – New India Assurance Company Ltd. - insurer of the bus has put in appearance to offer a contest, whereas remaining respondents opted not to appear.

During the course of proceedings before this Court, efforts for an amicable settlement were made by referring the matter to Mediation Centre but those did not prove to be successful. However, at request of the claimant, it was directed that a medical board comprising doctors of PGI, Chandigarh would examine her so as to assess her physical disability giving specific opinion, if the injured had suffered any disability on account of injuries sustained in the motor vehicle accident that took place on 24.4.2002. The claimant accordingly appeared before the medical board, which has issued disability certificate dated 25.1.2019. Alisha having date of birth as 28.4.1998 has since attained the majority. As per the disability certificate issued, she has suffered 90% physical disability and it is mentioned in the certificate that the condition is not likely to improve. The claimant had been examined by the board of doctors as per directions issued by this Court and copy of the disability certificate has been placed on record.

Both the counsel have agreed that the Motor Accident Claims

Tribunal, Sangrur, which had passed the award would be in a better position to assess as to how much weightage is to be given to this disability certificate and then to calculate the compensation payable on account of disability suffered and for that the claimant will have to examine the doctor, who was member of the medical board that had examined the claimant to prove the certificate and then the respondents would get an opportunity to cross-examine the doctor to clarify the entire picture.

As such, as agreed, the appeal in question is disposed of inasmuch as the case is remanded to Motor Accident Claims Tribunal, Sangrur with regard to issue on the point of assessing quantum of compensation. The Tribunal may fix a date for evidence of the claimant for proving the disability certificate and then the respondents would be given an opportunity to cross-examine the witnesses. The claimant may lead further evidence in that regard, if so advised and then the respondents would get an opportunity to lead evidence in rebuttal. The findings with regard to issues No.1 and 3 are kept intact and the case is being remanded with regard to issue No.2 only. Since the contesting respondent is New India Assurance Company, the insurer of the bus in question and it has been saddled with liability to pay the compensation, the Tribunal may not issue notice to the remaining respondents.

Since the case is quite old, the Tribunal is directed to complete the exercise within a period of two months from the date of receipt of copy of order there and then pass a fresh award with regard to the quantum of compensation payable to the claimant.

The parties through their counsel are directed to appear before the Tribunal on 16.12.2021.

Registry is directed to send the lower Court record back to the Tribunal immediately.

2.12.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No