

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4111-2008 (O&M)

Date of decision: 28.07.2022

Reserved on: 14.07.2022.

Satwinder Kaur

....Appellant

Versus

Pritam Bhayya and others

..Respondents

CORam: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.K.Aurora, Advocate for the appellant
Mr. Vinod Gupta, Advocate for the respondents

ANIL KSHETARPAL, J

1. The claimant prays for modification of the award passed by the Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as 'the Tribunal'). A claim petition under Section 166 of the Motor Vehicles Act, 1988, for grant of compensation on account of injuries suffered by the appellant was allowed by the Tribunal while assessing the compensation amount of Rs.4,01,686/-. As per Ex.175, the appellant suffered permanent disability to the extent of 55%. The total period of her hospitalization is 191 days. She suffered fracture on both the legs. On account of complications, it was a case of non-union of left femur with non-union of left tibia. She also developed bed sores (pressure ulcers). The details of hospitalization in the different hospitals is extracted as under:-

1. 13.08.2004 to 14.08.2004 in Civil Hospital, Tanda = 1 day
2. 14.08.2004 to 13.09.2004 in Joshi Hospital, Jalandhar = 31 days
3. 16.09.2004 to 15.10.2004 in Joshi Hospital, Jalandhar = 30 days

4. 15.11.2004 to 22.11.2004 in Sikka Hospital, Jalandhar = 8 days
5. 22.11.2004 to 30.11.2004 in Joshi Hospital, Jalandhar = 24 days
6. 11.12.2004 to 03.01.2005 in Joshi Hospital, Jalandhar = 24 days
7. 02.02.2005 to 15.04.2005 in Modern Hospital, Hoshiarpur = 73 days

2. At the time of accident she was a house wife residing along with her husband and three children in Village Salapur, Tehsil Dasuya, District Hoshiarpur. On 13th August, 2004, i.e the date of accident, she was 33-34 years of age.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paper book and the record of the Tribunal, which was requisitioned. It is evident that the claimant in order to prove her case examined the following doctors:-

- i) AW4 Dr. J S Dhaami, Civil Hospital
- ii) AW5 Dr Neelam Joshi, proprietor of Joshi Hospital
- iii) AW8 Dr.C.P Sikka from Sikka Hospital
- iv) AW10 Dr. Sanjay Narad from Modern Hospital
- v) AW11 Dr Surendra Singh Dardi, Civil Hospital in order to prove the disability certificate
- vi) AW15 Dr. Harish Parsi, owner of Pathology Laboratory.

4. Apart from the hospital charges, she also produced invoices of the medicines purchased by her. She claimed that she spent a sum of Rs.4,37,348/- out of which the Tribunal had accepted only Rs. 2,59,666/.

5. On a careful reading of the award passed by the Tribunal, it is evident that the Tribunal has refused to award the amount mentioned in the produced invoices Ex. A153 to A172. These invoices have been

issued by Joshi Medicos, Kapurthala Road, Jalandhar, which is located inside the Joshi Hospital. It would be evident from the hospitalization record of the appellant that she remained admitted in the Joshi Hospital on 4 different occasions. Dr. Neelam Joshi, proprietor of the Joshi Hospital appeared in evidence as AW 5. These invoices have been rejected on the ground that these do not tally with the Bed head ticket, as these medicines have not been prescribed in the Bed head ticket of the appellant. On a careful reading of the deposition of Dr Neelam Joshi, it is evident that no suggestion was given to her in this regard. Her attention was not drawn to the aforesaid facts. The Insurance Company or the respondents were required to seek explanation of the doctor in this regard, if they had any doubt about the genuineness of the invoices or the chart prepared wherein medical history was mentioned (i.e the Bed head Ticket)

6. Moreover, in para 18 of the award, the Tribunal has refused to grant the amount charged by the Sikka Hospital on the ground that she was admitted in the hospital due to a heart problem and was diagnosed to have dilated cardiomyopathy with diabetes. It was noted here that Dr. C.P.Sikka has been examined as AW8. On reading of the statement of Dr C.P. Sikka, it is evident that Satvinder Kaur, appellant was admitted in his Hospital due to the heart problem and ultimately she was diagnosed to have cardiomyopathy with diabetes and a fracture in her right tibia. On reading of his cross examination, it is evident that no suggestion was given to Dr. Sikka that the appellant was an old patient of cardio problem or Diabetes. Such problems can be interconnected,

particularly, when she had remained on bed for a period of more than 6 months. She was admitted into the Sikka Hospital on 15th November, 2004, for a period of total 8 days. It was the responsibility of the learned counsel representing the respondents to cross examine the witnesses on that aspect of the matter in order to solicit explanation. In the absence of any such proof thereof, it wasn't appropriate for the Tribunal to assume that such medical problems are not a result of the said accident.

7. Similarly, the Tribunal has rejected the invoices submitted of some chemists that include Raja Chemist, Sood Medicine Traders Private Limited and Walia Brothers, Hoshiarpur. These invoices are related to the period when the appellant remained admitted in Modern Hospital, Hoshiarpur for nearly two and half months that is for a total of 73 days. First of all Dr. Sanjay Narad has been examined as AW10. There is no cross examination of Dr. Sanjay Narad on the prescription of the medicines as on the invoices produced. For the parity of reason noted above, these bills/invoices cannot be rejected. It has been explained by Ashok Kumar, representative of Sood Medicine Traders Private Limited and representative of Walia Brothers that certain medicines were purchased as these were not available in the chemist shop located inside the Modern Hospital, Hoshiarpur. The representatives of Raja Chemist, Sood Medicine Traders Private Limited and Walia Brothers have been examined. The Tribunal has also refused to grant amount for purchase of bandage on the ground that Hospital has itself included dressing charges, amounting into Rs.7,200/-. In the opinion of the Court, the Tribunal has erred in this regard. The dressing charges include the

services of Medical and Paramedical staff. As far as bandage etc. the same has been purchased by the appellant. If the learned counsel representing the respondents had any doubt, they should have drawn the attention of Dr Sanjay Narad when he appeared and deposed as witness.

8. Similarly, the Tribunal has taken a myopic view of the matter while awarding Rs. 5,000/- towards the special diet and rejecting the claim of Rs.55,000/- for attendant and maid servant for the appellant.

9. Furthermore, the Tribunal has also erred in awarding Rs.1,10,000/- on account of permanent disability and Rs. 5,000/- only, on account of pain and suffering.

10. As already noticed, the appellant remained admitted in hospital for a period of total 191 days. She was ultimately discharged from the hospital on 15th April, 2005 i.e after period of 8 months from the date of the accident. In between she was hospitalized in the various hospitals, keeping small gaps within each duration. She must have engaged a maid servant to help her in the hospital. Therefore, the claim of Rs. 55,000/- by the appellant is not found to be exaggerated towards the attendant and maid servant. Hence, for maid servant and attendant Rs. 55,000/- are awarded. Similarly, she has claimed Rs. 25,000/- on account of special diet. Keeping in view the fact that she suffered fracture in both the legs and also there was a complication of non-union of the bones therefore claim is not found to be exaggerated and Rs.25000/- have been awarded towards the special diet. The Tribunal has awarded another sum of Rs.20,000/- on account of medicines and Rs.5,000/- for pain and suffering. The appellant has also been awarded

Rs. 1,10,000/- on account of her permanent disability. A bare look at Ex. A175, which has been proved by Dr. Surendra Singh Dadri, Medical Officer, Civil Hospital, it is evident that the appellant has suffered permanent disability to the extent of 55%. She has suffered fracture in both the legs. She has three children to take care of apart from her husband. In such circumstances, on account of permanent disability, she is held in entitled to Rs. 5,00,000/-. Apart from this, she is also held in entitled to Rs.50,000/- towards pain and suffering and Rs. 50,000/- towards the future medical expenses. The accident took place on 13th August 2004. Her notional income is assessed at Rs. 6,000/- per month. For a period of first year, she will be entitled to total amount i.e Rs. 72,000/- (6000x12=72000). On account of future escalation in the income, due to future increase the amount is required to be added by 40% as per the judgment passed by the Five Judges Bench in '**National Insurance Company Ltd. vs. Pranay Sethi and other'** 2017 (16) SCC 680, it comes to Rs. 28,800/-. Thus, the total income comes to Rs. 1,00,000/-. On account of functional disability her annual loss of income is assessed at Rs. 55,440/- which is rounded up to Rs.56,000/- multiplied by 15. Accordingly, the amount come to Rs.8,40,000/-.

11. Keeping in view the aforesaid facts, the award passed by the Tribunal is modified. The total amount payable comes to Rs.15,45,000/- out of which Rs. 4,01,686/- ordered by the Tribunal shall stand adjusted. The enhanced amount of compensation of Rs.11,43,314/- shall be paid to the appellant along with interest at the rate of 8% per annum from the date of filing of the claim petition till its realisation.

12. With these observations, the appeal stand allowed

13. All the pending miscellaneous applications, if any, are also disposed of.

28.07.2022

rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No