

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

**FAO No.2219 of 2005
Date of Decision : 25.07.2022**

Surjan Pal Holkar

....Appellant

Versus

Kishan and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sushil Bhardwaj, Advocate
for the appellant.

Mr. Ashwani Talwar, Advocate
for respondent No.3/Insurance Company.

PANKAJ JAIN, J.

Claimant is in appeal seeking modification of the award dated 10th of February, 2005 passed by the Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal').

2. Claimant filed petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation for the injuries sustained in motor vehicular accident dated 5th September, 2001.

3. As per the claim petition, on 5th September, 2001, Ram Chander was driving the motor-cycle No.HR-08B-0264 whereas appellant was the pillion rider. They were going on G.T. Road, towards Govt. College, Karnal. When they reached at the crossing of Sector 9, the offending tractor No.HR-05J-1324 being driven by respondent No.1, very rashly and negligently hit their motor-cycle. Both the occupants of

the motor-cycle fell down on the road and received multiple injuries. FIR No.311 dated 5th September, 2001, for the offences punishable under Sections 279/337/338 IPC at Police Station Civil Lines, Karnal was registered against driver.

4. Appellant claims to be a practicing lawyer at District Courts. As per claim petition he remained admitted in hospital from 5th September, 2001 to 14th September, 2001 and spent about Rs.45,000/- on his treatment. He claims that on account of injury in the shoulder he was put under brace for a period of one month and could not move his shoulder for three months.

5. On the basis of the pleadings of the parties, the following issues were framed by the Tribunal :-

1. *Whether the accident in question took place due to the rash and negligent driving of respondent No.1, driver of tractor No.HR-05J-1324, if so, its effect? OPP*
2. *If issue No.1 is proved, whether the claimants are entitled to receive any compensation, if so how much and from whom? OPP*
3. *Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident and if so its effect? OPR*
4. *Relief.”*

6. Since the finding recorded w.r.t. accident and the injuries suffered by the claimant is not in dispute, the subject matter of the present appeal is limited to the compensation awarded by the Tribunal i.e. Issue

No.2.

7. Ld. Counsel for the appellant claims that Tribunal has awarded a sum of Rs.81,00/- as per the bills proved on record. Amount of Rs.30,000/- awarded on account of pain and suffering, special diet, hospitalization and transportation charges, permanent disability and loss of income needs to be enhanced. He submits that Disability Certificate w.r.t. the appellant has been proved as Exhibit P-12 which shows that the appellant suffered permanent disability to the extent of 8% and nothing has been paid for permanent disability of 8%.

8. Per contra, Ld. Counsel for respondent No.3 is not in a position to dispute that meager sum of Rs.30,000/- awarded by the Tribunal needs to be enhanced and admits that the Tribunal has not paid any amount to the petitioner on account of disability as proved on record.

9. I have heard Ld. Counsel for the parties and with their able assistance have carefully perused the records of the case.

10. It has gone unrebutted that the claimant/appellant was hospitalized from 5th of September, 2001 to 14th September, 2001 and has suffered injury in the shoulder leading to permanent disability to the extent of 8%. Medical bills of Rs.81,00/- as proved on record have been rightly awarded. The appellant is further held entitled for Rs.10,000/- on account of pain and suffering, Rs.10,000/- for special diet and transportation, Rs.10,000/- as attendant charges, Rs.10,000/- on account of future treatment and allied expenses. He is 47 years of age and a practicing Advocate at

District Courts thus, the loss of income is assessed at Rs.5,000/-. Loss of earning capacity owing to permanent disability of 8% is being assessed by taking his monthly income @ Rs.5,000/-. Future prospects of 25% needs to be added. Loss of earning capacity is taken to be equivalent to that of permanent disability suffered by him i.e. 8%. Multiplier of 13 shall be applicable. The appellant is further held entitled for interest to be calculated @ 9% per annum from the date of filing of the claim petition till its actual realization.

11. As a sequel of the aforesaid discussion, the present appeal is allowed. The Award stands modified to the extent as stated herein above.

12. The total compensation be calculated accordingly and paid to the appellant.

13. Needless to say that any amount already paid to the claimant/appellant shall be set off.

14. Ordered accordingly.

July 25, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No