

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

FAO No. 7139 of 2010 (O&M)

Date of decision: 28.03.2022

Mukti Chatterjee

... Appellant

versus

Sanjay Kumar and others

... Respondents

Coram : Hon'ble Mr. Justice Arun Monga

Present : Mr. Avinash Chander Jain, Advocate, and
Ms. Aparna Jain, Advocate, for the appellant.

Ms. Shamsheer Kaur, Advocate, for respondent no.3-
Insurance Company.

Arun Monga, J.

CM No.10637-CII-2011

Applicant seeks permission to produce the medical prescriptions, vouchers for medicines purchased, tests/scans performed and an ambulance service voucher of Rs. 900/- for transport from Pushpanjali Hospital to Max Hospital, Delhi (Annexures A-1 to A-20) aggregating Rs.1,84,259.17 in connection with her treatment. It is stated that same were given to her counsel but inadvertently could not be exhibited alongwith other documents before the learned Motor Accident Claims Tribunal (for short hereafter 'the Tribunal').

Under Section 168 of the Motor Vehicles Act, 1988, the Tribunal/Court has to hold an inquiry into the claim and make an award determining the amount of compensation which appears to it to

be just. Section 169 of the Act provides that in holding such inquiry, Tribunal may follow such summary procedure as it thinks fit. To my mind, in such cases, the Tribunal is not bound to follow the strict provisions of the Code of Civil Procedure.

In **Chapala Chinnabbayi v. Naralasetti Anusuyama, AIR 2006 AP 42 (DB)**, it was held that the High Court may permit a party to adduce additional evidence even in Second Appeal, provided if the additional evidence is in the interest of justice.

In present case, the relevancy of the aforesaid documents for determination of fair compensation and their genuineness is not in doubt. The applicant is in first appeal before this Court against the order of the Tribunal. She should not suffer merely because by inadvertence her counsel could not produce/exhibit these documents before the Tribunal.

As a result, in the interest of justice, the application is allowed. Vouchers Annexure A-1 to A-20 are taken on record by way of additional evidence.

FAO No. 7139 of 2010 (O&M)

1. Appellant seeks modification of the award passed by the learned Motor Accident Claims Tribunal, Fast Track Court, Gurgaon, and enhancement of compensation from Rs. 1,00,000/- to Rs. 25,00,000/.
2. Succinct facts, as per the claim petition, are that on 25.12.2006, claimant was coming back with her daughter and son-in-law in a Santro Car no. DL-7-CC-4217 from Jaipur to Ghaziabad.

When they reached near Narsinghpur village and Shani Temple, NH-8, Tehsil and District Gurgaon, a truck bearing no. RJ-14-2G-3634 came from behind on high speed in a rash and negligent manner. Truck was being driven by respondent no.1 and hit the Santro car from the back side. Due to this impact, the car went on the extreme right side of the road. Thereafter the said truck also hit a Rajasthan Roadways Bus. The bus lost its balance. It turned to the right side and touched past the sides of the Santro car. On account of this accident, Smt. Mukti Chatterjee- claimant sustained serious and grievous injuries all over her body. Claimant was 60 years of age at the time of accident. She was holding all responsibilities of a household lady. She became permanently disabled. She spent about Rs. 10 lacs on her treatment. FIR was also lodged on the same day in Sadar Police Station, Gurgaon by Mr. Soumitra Chakraborty, son-in-law of the appellant-claimant. Respondent no.2 was the owner of the truck and respondent no.3 is the insurance company.

3. Upon notice, despite service none appeared on behalf of respondent nos.1 and 2 before the MACT. They were proceeded ex-parte.

4. The petition was contested by respondent no.3- Insurance company by filing written statement. It was pleaded that respondent no.1 was not holding a valid and effective driving license at the relevant time. Allegedly, no accident took place. The truck in question was not involved in the accident. It was pleaded that the

claimant was thus not entitled for any compensation and dismissal of petition was sought.

5. Learned Tribunal framed the following issues:-

- “1) *Whether the accident in question resulting in injuries to the claimant was caused because of rash and negligent driving of truck bearing registration No. RJ-14-2G-3634 by its driver respondent No.1 ? OPP*
- 2) *If issue No.1 is proved, whether the claimant is entitled to get compensation. If so, to what amount and from whom? OPP.*
- 3) *Whether the respondent no.1 was not holding effective and valid driving licence at the time of alleged accident. If so, its effect? OPR-3*
- 4) *Relief.”*

6. On appraisal of record, issue No.1 is in favour of the claimant. While deciding issue No.3, it is held that the driving license Ex P-1 of respondent No.1 produced on record is not fake or fictitious. However, Tribunal observed that respondents No.1 to 2 since did not join proceedings, the route permit had not been produced and it was presumed that respondent No.2 was not having a valid route permit for plying the truck in Haryana. Accordingly, the learned Tribunal directed the insurance company to pay the compensation and to recover the same from the insured by initiating execution proceedings, without filing a separate suit. Under issue No.2, it assessed the compensation payable to the appellant as under:

- | | |
|--|--------------|
| (a) For mental shock, pain and suffering | Rs. 30,000/- |
| (b) Medical expenses | Rs. 60,000/- |
| (c) Special diet expenses | Rs. 5000/- |

(d) Transport expenses	Rs. 5000/-
Total	Rs. 1,00,000/-

7. Learned counsel for the claimant would argue that amount of compensation in lieu of medical expenses awarded by the learned Tribunal is very meager, whereas the claimant has spent lacs of rupees on her treatment. Her treatment is an ongoing, whereby recurring nature of issues requires medical attention regularly. She suffered jaw fracture, fracture of right side nasal bone, deviation of nasal septum, multiple rib fractures on both sides, right maxilla fracture and right lateral orbital wall fracture. The accident took place on 25.12.2006. Since then she is suffering mentally as well as physically. The injury being permanent in nature will never recover with the passage of time as it is irreversible.

8. Learned counsel for the claimant would further urge that the injured claimant being 76 years of age now, the multiplier should be applied as per the formula laid down by Apex Court in in **Sarla Verma (Smt.) and others vs Delhi Transport Corporation and another, 2009 (6) Supreme Court Cases 121.**

9. In support of his contention that granting of future prospects of a house makers income on notional income is a just compensation in lieu of the contribution and work done by a housewife/ house maker, learned counsel for the appellant-claimant relied on **Kirti and another vs Oriental Insurance Company Limited, 2021 (2) Supreme Court Cases 166.**

10. As regards the contention that the damages and compensation should be provided to the injured claimant both under pecuniary and non-pecuniary heads, learned counsel for the appellant relied on **Rekha Jain vs National Insurance Company Limited and others, 2013 (8) Supreme Court Cases 389.**

11. On the other hand, learned counsel for the Insurance Company/Respondent no.3 urged that the learned Tribunal has granted just and fair compensation of Rs.1,00,000/- while considering the medical bills, etc.

12. Heard learned counsel for the parties and perused the paper book.

13. Para 11 of the impugned award, is as under:

“11. In this case, the petitioner has not proved the medical bills in the right perspective, despite the fact that she has suffered multiple grievous injuries. But it may be mentioned that in his statement, learned counsel for the petitioner has produced bills mark A-1 to A-7 which are to the tune of about Rs 26,000/-. In such type of cases, provisions of Evidence Act are not strictly applicable. Further, in the statement of Satpal PW4 admission sheet Ex PW4/1 contained in seven pages have been proved and some of the pages are containing bills to the tune of about Rs. 30,000/-. One bill is Rs. 26,302/-. Another bill is Rs. 2026/-. One bill is Rs. 10,271/-. Normally all the bills are not kept preserved. In this way, in my considered opinion, the petitioner has at least incurred medical expenses to the tune of Rs. 60,000/-.”

14. Vide a separate application bearing CM No.10637-2011 vouchers Annexure A-1 to A-20 aggregating Rs.1,84,259.17/- have been taken on record in additional evidence.

These vouchers were not before the learned Tribunal. Obviously, it

could not take them into account while assessing the compensation for medical expenses. To my mind, these expenses evidenced by these vouchers ought to be added in determining the compensation payable for medical expenses. With that addition, the compensation under this head would come up to Rs.2,44,259.17 say Rs. 2,44,260/-.

15. The learned Tribunal observed that the claimant had sustained multiple rib fracture on both sides, fracture of right maxilla and right lateral orbital wall fracture. She also suffered fracture right side nasal bone. Her nasal septum is deviated to right side. She also suffered some disfigurement of face. In my opinion, compensation of Rs. 30,000/- awarded by the learned Tribunal for mental shock, pain and suffering and the disfigurement of face is on the lower side and it should be enhanced to Rs. 50,000/-.

16. The claimant remained hospitalised from 25.12.2006 to 02.01.2007 for treatment of multiple injuries suffered in the accident. After discharge from hospital, it would have taken her considerable time, say about two months, for full recovery and resumption of normal day to day activities. During this period, she was unable to do even her household work. In terms of money value for household work, by guesstimate her loss of income on this account is safely assessed at Rs. 15,000/-. The learned Tribunal did not take this factor into consideration. In my opinion, the claimant ought to be compensated for this loss as well.

17. In the absence of any disability causing permanent loss/diminution of earning capacity of the claimant, no case is made

out for award of compensation on that account. The contention to this effect advanced by the learned counsel for claimant is, therefore, repelled.

18. As a result of above discussion, the claimant is held entitled to revised compensation as under:-

(i)	For mental shock, pain and suffering	Rs. 50,000/-
(ii)	Medical expenses	Rs.2,44,260/-
(iii)	Loss of Income	Rs.15,000/-
(iv)	Special diet expenses	Rs.5000/-
(v)	Transport expenses	Rs.5000/-
		Rs.3,05,760

19. Accordingly, the amount of total compensation payable to the claimant is enhanced from Rs.1,00,000/- to Rs. 3,05,760/- alongwith interest at the same rate as already awarded by MACT i.e. 7.5% p.a. with effect from date of filing of claim petition till actual payment thereof. The impugned award is modified to that extent.

The appeal stands thus disposed of.

March 28, 2022
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(Arun Monga)
Judge

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No