

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 7447/2016 (O&M) &

FAO No. 1749/2017 (O&M)

Date of decision:5.12.2022

FAO No.7447/2016

Liberty Videocon General Insurance Co. Ltd.

.....Appellant

Vs.

Jai Ram and others

.....Respondents

FAO NO.1749/2017(O&M)

Jai Ram

.....Appellant

Vs.

Sh.Parvinder Singh and others

.....Respondents.

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Vandana Malhotra, Advocate for the
 appellant/ Insurance Company in FAO 7447/
 Mr.Ashwani Arora, Advocate for the appellant/claimant.
 Mr. Dheeraj Kumar, Advocate for
 Mr. HPS Ishar, Advocate for respondent

Nidhi Gupta, J.

This common order shall dispose of aforesaid two appeals,
having arisen out of MACT case no.377 dated 29.10.2015 filed under Section
166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'),

decided by Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal'), vide Award dated 7.9.2016.

FAO No.7447/2016 has been filed by the Insurance Company challenging the award of compensation of Rs. 2,86,636/- to claimant-Jai Ram; whereas FAO No.1749/2017 has been filed by injured claimant-Jai Ram seeking enhancement of compensation awarded to him. Thus, in aforesaid appeals Award dated 7.9.2016 passed by the Tribunal has been challenged.

Parties shall be referred to by their litigative status before the Tribunal. Brief facts as pleaded before the Tribunal in the claim petition under are that on 1.6.2015 at about 8 pm, claimant was going from Tribune Chowk to his house in Village Raipur Khurd in a three-wheeler bearing registration No. HR-99-VC(T)6285 (hereinafter referred to as the 'the offending vehicle'). It is the case of the injured claimant that as the driver-respondent no.1 of the offending vehicle was driving it in a rash, negligent manner and at a fast speed as such, after covering some distance the offending vehicle struck against a stationary vehicle which was standing on the road. Due to this impact, claimant fell on the road and sustained injuries whereupon he was immediately taken to GMCH Sector 32, Chandigarh. A criminal case was registered against the driver of the offending vehicle. It was further pleaded by the injured claimant that he was in the profession of marble cutting and used power tools for breaking lintels but due to said accident he suffered two fractures on right leg, head injury, face injury, tongue injury, fracture on right arm and other multiple injuries.

Respondents 1 and 2, who are driver and owner of the offending vehicle respectively, resisted the claim petition and stated that a false FIR had been registered against the respondent no.1-driver. The

respondent No. 3 -Insurance Company in its written statement before the Tribunal stated that the insured had violated the terms and conditions of the insurance policy and took defence under various provisions of the Act. After examining the pleadings and the evidence led by the parties, the learned Tribunal granted a total compensation of Rs.2,86,636/- by assessing his monthly income at Rs.8000 and applying the multiplier of 15 which comes to $Rs.8000 \times 12 \times 15 = 14,40,000 - \times 15 / 100 = Rs.2,16,000/-$. Further an amount of Rs.35636/- was granted for the expenditure on medicine/treatment; Rs.15,000/- for pain and suffering; Rs.10,000/- on account of transportation charges; and Rs.10,000/- for special diet. Thus, total compensation under all the heads came to Rs.2,86,636/-. His income was assessed @ Rs.8000/- per month, as claimant led no evidence in support of his claim that he was earning Rs.20,000/- per month. Since the age of the claimant was taken to be 37 years, multiplier of 15 was applied and functional disability of the claimant was assessed to be 15% of the disablement as permanent in nature.

Learned Tribunal also held that the claimant would be entitled to interest @ 9% from 1.6.2015 i.e. after 30 days from the date of injury and if the amount of compensation was paid within a month from the date of passing of the award then the claimant was held entitled to interest @ 7.5% per annum.

Ld. Counsel for the Insurance Company very ably takes me through the LCR, and refers to the statement of the claimant on the basis of which FIR was lodged, which is as follows:-

“Statement of Jai Ram s/o Sadhu Pal r/o 151 3C, Village Raipur Khurd age 37 years. It is stated that I am the resident of the above mentioned address along with my family by taking a room on rent. I work in the

Industrial Area, Phase No.II in Plot 129 as labour. On 1.6.2015 at about 8 pm after finishing my duty I sat in the auto Rikshaw near Tribune Chowk to go to my house. The Auto Rickshaw had gone to some distance and it struck against a car and I fell down. When I gained consciousness then I was in GMCH-32 Chandigarh for treatment. In this accident I received fracture of right leg and injuries on my right arm. I received injuries on my nose also. The accident occurred suddenly for to the rash and negligent driving of the auto and due to taking a right turn suddenly and due to striking against a vehicle at its back. Kindly take a legal action against the auto driver. I have got to know the auto No. as HR99VC(T)6285. I have got recorded my statement the same is correct. Sd/-Jai Ram (M)9779740314”.

It is vehemently submitted by the learned counsel for the Insurance Company that the accident had taken place at about 8 pm. By the claimant's own statement he had fallen unconscious. Therefore, how could he have known the number of the offending vehicle/ auto rickshaw. It was further submitted that the accident is of 1.6.2015 whereas the FIR was lodged only on 8.6.2015. It is accordingly submitted that auto rickshaw in question has been falsely implanted only for the gain of illegal compensation and was not involved in the alleged accident. Learned counsel further refers to report of the Mechanical Expert to submit that after registration of the FIR, the auto rickshaw had been impounded and as per the report of the Mechanical Expert, there was no mark on the auto rickshaw and even no dent caused by allegedly running into a stationery vehicle. It is submitted that there was no involvement of the auto rickshaw and the whole incident has been falsely created by the claimant. The third contention of the learned counsel for the Insurance Company is that the endorsement of the driving licence of respondent no.1-driver is for LMV (non-Transport) whereas his permit should

have been for ‘passenger carrying vehicle’. Learned counsel submits that the reasoning of the Tribunal that u/s 66 of the Act, no permit is required when the gross weight of the vehicle does not exceed 3000 kgs., is misplaced in view of sub-clause (b) of Section 66 wherein it is stipulated that *‘The exemption from permit in view of Section 66(3)(i) is available only to Goods Carrying Vehicle and not to Passenger carrying vehicles....’* It is submitted that the Auto rickshaw falls under the category of ‘Public Service Vehicle’ as defined under Section 2(35) of the Act. ‘Public service vehicle’ means *‘any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxicab, a motorcab, contract carriage and stage carriage’*; whereas as per Section 2(47) of the Act, *“transport vehicle” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle’*. It is accordingly submitted that since the vehicle in question was a Public service vehicle/transport vehicle, findings of the Tribunal to the effect that such vehicle needs no permit and driver does not need to have licence authorising him to drive transport vehicle, were clearly erroneous. Further submitted that the auto rickshaw was not registered and registration of the offending vehicle was done only after the date of accident and as per the Act, no permit can be issued to a vehicle bearing a temporary registration.

Learned counsel for the claimant inter alia submits that this is a simple case of denial. It is submitted that the mechanical report cannot be relied upon because in case the auto rickshaw had turned turtle then there need not be any dent or scratch on the vehicle. It is further submitted that delay in registration of FIR is because the claimant was under treatment. Further submits that as regards how the claimant came to know about the registration

number of the auto rickshaw, when as per his own case he had fallen unconscious upon the impact of the accident, it is submitted that no such question has been put to the claimant who had appeared as PW1. It is further submitted that the fact that driver respondent no.1 had not challenged the FIR or further proceedings emanating therefrom, is to be construed as an admission on the part of respondent no.1 of his negligence. It is further submitted that the claimant is in the business of breaking lintels and he was a labourer and there is no denying the fact that he has suffered 15% disability of the whole body which in actual terms comes to 30% functional disability. Accordingly, the claimant was entitled to 40% by way of future prospects. Learned counsel further submits that due to accident claimant was unable to work for one year, however, no loss of income has been granted to him. It is further submitted that the claimant is entitled to loss of income during recuperation and recovery period during which he could not work and therefore, multiplier of 15 applied by the Tribunal for loss of future income was correctly applied.

I have heard learned counsel for the parties and perused the record in great detail.

A perusal of the statement of Dr. Ravi Kumar, PW2- Assistant Professor, Department of Orthopedics and member Disability Board, GMCH, Sector 32, Chandigarh shows that he has deposed as follows:-

“...He was found to be a post operated case of fracture tibia right side with fracture medial condyle tibia right side with stiffness right knee with scarring right forearm. On taking fresh x-rays and on physical examination he was found to have permanent disability of 15% in relation to whole body. If the patient is into labour work or any work where extraneous physical activities are involved and this disability will

effect his earning capacity, therefore, this can be termed as functional disability”.

PW-2 has further stated that the fracture of the claimant was united after 7 months and 9 days during which period he remained on follow up treatment and was advised to do non-weight bearing work, and therefore, clearly the claimant could not have worked during this period being a lintel breaker.

A perusal of cross-examination of RW-2 Parvinder Singh, driver of the offending vehicle evidences that he has admitted that the driving licence was issued on 16.5.2013 for non-transport vehicle and has further admitted that at the time of accident his vehicle did not have a permanent registration number and that he did not file any application before the higher authorities regarding his false implication.

Accordingly, in view of the above facts and circumstances, this appeal is partly allowed by holding that the claimant shall be entitled to 40% future prospects, functional disability is assessed to be 20%. Loss of income for one year during which he was recuperating will be added and application of multiplier of 15 is maintained; special diet is maintained at Rs. 10,000/-; and pain and suffering is maintained at 15,000/-. The revised calculation, is accordingly, as follows:-

Date of accident	1.6.2015
Age	37 years
Occupation	Marble cutting and using power tools and was breaking lintels
Disability	15% permanent in relation to whole body issued by GMCH Sector 32, Chandigarh
Hospitalization in GMCH 32, Chandigarh	Date of admission-2.6.2015 Date of Discharge-2.7.2015

Monthly income	Rs.8000/-
Future increase @ 40% (NIC v Pranay Sethi)	Rs.3200/-
Total monthly income	Rs.11,200/-
Permanent disability-15% Functional disability-20%	Rs.2240/- loss of income due to disability
Multiplier	15
Loss of future income due to permanent disability (2240x12x15)	Rs.4,03,200/-
Loss of income for seven months i.e. during recovery period (Recovery period is mentioned as per the statement of Dr. Ravi Kumar) (Anthony v Managing Director, KSRTC 2020 ACJ 1592 SC)	Rs.56,000/- (Rs.8000x7)
Pain & Sufferings	Rs.15,000/-
Medical bills	Rs.35,636/-
Special diet	Rs.10,000/-
Transportation	Rs.10,000/-
Total amount	Rs.5,29,836/-
Already awarded	Rs.2,86,636/-
Enhancement	Rs.2,43,200/- along with interest on enhanced amount @ 7.5% from the date of filing of petition till actual realization.

A copy of this order be placed on the file of FAO No. 1749/2017.

Pending application(s),if any, also stand disposed of.

05.12.2022
Joshi

(Nidhi Gupta)
Judge