IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 7459/2017 AND
FAO 5081/2017
Date of decision: 08.12.2022

FAO 7459/2017

Ms. Arti ………..Appellant

Vs.

Sakun Ahmed @ Kaka and others ………..Respondents

(2) FAO 5081/2017

New India Assurance Company Limited ……….Appellant

Vs

Arti and others ……..Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ashwani Arora, Advocate for the claimant-Arti (Appellant in FAO No.7459/2017 and respondent no.1 In FAO 5081/2017

Mr.Rajneesh Malhotra,Advocate for New India Assurance Co.Ltd. (Appellant in FAO 5081/217 and respondent no.3 In FAO 7459/2017)

Mr.Madan Gupta, Advocate for owner of Car No.HR-03-L-1120 (respondent no.2 in FAO 7459/2017 and respondent No.3 in FAO 5081/2017)

Nidhi Gupta, J.

This common order shall dispose of aforesaid two appeals bearing FAO 7459/2017 and FAO 5081/2017, since the facts and law points involved in both these appeals are same and learned counsel for the parties have no objection to the same. For the sake of convenience facts are being noticed from FAO 7459/2017, and parties are being referred to by their litigative status therein. These appeals arise out of MACT Case No.445/2015 decided by Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') vide Award dated 25.4.2017 passed in a petition under Section 166 of the Motor

Vehicles Act, 1988 whereby injured claimant- Arti was held entitled to compensation amounting to Rs. 19,93,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization of the whole amount, on account of injuries suffered by her in a motor vehicular accident that took place on 13.5.2013 due to rash and negligent driving of Car bearing registration No. HR-03L-1120 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1 - Sakun Ahmed @ Kaka when it hit Activa Honda bearing registration No.CH 04-A-9562 from behind, at the Light Point of Sector 46/47/48/49. Appellant/claimant Arti at that time was sitting on the pillion of said Activa Honda, which was being driven by respondent no.4 - Ms. Chetna, and owned by respondent no.5 - Mrs.Urmil Anand. FAO No. 7459/2017 has been filed by claimant/appellant Arti for enhancement; while FAO No. 5081/2017 has been filed by respondent No. 3 Insurer of offending vehicle on the ground that (i) offending vehicle was not involved in the accident and (ii) compensation awarded by the Tribunal is on higher side.

Brief facts of the case

On 13.05.2013 at about 2.30 PM Ms. Arti Appellant/Claimant was going from her house Sector 32-C, Chandigarh to Phase-XI, Mohali while sitting on the pillion seat of an Activa Honda bearing registration No.CH-04-A-9562 which was being driven by her friend Ms.Chetna Anand respondent no.4 at fast speed and in a zig-zag manner. When they reached near the Light point of Sector 46/47/48/49, Chandigarh, at that time a Car bearing Registration No. HR-03-L-1120 came at fast speed from their behind and struck against their Activa Honda. As a result of this accident claimant Arti and her friend both fell on the road alongwith their Activa Honda and received serious injuries. They were taken to hospital immediately. The accident took place due to the rash and negligent driving of Car bearing registration no.HR-03-L-1120/ offending vehicle by Sh.Sakun Ahmed @ Kaka respondent no.1, and Activa Honda bearing registration No.CH-04-A-9562 driven by Ms Chetna Anand Respondent No.4.

Before the Tribunal, it was case of the claimant that she was 22 years of age at the time of accident and pursuing B.A. 1st Year in Govt. College for Girls, Sector 11, Chandigarh. She had participated in National School Games at Chandigarh and had also received various certificates and appreciations in the game of Ball Badminton. However, due to paralysis of right side of her body on account of injuries received in the said accident she had to give up her academic and sports career. In the accident she suffered brain injury, right hemiparesis with ataxia and other multiple injuries. She was admitted in GMCH Sector 32, Chandigarh on 13.5.2013 and discharged from there on 6.6.2013. She was medically examined by Medical Board of PGIMER Chandigarh and her permanent disability was assessed to the extent of 50% in relation to the whole body. The disability was reported to be permanent in nature and not likely to improve. Reassessment of disability was also not recommended. Due to said injuries her IQ level had decreased and she stammers while talking.

The learned Tribunal on appraisal of pleadings and evidence adduced by the parties concluded that the appellant suffered injuries due to the accident that took place due to the rash and negligent driving of Car bearing registration no.HR-03-L-1120/ offending vehicle by Sh. Sakun Ahmed @ Kaka respondent no.1, and Activa Honda bearing registration No.CH-04-A-9562 driven by Ms. Chetna Anand Respondent No.4. Ld. Tribunal further held that at the time of accident the claimant was 22 years of age. Since there was nothing on record to establish her income, the Tribunal assessed the income of the appellant @ Rs.7500/- per month as per Collector rate. The functional disability was assessed at 60% and thus annual income was assessed at Rs.54,000/- per annum (Rs.7500x12x60/100). Multiplier of 18 was applied, claimant being 22 years of age. Thus the total compensation towards loss of income came to Rs.9,72,000/-

(Rs.54000x18). She was also held entitled to 50% towards future prospects in view of law laid down by Hon'ble Supreme Court in V.Mekala v M.Malathi and another 2014(2) RCR (Civil) 880, which was assessed at Rs.4,86,000/-. Under medical heads, Rs.84,337/- were awarded based on production of medical bills (Ex.P46 to Ex.P-125); Rs.2 lacs towards future medical expenses particularly physiotherapy; Rs.1 lac towards loss of marriage prospects; Rs.50,000/- for pain and suffering; Rs.50,000/- towards loss of opportunities; Rs.50,000/- towards hospitalization and healthy diet. The sum total under all the heads came to Rs.19,92,337/- which was rounded off to Rs.19,93,000/-. She was also held entitled to interest @ 7.5% per annum from the date of filing of the petition till realization of the whole of the awarded amount. As regards liability, the driver, owner and insurer of offending vehicle (car) were held jointly and severally liable to pay the compensation.

Learned counsel for the appellant/claimant submits that the Tribunal is in error in assessing the monthly income of the appellant as only Rs.7500/- as per Collector rate and the same ought to have been taken as Rs.30,000/- per month, the appellant being an outstanding academic and sportsperson. Further, appellant should be awarded 50% increase towards future prospects in view of her acknowledged achievements. It is further submitted that appellant has suffered permanent disability to the extent of 50% in relation to her whole body. The IQ level of the appellant has decreased due to head injury, her right side is paralyzed, and she stammers while talking. It is therefore, submitted that functional loss be taken as 100% also in view of the fact that reassessment of disability was not recommended by the Medical Board. As regards medical treatment, it is submitted that though a sum of Rs.3 lacs was incurred in her treatment, but appellant having remained bed ridden could not maintain all the bills except the ones that were produced amounting to Rs.84,337/-. Therefore, medical expenses are claimed to the extent of Rs.3 lacs. Reasonable amount is also prayed for in view of life-long physiotherapy that the appellant will require during her life time. Against the award of Rs.50,000/- under the head of pain and suffering, enhancement to the tune of Rs. 3 lac has been prayed. Similarly, under the head of loss of marriage prospects Rs. 3 lacs have been prayed for, while the Tribunal awarded only Rs.1 lac under this head. Reliance is being placed upon **Sri Kumaresh v The Divisional Manager National Insurance Co.Ltd., 2011 STPL(web) 462 SC** Further, enhancement is also sought in the rate of interest from 7.5% to 12%. It is also submitted that it may be held that the accident took place due to the composite negligence of respondent No. 1 and respondent No. 4.

On the other hand, learned counsel for the respondent Insurance Company refers to judgment dated 5.1.2016 Annexure A1/ Ex. RP1, to submit that vide the aforementioned judgment, respondent No. 1-driver of the offending vehicle has been duly acquitted. Ld. Counsel also makes a reference to cross-examination of RW1 Ms. Chetna Anand (who was driving the Activa Scooter on which the claimant was pillion riding), to submit that RW1 Ms. Chetna eyewitness had herself admitted in her cross-examination that she had not seen the respondent No. 1 driver at the spot of occurrence, and she had not noted down the number of the offending vehicle either. It is accordingly, submitted that involvement of the offending vehicle in the accident is itself doubtful, and therefore, the ld. Tribunal is in error in passing the impugned Award and granting an exorbitant compensation when even the occurrence is not beyond shadow of doubt.

I have heard ld. Counsel for the parties. Respondent No. 1 driver was proceeded ex-parte before the Tribunal and accordingly, his service was dispensed with by this Court vide order dated 23.1.2018.

In my considered view the argument of the ld. Counsel for the respondent Insurance Company to the effect that the incident, as also the involvement of the offending vehicle is doubtful, does not hold water as the accident is proven from the statement of the claimant/ appellant as PW1, as also the voluminous evidence on record regarding the treatment she underwent for the injuries she received in the accident. Accident is also admitted by respondent No. 4/ RW1 on basis of whose statement FIR

Ex.P126 was registered against respondent No. 1. Accordingly, from the above facts it is sufficiently proved on record that the accident in question had taken place. Moreover, in Motor Accident cases, claimants are required to prove their case on the preponderance of evidence and not beyond shadow of reasonable doubt as required in a criminal trial.

Further, regarding acquittal of respondent No. 1 driver, there is no doubt that though FIR was registered on basis of statement of respondent No. 4 but subsequently turned hostile and respondent No. 1-driver was acquitted in the case. However, even though driver was acquitted, fact remains that prima facie materials were found against him which showed his negligence which put him to trial. As noticed above, claimants have established their case on the touchstone of preponderance of probability as required under law, and the standard of proof beyond reasonable doubt cannot be applied.As such, this submission of respondent Insurance Company is rejected. Even as per law laid down by the Hon'ble Supreme Court in case **of (1980) 3 SCC 457 NKV Brothers pvt. Ltd. Vs. MK Ammal and others etc. and 2013 ACJ 2712 Dulcina Fernandes and others vs. JX Cruz and another**, it has been held that acquittal of driver in criminal case does not mean that proceedings in the civil case must also follow suit 'as the requirements of culpable rashness under section 304A IPC is more drastic than negligence sufficient under the law of tort to create liability'. Undisputedly, learned Tribunal has found enough materials on record to establish the negligence on part of respondent-Driver.

Regarding the question of composite negligence, it is undisputed on record that the claimant in her cross-examination has admitted that the respondent no.4–driver of Active was not at fault. Thus, notwithstanding the fact that the claimant was not confronted with this statement, this Court is of the view that the present is not a case of composite negligence.

Now regarding quantum of compensation, the fact that jumps out from the present case is the factum of horrific injuries suffered by the appellant as a result of which the great future ahead of her was cut short. In this regard the statement of Dr Rajesh Chhabra PW2 is very relevant. Further, admittedly, at the time of accident the appellant was an outstanding student as also a National Level player of ball badminton. In the accident she received serious injuries – including a brain injury as a result of which she remained unconscious for a period of more than one month, and the right side of the body of the appellant is now paralysed. As per the Medical Board, this disability is permanent and is not likely to improve. This verdict of the Board seems to be irreversible in view of the fact that even reassessment of disability has not been recommended by them. It is also not in dispute that the IQ level of the appellant has decreased due to head injury and she stammers when she talks. Further she cannot walk without the help of a stick, cannot stand for a long time, and climbs stairs with great difficulty. It is therefore, clear that notwithstanding the fact that the permanent disability of the appellant has been assessed to the extent of 50% only, however, for all intents and purposes, the functional life of the appellant is at an end. In view of the above facts, the functional disability of the appellant is taken to be hundred percent.

Further given the fact that the appellant was admittedly a bright student and a national level player of ball badminton, therefore the income of the appellant should be taken as Rs. 12,000/– per month. Future prospects is granted at the rate of 40%. The monthly income of the appellant therefore comes to Rs.16,800. Taking the functional disability of the appellant to be hundred percent and applying the multiplier of 18, the loss of future income due to permanent disability is calculated as 16,800 x 12×18 = Rs. 36,28,800/-. To this, medical bills of Rs.84,337/-; Rs.1,00,00/- on account of pain and suffering; Rs.50,000/- for special diet and Hospitalization; Rs.1,00,00/- on account of loss of opportunities; Rs.2 lakhs on account of marriage prospects, is added making it a total of Rs. 41,63,137/–. Vide the impugned Award the appellant has been granted only Rs.2 lakhs by way of future physiotherapy expenses. I find the said amount to be abysmally low. From the above facts it is decipherable that the appellant will be requiring lifelong physiotherapy. It is a well-known fact that this will cost appellant at least Rs.5000/– per month. Accordingly for future physiotherapy expenses for the next 18 years, the appellant is granted Rs. 5000 x 12 x 18 = Rs. 10,80,000/-. Thus, the total enhanced compensation admissible to the appellant comes to Rs. 41,63,137 + 10,80,000 = Rs. 52,43,137/-; along with interest on the enhanced compensation @ 7.5% per annum from the date of filing petition till date of realisation. The same is tabulated as under:-

Income	Rs.12,000/-
Future prospects @ 40%	Rs.4800/-
Monthly income	Rs.16,800/-
Multiplier-18	14,000x12x18= 36,28,800/-
Medical bills	Rs.84,337/-
Pain and sufferings	Rs.1,00,000/-
Special diet and hospitalization	Rs.50,000/-
Loss of opportunities	Rs.1,00,000/-
Loss of marriage prospects	Rs.2,00,000/-
Future physiotherapy expenses	Rs.5000x12x18= Rs.10,80,000/-
Total Compensation	Rs.52,43,137/-
Interest	@ 7.5% per annum

Accordingly, the present appeal is disposed of in the above terms.

A copy of this order be placed on the file of FAO 5081/2017.

(Nidhi Gupta)
Judge

08.12.2022
Joshi