

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

Reserved on:14.12.2022

DATE OF PRONOUNCEMENT:22.12.2022

FAO-4121-2017 (O&M)

Jameela

.....Appellants

Versus

Irfan and Ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Ms. Priyanka Vij, Advocate, for the appellant.

Mr.Sanjeev Pabbi, Advocate, for the respondent No.3.

HARKESH MANUJA, J.

The present appeal lays challenge to an award dated 31.07.2013 passed by the learned Motor Accident Claims Tribunal, Nuh (in brevity, 'the Tribunal'), whereby claim petition filed by the appellant has been dismissed.

A claim petition was filed by appellant on account of injuries suffered by her in an accident held on 24.11.2011, which was dismissed by the learned Tribunal after holding that the petitioner/appellant was not able to prove her version that the accident was caused by the vehicle bearing registration No. HR-38L-0892 being driven by respondent No.1, rashly and negligently. Judgment dated 31.07.2013 was based primarily on the reasoning that:

- While in the claim petition, registration No. of the offending vehicle was mentioned as HR-38L-0892, however in the affidavit before the

learned Tribunal, its registration No. was mentioned as HR-28L-0892 and even there was difference in description as in claim petition it was specified as Maruti van while PW1-Iqbal in his testimony stated that it was 800cc Maruti car;

- In statement of PW2 - Smt. Jameela, it was stated that she was alone at the time of accident, while PW1- Iqbal, eye-witness of the accident stated that he was with her at the time of accident and therefore learned Tribunal recorded that there were contradictions in their statement;
- In his testimony PW1-Iqbal stated that he gave statement to the police on 24.11.2011, where as in the final report under section 173 CrPC, it came on record that his statement to police was given on 05.12.2011 and therefore he was found to be unreliable.

It is the said award dated 31.07.2013 which has been challenged by way of present appeal.

Learned counsel for appellant contends that considering the age of the Claimant, as she was more than 60 years old, on the basis of minor contradictions here or there, her claim could not have been denied by the learned Tribunal. He further contends that the fact that respondent No.1 faced trial in pursuance to the FIR number 468 of 2011, rash and negligent driving by should have been presumed and the fact that respondent No.1 did not appear to record his testimony should have gone against him. With respect to the delay in lodging the FIR, learned counsel contends that it was the consistent case of appellants that compromise talks were going on with respondent No.1 and when no settlement could take place, FIR was registered by

them. He also prays that in case it is held by this court that the accident occurred due to rash and negligent driving of respondent No.1, this court shall decide the quantum of compensation as well, in view of the long pendency of this case and appellant being more than 70 years of age.

On the other hand, learned counsel for respondent no. 3/ Insurance Company contends that considering the material differences in the statements of PW1- Iqbal and PW2- Jameela and further the fact that their statements could not be corroborated by documentary evidences, learned Tribunal rightly dismissed the claim petition of the appellant.

I have heard learned counsel for both the parties and gone through the paper book as well as the records of the case. In my considered opinion, learned Tribunal has tested the evidences on the basis of strict liability rather than on the basis of preponderance of probabilities, which is applicable to the type of cases in hand. Apart from that, the Tribunal has ignored the practical realities faced by the people while going through such situations. As regards, explaining the delay in lodging of the FIR, it has been the consistent case of appellant that compromise talks were going on with respondent no. 1/ Driver, which seems to be quite fair and reasonable, as any person, specifically from lower strata of the society, first would try to settle the matter outside the court rather than indulging oneself in long lasting legal battle. It also explains the contradiction in the statement of PW1-Iqbal, the eye witness, as it seems that though a written complaint might have been given on the date of accident itself i.e. on

24.11.2011, but must have pressed this application only on 05.12.2011, when the compromise could not take place, which in the facts and circumstances of the present case and the evidence available on record appears to be a possible view.

At this juncture, it would be appropriate to notice that FIR 468 of 2011 was registered against respondent no. 1/Driver and he faced trial in this case, which even stands corroborated by the testimony of **PW3- Shri Sitaram, court ahlmad**. In these circumstance, presumption should have been that the accident occurred due to the rash and negligent driving by the respondent no. 1. Obligation was on driver/ respondent no. 1 to appear before the learned Tribunal and explain, however, he failed to appear before the learned Tribunal and therefore, presumption has to be drawn against him. Use of phrase "...I was standing alone on kaccha road..." by PW2-Smt. Jameela in her statement has been given undue weightage considering the fact that she was an old lady and the statement could be with state of mind that she alone was the victim of the accident as other persons were at a distance, as admittedly PW1-Iqbal was at distance of 15 feet from the PW2-Jameela at the time of accident. Apart from that, contradiction regarding the registration number of offending vehicle is apparent in view of the fact that registration No. of the offending vehicle as mentioned in claim petition as HR-38L-0892 was subsequently brought on record, as can be seen by a perusal of final report filed under section 173 Cr.PC.

Therefore in view of the discussion held above, it can be held that accident occurred due to rash and negligent driving by

respondent no. 1/Driver of the offending vehicle and therefore, appellant is entitled for compensation.

In general, this court would have remanded the matter back to learned Tribunal so as to decide the quantum of compensation, however, considering the fact that already more than 10 years have passed after the accident and appellant/claimant is more than 70 years old, to further the end of justice, this court is proceeding ahead to assess just and fair compensation in this matter after assessing the notional income as well as the functional disability of the appellant.

Appellant suffered 25% permanent disability on account of amputation of leg below the knee and it has been claimed that before the accident, she was earning Rs. 4500/- per month by her work as a labourer.

Though the permanent disability was only 25%, however, considering the nature of work being performed by a laborer, having an amputated leg would substantially affect her working efficiency and therefore, functional disability is assessed @ 50%. Although, no evidence has been brought on record to substantiate the income of the appellant, however, considering the fact that even the minimum wages in 2011 were approximately Rs.4,500/- per month, it can be safely taken as her monthly income. As the age of appellant was more than 60 years at the time of accident, no future prospects are being awarded.

It has been claimed by the appellant that Rs. 1,00,000/- were spent by her on her treatment, though, bills of approximately Rs. 5,000/- has been brought on record. Appellant remained hospitalized

in General Hospital, Mandikhera for 12 days and she was operated upon in Palwal Hospital where she remained admitted for 1 day. Considering this fact, it cannot be denied that some reasonable amount must have been incurred by her and therefore, under all pecuniary headings cumulatively (including attendant charges, transportation, special diet, medical expenses, etc.) Rs. 30,000/- is being awarded.

As shown in the disability certificate brought on record as Ex-P9, appellant suffered 25% permanent disability on account of amputation of left foot through midfoot, which must not have only caused sufferings in her day to day work but deep mental agony as well, therefore, under all non-pecuniary headings cumulatively (including disability, pain and suffering and loss of amenities and enjoyment of life etc.) Rs. 50,000/- is being awarded.

In view of what has been stated hereinabove, the appellants/claimants shall be entitled for grant of following compensation:-

Sr.No.	Nature	Amount in Rupees
1.	Annual Income of deceased	Rs.54,000/-
5.	Multiplier of 7 as per age of 61 years (Rs.54,000 /- X 7)	Rs.3,78,000/-
5.	Loss of future earning capacity/ income 50% (percentage functional disability) of total income]	Rs.1,89,000/-
6.	Pecuniary Headings	Rs.30,000/-
7.	Non-Pecuniary Headings	Rs.50,000/-
	Total Compensation	Rs.2,69,000/-

In view of the facts and circumstances of the present case; as per the observations made by Hon’ble the Supreme Court in case of **Smt. Supe Dei and others Vs. National Insurance Company Limited and other**, (2009) (4) SCC 513 approved in a subsequent judgment in case of **Puttamma and others Vs. K.L. Narayana Reddy and another**, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimants shall be deducted from the enhanced compensation.

Disposed off in the above terms.

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

December 22, 2022
anil

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No