

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-473-1991 (O&M)
Date of decision: 20.02.2023

Harinder Kaur

...Appellant(s)

Vs.

Malkiat Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. S.S. Swaich, Advocate for the appellant.

Mr. P.S. Punia, Advocate for respondent No.1.

Ms. Rishu Madan, AAG, Punjab.

NIDHI GUPTA, J.

Present appeal has been filed by the claimant seeking enhancement of compensation of Rs.20,000/- awarded by Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as "the learned Tribunal") vide Award dated 06.01.1990 passed in MACT Case No.15/24 of 28.07.1989 filed under Section 110-A of the Motor Vehicles Act (hereinafter referred to as "the Act").

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that appellant-claimant had suffered injuries in a motor vehicular accident that took place on 23.06.1989 due to the rash and negligent driving of bus bearing registration No.PJG-2841 (hereinafter referred to as "the offending vehicle") being driven by respondent No.1/driver, owned by respondents No.2 and 3. Learned Tribunal awarded compensation as noted above along with interest @ 12% per annum from

the date of filing the petition till its actual realization. Respondents were held jointly and severally liable to pay the compensation.

3. Learned counsel for the appellant submits that the appellant was pregnant at the time of accident and she had suffered miscarriage due to the accident. Learned counsel refers to testimony of AW3 Dr.A.S. Garewal whereby he had deposed that six injuries were found on the person of appellant. Learned counsel also refers to Exhibit AW3/A which is the 'Injury Report' dated 20.07.1989 where injuries suffered by the appellant have been described. It is submitted that AW3 Dr. A.S. Garewal also deposed that the appellant had suffered permanent disability as she could not have any more children. It is submitted that under these circumstances compensation awarded by the learned Tribunal is shamefully inadequate and deserves to be enhanced.

4. Per contra, it is submitted by learned counsel for respondent-State that no FIR was filed by the appellant in respect of accident in question. It is further submitted that no bills have been produced by her to show that she had undergone any treatment. It is further submitted that accordingly, the compensation awarded by the learned Tribunal is just and fair in the circumstances of the present case.

5. I have heard learned counsel for the parties.

6. Perusal of the record of case shows that as per injury report Exhibit AW3/A, the appellant had suffered following injuries:-

1. Hypovolemic shock.

2. 4 rami fracture pelvis, pubic diastasis fracture iliac bone.

3. *Abrasion on back and gluteal region.*

4. *Intrauterine pregnancy 4 months with threatened abortion as a result of injury (Patient aborted the Ward).*

5. *Blunt trauma abdomen.*

6. *2" long laceration left pubic area.*

7. A perusal of above said report shows that injuries No.2, 4 and 5 were stated to be grievous injuries; and injury No.1 was dangerous to life. It is further not disputed on record that appellant had suffered miscarriage due to the accident in question. Perusal of statement of AW3 shows that he has categorically stated that *"Injured has become permanently disabled throughout."* It further remains undisputed on record that appellant was hospitalized from 23.06.1989 to 11.08.1989 i.e. for a period of almost two months.

8. Following findings of the Learned Tribunal are relevant:-

"Out of six injuries on the person of Harinder Kaur, four were dangerous to life and grievous. At the time of accident, Harinder Kaur had four months old pregnancy which developed into threatened abortion as a result of these injuries and she actually aborted in the Ward. The doctor has found the Hypovolemic shock to be dangerous to life and in this opinion, he was not cross-examined. A fractured pelvis bone and fractured iliac bone were noticed to be of grievous nature and besides this Harinder Kaur suffered from abdominal injury with blunt trauma. The whole pubic area of Harinder Kaur was completely lacerated. She has stated that bone in her flank are fractured and she feels pain in her legs. This was the natural consequence of fractured pelvis and iliac bones and

sufferance of abortion of four months pregnancy and abrasion on her backand gluteal region. I concure with the opinion of Dr. Grewal that extent and nature of injuries found by him on the person of Harinder Kaur were such that the same could not have been suffered by a single fall from the scooter. The impact of accident was so grave that almost the entire bone structure of victim had become discordant. For treatment of all these injuries, Harinder Kaur had to remain admitted in the CMC Hospital as indoor patient from 23.6.89 to 11.8.1989 under the treatment and care of Orthopedic Surgeon.”

9. However, despite the above findings, learned Tribunal awarded only Rs.20,000/- as compensation in view of the fact that: a) though Dr. Garewal in his statement as AW3 had stated that appellant had become permanently disabled throughout however, no such opinion was tendered by him in his report Exhibit AW3/A; b) no bills were produced by the appellant to show that she had remained in hospital for almost two months.

10. Thus, though it remained undisputed on record that the appellant was hospitalized for two months, however as appellant was unable to produce all the bills in respect of the medical expenses incurred by her on her treatment, learned Tribunal granted only Rs.9958.60/- against bills produced; and a sum of Rs. 10,000/- only was granted towards pain and suffering.

11. In my view, in the facts and circumstances as noted above, compensation of Rs.20,000/- granted by learned Tribunal is abysmally low. In the considered opinion of this Court, it will serve ends of justice if compensation is enhanced to **Rs.5,00,000/-**. Needless to say no

amount of money can make up for pain and agony suffered by the appellant due to loss of her child, and the permanent disablement suffered by her in this respect. However, it is also to be ensured that compensation so awarded is not punitive to the respondent-State. Accordingly, in the facts and circumstances of the case, present appeal is **allowed**. Compensation awarded to the appellant is enhanced to Rs.5,00,000/-, over and above the Rs.20,000/- already granted by learned Tribunal.

12. Respondents are directed to make payment of above said compensation within four months from today, failing which appellant will be entitled to interest at the rate of 12% per annum on enhanced compensation from date of filing of claim petition till realization.

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

20.02.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No