

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

**F.A.O. No.4396 of 2001 (O&M)
Date of Decision: 13.09.2023**

Raman Kumar

.....Appellant

Versus

Ashwani Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present:- Mr. Rajesh Arora, Advocate
for the appellant.

Mr. P.K.S. Phoolka, Advocate,
for respondent No.2.

Mr. Pardeep Goyal, Advocate,
for respondent No.3-Insurance Company.

GURBIR SINGH, J.

1. This appeal has been filed by claimant for enhancement of the amount of compensation granted vide Award dated 31.07.2001 passed by the Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal') in case No. 33 of 1990.

2. The claimant filed petition for grant of compensation under Sections 140 and 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), on account of injuries suffered by him in the motor vehicular accident caused by respondent Nos.1 and 2 while driving the car

and scooter respectively in a rash and negligent manner.

3. The Tribunal, on the basis of evidence led on the file, has held that it was a case of head-on collision between Car No.DL-2CA-9216 which was being driven by respondent No.1 and Scooter No.PB-48-8373 which was being driven by respondent No.2. The claimant was pillion rider of scooter and he suffered injuries in the said accident. The accident had taken place due to contributory negligence of respondent Nos.1 and 2 and both of them were equally liable for causing the accident. The appellant remained under treatment for 41 days and he lost vision of his left eye permanently. The appellant suffered permanent disability to the extent of 30%. The appellant was a member of Self Finance Group Insurance Scheme of the Bank (hereinafter referred to as the 'Insurance Scheme'), in which he was serving and premium of the insurance was deducted from the salary of the employees including the appellant. A sum of ₹ 66,000/- had been given to the appellant by the said Insurance Scheme on account of the expenses of treatment. So, no amount of compensation, on account of expenses of the treatment, was granted to the appellant. He was granted compensation along with interest @ 9 per cent per annum from the date of filing of the petition till the realisation of the awarded amount as under:-

(i) On account of permanent disability : ₹ 50,000/-

(ii) On account of loss of pay of 41 days : ₹ 11,234/-

(ii) On account of shock, pain and suffering : ₹ 28, 766/-

Total : 90,000/- (Rs Ninety thousands only)

It has been further held that respondent No. 2 shall pay 50% of the awarded amount whereas respondent Nos. 1 and 3 shall pay the remaining 50% of the awarded amount jointly and severally.

4. Counsel for the appellant-claimant has argued that deduction to the extent of ₹ 66,000 of the amount which was paid by the Insurance Scheme of the bank in which the appellant was serving, is wholly illegal as appellant became member of the said group and was paying the premium from his own pocket. Learned counsel for the appellant, in support of his arguments, relies upon a judgement passed in the case of ***Manoj Kumar Yadav versus Azad and others, 2015 (3) PLR 211 (P&H)*** and a judgement of this Court passed in the case of ***Dr. Kamlesh Bhalla versus G.T. Roadways and others in FAO No. 402 of 2014 (O&M)*** decided on 18.01.2019. It is further submitted that no amount was granted under the head 'transportation charges and special diet'. A meagre amount has been granted on account of permanent disability whereas vision of the left eye of the appellant is permanently lost and he has not been able to enjoy basic amenities of life. Counsel for the appellant has further argued that respondent No. 1-driver of the car and respondent No. 2-driver of the scooter have been rightly held to be negligent in causing the accident. Although, the Tribunal has held that accident was the result of contributory negligence but as far as appellant is concerned, he suffered injuries due to composite negligence of both the drivers. Both the drivers have been jointly and severally liable for the loss caused to the appellant. The appellant-claimant can recover the amount of compensation from both of

them or either of them. Reliance is place upon a judgement passed by the Division Bench of this Court in the case of *Parsani Devi vs. State of Haryana and others, 1973 ACJ 531*.

5. Per contra, learned counsel for respondent Nos.2 and 3 have submitted that the Tribunal has rightly held that the appellant has already been compensated on account of expenses of treatment and awarding further compensation under the same head would amount to giving double benefits to the appellant. It has been further argued that no evidence was led whether any special diet was prescribed to appellant and he had actually taken the same or about the charges incurred on transportation. Since both the drivers were held equally responsible for causing the accident finding that there was a head-on collision, so liability has been rightly fastened to the extent of 50% each. Learned counsel for the respondents have further argued that in case it is found that respondent No.3 is liable to indemnify respondent No.1 for paying the entire amount of the Award then it be ordered to recover the 50% of the amount of Award from respondent No. 2.

6. I have heard the submissions made by learned counsel for the parties and have also perused the record.

7. The injured had been working in the bank and he got medical leave for 41 days. Although, the appellant lost the vision of his left eye and permanent disability was assessed as 30% but, after recovery, he remained working in the same bank on the same post and was getting same pay and allowances. Therefore, there is no loss of any future earning to the

appellant. Keeping in view the fact that the appellant failed to enjoy basic amenities of life due to loss of vision of one eye in the accident that took place in the year 1998, a sum of ₹ 28,766/- is granted as compensation to him under the head 'shock, pain and suffering'. Sum of Rs.50,000/- has been granted for permanent disability and Rs.11,234/- has been awarded for loss of pay during period of treatment. In determining the compensation, the Court is required to make some guesswork. Keeping in view the suffering of victim, the award must correspond to the reasonableness and should be in consonance with the conventional sum and the injured is entitled for just compensation. A victim is entitled to separate claims towards permanent disability as well as loss of amenities of life.

8. As per prevalent practice, a sum of ₹ 2000/- per percentage of disability is the just compensation for permanent disability. Since the disability of the appellant is 30% but Tribunal has only awarded ₹ 50,000/- whereas the appellant is entitled to compensation as ₹ 60,000/-. The appellant being member of the Insurance Scheme was paying separate premium of the said policy, which was not only meant for accidental injuries but it covered the other injuries also, for which the requisite premium was paid by the appellant. Therefore, such pecuniary advantage would have no co-relation with the injury for which compensation is computed in terms of loss. So, the appellant is entitled to get Rs.66,000/- as medical expenses which have been wrongly deducted by learned Tribunal. Reliance is placed upon case **Dr. Kamlesh Bhalla vs. M/s. G.T.**

Roadways and others. cited (supra). The appellant has further entitled for sum of Rs.5000/- as transportation charges, sum of Rs.5000/- on account of special diet and sum of Rs.5000/- on account of attendant charges since appellant remained under treatment for 41 days and lost his one eye.

9. The learned Tribunal apportioned the amount of compensation to be equally paid by respondent Nos. 1 and 2 i.e. 50% each. Since respondent No. 3 is insurer of the car owned by respondent No. 1, the liability of respondent Nos.1 and 3 was held to the extent of 50% jointly. In case, *Parsani Devi (supra)*, it is held that the victim can recover the compensation jointly and severally from both the drivers, who were negligent in causing the accident. Both respondent Nos.1 and 2 are jointly and severally liable to pay the entire amount of compensation. Since respondent No. 3 is insurer of car owned by respondent No.1, so it is also jointly and severally liable to pay the amount of compensation to the appellant. Since, respondent No. 3 has no contract with respondent No. 2, respondent No. 3 can take proceedings against respondent No. 2, if so advised, but no orders can be passed in this appeal against respondent No. 2 and in favour of respondent No. 3 to recover the amount from respondent No.2 after making payment to claimant.

10. Now, the total amount of compensation comes to Rs. 1,91,000/- (Rs.66,000 for medical expenses, Rs.50,000/- for permanent disability plus Rs.10,000/- enhancement as per prevalent percentage, Rs.11234/- for loss of pay of 41 days, Rs.28,766/- for shock, pain and suffering, Rs.10,000/- as compensation for loss of amenities due to injury

and Rs.15,000/- for the transportation, for attendant and special diet), out of which Rs.90,000/- has already been awarded. The appellant shall be entitled to recover the enhanced amount of Rs.1,01,000/- along with interest @ 9% per annum from the date of filing of the claim petition till its realization.

11. The Appeal is partly allowed and the amount of compensation is hereby enhanced as stated above. Liability of respondent Nos.1 to 2 is joint and several and also liability of respondent Nos.1 and 3 is joint and several. Thus, liability of respondent Nos.1 and 3 and 2 is joint and several.

12. Pending application(s), if any, stands disposed of.

September 13, 2023

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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes