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

**FAO NO. 1441 of 2006 (O&M)
DATE OF DECISION: 01.06.2023**

Ashwani Kumar**...Appellant****Versus****The District Transport Cooperative Society
And others****...Respondents****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Ms. Ekta Thakur, Advocate,
For the appellant.

Mr. Neeraj Khanna, Advocate,
For respondent No.3.

ARUN MONGA, J. (ORAL)**CM-23572-CII-2019**

This is an application filed by appellant under Order 41 Rule 27 CPC for additional evidence for filing disability certificate, photographs of appellant showing his present condition and medical record of appellant as Annexures A1 to A3.

Though reply has been filed but there is no serious dispute *qua* the genuineness of same.

Heard. For the reasons stated in application, same is allowed and documents contained at Annexures A1 to A3 are taken on record, subject to all just exceptions.

Main case

Appellant/injured is in appeal against the Award dated 30.11.2004 passed by learned Motor Accidents Claims Tribunal, Amritsar (for short "the Tribunal"), whereby in a claim petition filed under Sections

166/140 of the Motor Vehicles Act, 1988, compensation to the tune of Rs.1,51,950/- was awarded to the claimant on account of injuries sustained by him in a motor vehicular accident.

2. Succinct facts first, as pleaded in the instant appeal.

2.1. On 09.10.2000, claimant Ashwani Kumar, his mother Santosh Rani (deceased), his wife Sunanda, his aunt Sunita Bhandari and Ranjit Kumar s/o Surjinder Kumar and Rajinder Kumar, his uncle after giving gifts to Usha d/o Ashok Kumar on the occasion of Karwa chauth, were coming back to Sirhail Kalan. All were occupants of maruti car bearing registration No. PB-02-A5942. It was being driven by Harjit Singh. Ranjit Singh and Rajinder Kumar were following them on a scooter. When the car reached near village Dalam at about 6:00 p.m., one speeding bus bearing registration No. PB-02-X-9999 driven by Sarvinder Singh, respondent No.2 hit the car, due to which occupants of the car received injuries. Santosh Rani died at the spot while injured Ashwani Kumar and Sunanda Rani were taken to hospital.

2.2. Upon notice, respondents No.1 and 2 appeared and filed joint written statement denying the factum of accident. It was further pleaded that petition is not maintainable; it is barred for mis-joinder and non-joinder of necessary parties.

2.3 Respondent No.3-Insurance Company filed separate written statement stating that respondent No.2 was not having valid and effective driving license and therefore, Insurance Company is not liable to pay any compensation.

2.4 No rejoinder was filed.

3. From the pleadings of parties, following issues were framed by learned Tribunal:

1) *Whether Ashwani Kumar had received injuries in an accident caused by rash and negligent driving of the bus No.PB-02-X-9999 by the respondent No.2 Sarvinder Singh on 09.10.2000 in the area of village Dalam, Tehsil Ajnala? OPA*

2) *If Issue No.1 is proved, whether the applicant is entitled to receive compensation, if so, how much and from which of the respondents? OPA*

3) *Whether respondent No.2 Sarvinder Singh was not having valid driving license at the time of the accident? OPR-3*

4) *Whether the aforesaid bus was being plied against the terms and conditions of the insurance policy and was also not having any valid registration certificate and route permit? OPR-3*

5) *Whether the petition is bad for non-joinder of driver, owner and insurer of the car bearing registration No.PB-02-A-5042 in which the injured was travelling at the time of alleged accident? OPR*

6) *Relief.*

4. On appraisal of record/evidence, learned Tribunal decided Issues No.1 and 2 were decided in favour of claimant, issue No.3 was decided in favour of respondent No.3 and issues No.4 and 5 were decided against respondent No.3. Consequently, claim petition was allowed and a sum of Rs.1,51,950/- was awarded as compensation along with interest from the date of filing of petition till its realization. It was held that since primary responsibility to make payment of compensation was on the insurance company, respondent No.3-Insurance company was ordered to make payment of Rs.1,51,950/- to appellant with recovery rights granted to respondent No.3-Insurance Company from respondents No.1 and 2-owner and driver of offending vehicle.

5. Learned counsel for appellant-claimant contends that sufficient evidence was led to prove the income of injured as Rs.10,000/- per month. He further argues that learned Tribunal has not taken into

consideration medical bills while granting reimbursement. He would further argue that appellant has suffered 50-60% disability and he is still undergoing the pain and suffering as he is unable to swallow anything orally and has to be fed through tube inserted in his throat.

6. On the other hand, learned counsel for respondent No.3-Insurance Company opposes the appeal of claimant/injured.

7. I have heard competing arguments of learned counsels for parties and have gone through the records with their assistance.

8. Having heard arguments, I am of the view that learned Tribunal committed manifest error in not awarding anything on account of loss of income due to disability suffered by appellant even though there is cogent evidence which was adduced *qua* disability of the claimant/injured. The record and testimony of witnesses which remained unimpeached and unshaken in the cross-examination clearly establish that injured had indeed suffered 60% permanent disability as per evidence led before learned Tribunal. Subsequently it was reduced to 50%, as is borne out from Annexure A-1, which was produced during the pendency of appeal and said document has not been disputed by learned counsel for respondent No.3.

9. Furthermore, photographs (Annexure A-2) also reflect that victim is unable to swallow anything orally and has to be fed through tube inserted in his throat. Needless to say that he deserves monetary compensation for the suffering he is undergoing. Even though no amount of compensation can match the sufferings and pain which can only be felt by him alone.

10. Be that as it may, in view of the disability suffered by appellant, compensation awarded by learned Tribunal is modified as per following computations:

Name of the claimant/injured	Ashwani Kumar
Date of accident	09.10.2000
Age	29 years
Loss of income due to disability (3000 x 50% x 12 x 20)	Rs.3,60,000/-
Attendant charges (3000 x 12 x 20)	Rs.7,20,000/-
Pain and suffering	Rs.3,00,000/-
Transportation	Rs.50,000/-
Loss of amenities	Rs.1,50,000/-
Special diet (1000 x 12 x 20)	Rs.2,40,000/-
Total	Rs.18,20,000/-
Compensation awarded by learned Tribunal	Rs.1,51,950/-
Enhanced amount of compensation to be paid	Rs.16,68,050/-

11. Accordingly, impugned award is modified in terms of above computations. Enhanced compensation shall be payable to claimant along with interest@ 7% per annum, from the date of filing of claim petition till actual date of payment. Same shall be payable to claimant within a period of 2 months of his approaching respondent-Insurance Company along with web print of instant order, failing which additional compensatory interest of 3% p.a. shall be paid from the date of filing of claim petition till payment. Enhanced compensation amount after adjusting the compensation, if any, already paid, be disbursed to claimant. As directed by learned Tribunal, respondent No.3 will have the right of recovery from respondents No.2 and 3.

12. In the premise, appeal filed by claimant stands disposed of in above terms.

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

JUNE 01, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No