

FAO-831-2010 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-831-2010(O&M)

Reserved on:- 18.07.2023

Pronounced on:- 24.07.2023**Raghubir Singh**

....Appellant

Versus

Dharmender Etc.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Raj Kumar Rana, Advocate
for the appellant.

Ms. Anamika Mehra, Advocate
for respondent No. 4.

AMARJOT BHATTI, J.

1. The appellant – Raghubir Singh filed present appeal against impugned award dated 05.02.2009 passed by learned Motor Accident Claims Tribunal, Kurukshetra vide which he has been granted award to the tune of Rs.4,21,500/- along with interest at the rate of 7.5% per annum from the date of the filing of petition till realization of the award as detailed therein, with the prayer that the quantum of compensation is towards the lower side which is liable to be enhanced.

2. The facts of the case are that the appellant-Raghubir Singh filed claim petition under Section 166 of Motor Vehicles Act, 1988 against the respondents alleging that at the time of filing of claim petition he was 35 years old. He was working as shop keeper and earning Rs.10,000/- per month. The accident took place on 16.08.2006 when he was going from Babain to village Tharwa on Babain Barara road on his motorcycle

No.HR-07J-1314. At about 5:20 AM, when he reached at Bir mangholi chowk, the offending truck No.HR-63-A-1168 driven by respondent No.1 rashly and negligently came from Lakhmari side and hit his motorcycle in the middle of crossing of Bir mangholi by coming on the wrong side of the road. In this accident he fell down and received multiple injuries including fracture of left ankle bone, fracture below knee left fibula and tear of muscle. His motorcycle was damaged. The respondent No.1 stopped his truck for a while and thereafter managed to escape towards Babain side. The accident was witnessed by Vinod Kumar and Chand Ram who were coming behind on another motorcycle. After the accident, he was taken to PHC Babain but due to his serious condition he was not admitted there and was advised to admit him in LNJP Hospital Kurukshetra. He was admitted in LNJP Hospital Kurukshetra on 16.08.2006 where he was medico legally examined and remained there up to 17.08.2006. Thereafter he was shifted to Apna Hospital, Kurukshetra where he was operated on 18.08.2006. He was again operated due to injury on his ankle. He had spent two lac rupees on his treatment, medicines, payment towards transportation etc. Prior to the accident, he was having good physic but now he has become disabled. His profession has been adversely effected. His entire life has become miserable due to the injuries suffered in the accident. The claimant claimed compensation of Rs.5 lacs along with interest and cost.

3. The claim application was contested by all the respondents. The respondents No.1 to 3 had filed joint written statement denying the accident as well as the manner in which it allegedly took place. The involvement of offending truck as well as respondent No.1-Dharminder was denied. It was alleged that a false criminal case was registered against Dharminder.

4. The respondent No.4 filed separate written statement taking the stand that claim application is not maintainable. No accident took place and a false FIR was registered with the collusion and connivance of respondents No.1 to 3. The respondent No.4 wanted to contest the claim application on all the grounds as available to respondents No.1 to 3. The alleged vehicle was driven in violation of the terms and conditions of the insurance policy. On merits, the facts were denied for want of knowledge. The respondents No.1 and 2 never informed the insurance company about the accident. In fact no such accident took place. The claimant is not entitled to receive any compensation under any head. The claim of claimant is highly excessive. All the facts mentioned regarding accident as well as rash and negligent driving are denied. A false and frivolous FIR was arranged by the claimant with the help of police. It was prayed that claim petition filed by the claimant may kindly be dismissed.

5. From the pleadings of the parties, following issues were framed by the Tribunal :-

(1) Whether the accident took place on 16.08.2006 was because of rash and negligent driving of the respondent no. 1 while driving the truck No. HR-63-1168, if so, its effect? OPP

2) If issue no.1 is proved in affirmative, whether the claimant is entitled to receive compensation, if so how much and from whom? OPP

3) Whether the claim petition is not maintainable in the present form? OPR

4) Whether the vehicle was being driven in violation of terms and condition of Insurance policy, if so its effect? OPR4

5) Whether the claim petition is bad for non- joinder and mis-joinder of parties? OPR

6) Relief.

6. In order to prove the claim petition, the claimant stepped into the witness box as PW3. He further examined Dr. Vikas Goel, Orthopedic Surgeon of Apna Hospital, Kurukshetra as PW-1 and Dr. Bimla Gauri, Orthopedic Surgeon, LNJP Hospital, Kurukshetra as PW-2 along with documents.

7. In order to rebut the case of the claimants, the learned counsel for respondents No. 1 to 3 tendered photocopy of Driving License of Dharmender as Ex. R2, copy of cover note Ex. R3 and copy of registration certificate Ex. R4 and learned counsel for respondent No. 4 tendered copy of the Insurance policy Ex. R1.

8. After hearing the arguments advanced by learned counsel for all the parties, the claim petition filed by the claimant was allowed by passing award dated 05.02.2009 as referred above. Feeling aggrieved about the quantum of compensation present appeal has been filed with a prayer to enhance the quantum of compensation.

9. The perusal of paperbook and the order dated 02.12.2011 passed by the Coordinate Bench of this Court shows that this case fell in the list of partially burnt cases. A part of reconstructed file of Motor Accident Claims Tribunal, Kurukshetra has been received.

10. Learned counsel for the appellant/petitioner has argued that the present appeal on the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Kurukshetra. It is pointed out that the medical record was duly proved on file to establish the nature of injuries

suffered by the appellant which are going to effect him for the whole of his life. Dr. Vikas Goel, Orthopedic Surgeon of Apna Hospital, Kurukshetra PW1 has proved the treatment record, according to which he was admitted in their hospital on 17.08.2006 and was discharged on 08.11.2006. He was operated twice for skin grafting and twice for debridement and once for making drill holes in the bone. The bill of the hospital as well as the medicines purchased by the petitioner from outside are duly proved on record. Initially, he was taken to PHC Babain but due to his medical condition, he was shifted to LNJP Hospital, Kurukshetra where he remained admitted for two days and then he was shifted to Apna Hospital, Kurukshetra for better treatment. It is argued that even thereafter, he took treatment from S.P.S. Apollo Hospital, Ludhiana. The medico legal report, the prescription of S.P.S. Apollo Hospital, the bills regarding test, treatment history, are also produced on the file. He was admitted on 03.05.2007 and was discharged on 05.05.2007. The appellant/petitioner remained under treatment for a long duration.

The petitioner as PW3 has proved his entire version. However, the learned Motor Accident Claims Tribunal, Kurukshetra has not awarded adequate compensation for the medical expenditure. It is pointed out that in this accident the appellant/petitioner also suffered permanent disability which is proved on file by Dr. Bimla Gauri, Medical Officer, Orthopedic Surgeon, LNJP Hospital, Kurukshetra as PW-2. The disability certificate is Ex.P6. As per this disability certificate, Raghbir Singh suffered 15% disability in respect of restricted movement of knee, 20% disability in respect of restricted movement of ankle and 6% disability as a result of severe wasting of muscles in the left leg.

Therefore, he suffered total disability of 41% but in the case in hand the

learned Motor Accident Claims Tribunal, Kurukshetra has granted only Rs.50,000/- for the 41% disability suffered by the appellant/petitioner. The record shows that the petitioner was operated upon number of times. He remained in the hospital for a long duration, despite this he is granted only Rs.50,000/- on account of pain and suffering. The appellant/petitioner has not been granted any compensation on account of attendant charges, transportation, special diet. He has not been granted any compensation on account of loss of income as he could not run his shop for a period of about eight months. No compensation has been granted for future medical expenditure. Even the rate of interest awarded by the learned Motor Accident Claims Tribunal, Kurukshetra is towards the lower side. With this, it is prayed that the appellant/petitioner is entitled to enhanced amount of compensation.

11. On the other hand, the learned counsel for the Insurance Company opposed the arguments by raising the issue that the petitioner has not examined any witness to prove the treatment record of the petitioner in LNJP Hospital, Kurukshetra as well as S.P.S. Apollo Hospital, Ludhiana. There is no evidence on the file that the appellant/petitioner require future medical treatment. The appellant/petitioner did not examine any witness to prove the bills of the hospital as well as the bills regarding purchase of medicines. However, learned Motor Accident Claims Tribunal, Kurukshetra has considered the treatment record of Apna Hospital, Kurukshetra as well as the prescription slips, bills, receipts and other record of S.P.S. Apollo Hospital, Ludhiana and has granted liberal compensation to the tune of Rs.3,21,500/- towards the medical expenditure. As per the claim petition, the appellant/petitioner was working as a shopkeeper therefore, the alleged disability suffered by him is

not going to effect his profession. There is no evidence on record to establish his claim for compensation on account of transportation, special diet, attendant etc. The quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Kurukshetra is fully justified and the same does not require any interference. It is prayed that the appeal preferred by the appellant/petitioner may kindly be dismissed.

12. I have considered the arguments advanced before me and have also gone through the record available along with the present appeal. I have also gone through the award passed by the learned Motor Accident Claims Tribunal, Kurukshetra. The present appeal has been preferred by Raghbir Singh-appellant/petitioner only on the ground of quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Kurukshetra. As per the record, Raghbir Singh met with an accident on 16.08.2006 while he was going on his motorcycle No.HR-07J-1314. At about 5:20 AM, when he reached at Bir mangholi chowk, he was hit by the offending truck No.HR-63-A-1168 driven by respondent No.1 in a rash and negligent manner. The appellant/petitioner in order to establish his claim under Section 166 of Motor Vechiles Act, 1988 stepped into the witness box as PW-3. He categorically stated that after the accident, firstly he was taken to PHC Babain, however due to the injuries suffered by him he was shifted to LNJP Hospital, Kurukshetra and thereafter he was further taken to Apna Hospital, Kurukshetra for treatment. He also took treatment from S.P.S. Apollo Hospital, Ludhiana.

The learned counsel for the appellant/petitioner had examined Dr. Vikas Goel, Orthopedic Surgeon of Apna Hospital, Kurukshetra as PW1, who has proved the bills for medical treatment which are Ex. P1 to P5 to the tune of Rs.60,000/- and there are bills regarding purchase of

medicines Mark P1 to P23 for a sum of Rs.82,127/-. The petitioner has also placed on record the MLR and prescription form of S.P.S. Apollo Hospital, Ludhiana as Ex. P10 and Ex. P11. The documents regarding treatment taken from S.P.S. Apollo Hospital, Ludhiana was also tendered into evidence. The discharge summary of the hospital are Ex.P17 and Ex. P20. As per the recital in the impugned award the medical bills of S.P.S. Apollo Hospital were also considered which are to the tune of Rs.97,000/- and the bills regarding purchase of medicines are to the tune of Rs.64,865/- plus other receipts of S.P.S. Apollo Hospital, Ludhiana to the tune of Rs.17,354/-. Therefore, the total medical expenditure of the hospital as well as regarding purchase of medicine is to the tune of Rs.3,21,346/- rounded figure Rs.3,21,500/-. Therefore, the learned Motor Accident Claims Tribunal, Kurukshetra has rightly considered the bills of treatment of various hospitals as well as the bills regarding purchase of medicine etc. and the amount of compensation granted under the Head of medical expenditure as referred above to the tune of Rs.3,21,500/- does not require any interference.

13. Learned counsel for the appellant further raised the issue that the quantum of compensation granted for the disability suffered by him is towards the lower side. The counsel for the petitioner had examined Dr. Bimla Gauri, Medical Officer, Orthopedic Surgeon, LNJP Hospital, Kurukshetra as PW2 and proved the disability certificate Ex.P6, according to which the petitioner suffered 15% disability in respect of restricted movement of knee, 20% disability in respect of restricted movement of ankle and 6% disability as a result of severe wasting of muscles in the left leg. Therefore, total disability is assessed as 41% in respect of the said

limb. It has come in the cross-examination that the chances regarding improvement in the disability mentioned at serial No.2 and 3 were less as period of two years had already elapsed from the date of injuries suffered by the petitioner. After considering this evidence, the learned Motor Accident Claims Tribunal, Kurukshetra has granted Rs.50,000/- on account of permanent disability suffered by the appellant/petitioner.

I have considered the statement of Dr. Bimla Gauri, Orthopedic Surgeon, LNJP Hospital, Kurukshetra who prepared the disability certificate Ex.P6 and have also considered the profession of appellant/petitioner. It is a matter of record that the learned Motor Accident Claims Tribunal, Kurukshetra has not considered the profession of appellant/petitioner as well as the nature of disability suffered by him, only lumpsum compensation has been granted. The accident took place on 16.08.2006. The petitioner was working as a shopkeeper. There is no evidence on record to prove his income. Therefore by guess work his monthly income is taken as Rs.5,000/- per month and the annual income comes to Rs.60,000/-. At the time of accident he was 35 years old, therefore, multiplier of 16 is appropriate to be applied in this case. As referred above the appellant/petitioner suffered injury on his knee and ankle and there is restricted movement of both knee and ankle. It is mentioned that there was severe wasting of muscles in the left leg. After considering all the three injuries, the total disability of the limb was assessed as 41%. Since the petitioner was working as shopkeeper, therefore considering the seat of injury as well as his profession, the functional disability is taken as 15%. Therefore by considering his annual income as Rs. 60,000/-, functional disability as 15% and by applying the

multiplier of 16, the amount of compensation comes out to be Rs.1,44,000/-. Whereas, the learned Motor Accident Claims Tribunal, Kurukshetra granted only Rs.50,000/- towards the permanent disability. Under these circumstances, the appellant/petitioner is entitled to receive the balance amount of compensation on account of permanent disability i.e. Rs.94,000/-.

14. The award passed by the learned Motor Accident Claims Tribunal, Kurukshetra further shows that the appellant/petitioner has been granted Rs.50,000/- towards pain and suffering. The said accident had taken place on 16.08.2006, therefore, considering the time period when the appellant/petitioner had met with an accident the quantum of compensation awarded under the head of pain and suffering to the tune of Rs.50,000/- is justified. But at the same time no compensation has been awarded regarding loss of income, charges for the attendant, transportation or special diet. It cannot be ignored that the appellant/petitioner remained under treatment for a long duration and even after the discharge from the hospital he would have required rest for recovery.

Learned counsel for the petitioner had also claimed compensation for future medical treatment. Dr. Vikas Goel, Orthopedic Surgeon of Apna Hospital, Kurukshetra PW1 stated that the petitioner may require further surgery. However, during this entire period no such record has been placed on the file to show that he required any medical treatment on account of injuries suffered in the accident.

15. Therefore, considering this fact, the appellant/petitioner is granted compensation as under:

SR. No.	Head	Awarded by Tribunal	Enhanced amount
1.	Medical expenditure	Rs.3,21,500/-	--
2.	Compensation on account of permanent disability	Rs.50,000/-	Rs.1,44,000 – Rs.50,000 = Rs.94,000/-
3.	Pain and suffering	Rs.50,000/-	--
4.	Loss of income for 4 months @ Rs.5,000/- per month	—	Rs.20,000/-
5.	Attendant charges	—	Rs.5,000/-
6.	Transportation	—	Rs.10,000/-
7.	Special diet	—	Rs.10,000/-
		Rs. 4,21,500/-	Rs.1,39,000/-
	Total compensation Rs.4,21,500+Rs.1,39,000 = Rs.5,60,500/-		

Considering the aforesaid facts, the award passed by learned Motor Accident Claims Tribunal, Kurukshetra is modified and the appellant/petitioner is entitled to the additional amount of compensation of Rs.1,39,000/- along with interest @ 6% per annum from the date of filing of present appeal till realization.

The copy of record received from the Tribunal be sent back to the concerned quarter.

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

24.07.2023
Sunil Devi

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes
Yes/No