

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

FAO-2628-2012(O&M)

Reserved on:-15.3.2023

Date of decision:-23.3.2023

Parhlad Singh

...Appellant

Versus

Robin Gupta and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ashwani Arora, Advocate
for the appellant.

Ms.Anamika Mehra, Advocate
for the respondent No.3.

H.S. MADAAN, J.

1. Petitioner/claimant Parhlad Singh, aged about 41 years, son of Sh.Deep Chand, resident of House No.2001/B, Sector 41-B, Chandigarh had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against Robin Gupta – driver, V.K. Gupta – owner and New India Assurance Company Ltd., Chandigarh – insurer of car bearing registration No.CH-03-L-2230 (hereinafter referred to as the offending car) before Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the Tribunal), claiming compensation.

2. As per the case of the petitioner/claimant, on the intervening

night of 16/17.05.2008, he was pillion riding motorcycle driven by Constable Ganga Parsad going from Sector 41, Chandigarh to Police Station Sector 34, Chandigarh; the motorcycle was being driven on left hand side of the road; at about 3:30 a.m., when they had reached on the small chowk of Sectors 35 & 36, Chandigarh and had almost crossed the said chowk, then the offending car came from the side of Kisan Bhawan and struck against the motorcycle, resultantly both the riders fell down on the road along with the motorcycle; the claimant received serious injuries and he was removed to hospital.

3. According to the petitioner/claimant, the accident had taken place due to rash and negligent driving of the offending car by respondent No.1 Robin Gupta. The claimant prayed for grant of compensation of Rs.15 lakhs along with interest and cost.

4. On getting notice, all the three respondents appeared and filed separate written statements.

In the written statement filed by respondent No.1, he contended that the accident had taken place due to rash and negligent driving of the motorcycle by Ganga Parsad, who was under the influence of liquor and the claimant was pillion riding that motorcycle.

In the written statement filed on behalf of respondent No.2, he had also taken several preliminary objections contending that respondent No.3 insurance company is liable to pay compensation to the claimant.

Respondent No.3 insurance company in the written statement filed by it had taken various legal objections contending that claim

petition had been filed by the claimant in collusion with the other respondents and driver of the offending car did not possess a valid and effective driving licence at the time of accident. On merits, such respondent denied that any accident had taken place.

All the three respondents prayed for dismissal of the claim petition.

5. Issues on merits were framed and parties were afforded adequate opportunities to lead evidence in support of their respective claims.

6. After hearing arguments, the Tribunal allowed the claim petition partly vide award dated 12.3.2012 and awarded compensation of Rs.89,800/- to the claimant along with interest @ 6% per annum from the date of filing of the petition till realization, payable by all the three respondents jointly and severally.

7. Feeling that the compensation awarded to him was on lower side, the claimant has filed the present appeal seeking enhancement of compensation, notice of which was given to respondents. However, only respondent No.3 – insurance company appeared through counsel.

8. I have heard learned counsel for the parties besides going through the record.

9. The Tribunal on appreciation of the evidence produced before it had returned a clear finding that the accident in which Parhlad Singh had suffered injuries had taken place on account of rash and negligent driving of the offending car by respondent No.1. I do not see any reason to take a different view in the matter and to disagree with the

Tribunal in that regard. Once it is established that the accident had occurred due to rash and negligent driving of the offending car by respondent No.1 Robin Gupta, then Robin Gupta becomes liable to pay compensation to the appellant/claimant. The owner of the offending car is vicariously liable to pay compensation and New India Assurance Company Ltd., Chandigarh also gets fastened with liability for the reason that the vehicle in question was got duly insured by respondent No.2 – owner of the offending car with such Insurance Company. Therefore, the liability of all the three respondents to pay the compensation amount was rightly held to be joint and several by the Tribunal.

10. However, I find that the compensation awarded by the Tribunal is somewhat on the lower side.

11. Admittedly, the claimant is serving in Chandigarh police and getting salary. Despite having suffered injuries in the accident resulting in permanent disability, he continues to be in employment. Therefore, for the present no pecuniary loss has been caused to him with regard to his employment. But then the Court has to see that after his retirement, the claimant would not be able to take any routine employment and his chances for further employment shall be severely restricted. Considering the fact that he was getting salary of around Rs.10,000/- at the time of accident, which is bound to increase with passage of time; after retirement the loss of capacity to earn can be taken to be Rs.3,000/-, annual loss Rs.36,000/-. Applying multiplier of 9, which is for the age group of 56 to 60 years, the loss comes out to **Rs.3,24,000/-** (36,000 x 9).

12. The Tribunal has awarded a sum of Rs.4,800/- to the claimant

under medical expenses. Although the petitioner/claimant being a Government employee is supposed to be entitled to get the medical expenses reimbursed but as it is a matter of common knowledge that all the expenses incurred are generally not reimbursed due to various technical reasons and the injured would be required to incur expenses in future also after his retirement from service. I enhance this amount to **Rs.50,000/-**.

13. Under the head pain and suffering, the Tribunal has awarded a sum of Rs.10,000/- to the petitioner/claimant. In my view considering the number of injuries suffered by the claimant, period of hospitalization, it is very difficult to quantify the pain and suffering undergone by a person suffering injury requiring long hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, the amount is enhanced to **Rs.50,000/-** under that head.

14. The Tribunal has further awarded a sum of Rs.5,000/- under the head special diet. A person suffering injuries does need special diet for early and proper recovery. Thus, the amount under this head is enhanced to **Rs.25,000/-**.

15. Further, the Tribunal has awarded a sum of Rs.5,000/- for attendant charges. In my considered view, the amount is somewhat on lower side. The amount is thus enhanced to **Rs.25,000/-**.

16. The Tribunal has awarded a sum of Rs.5,000/- for conveyance charges, which amount is very meagre. Keeping in view the period of hospitalization and nature of injuries and that claimant would have gone to the hospital for follow up treatment also, the amount is

enhanced to **Rs.25,000/-** under that head.

17. The Tribunal has awarded a sum of Rs.60,000/- for permanent disability. The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. A sum of **Rs.70,000/-** is awarded to him on account of loss of amenities and loss of expectation of life.

18. Under the head 'damages for loss of expectation of life' on account of injuries resulting in shortening of normal longevity, inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life, a sum of **Rs.50,000/-** more is awarded to him.

19. Thus, the total compensation comes out to Rs.6,19,000/-.

20. The Tribunal has awarded compensation of Rs.89,800/-.

21. In this way, the enhanced amount comes out to Rs.5,29,200/- (6,19,000 – 89,800). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount. The other terms and conditions given in the relief clause of the impugned award shall apply to the enhanced amount as well.

22. With such modification, the appeal is allowed partly with costs.

Since the main appeal stands partly allowed, the miscellaneous application(s), if any, stand disposed of accordingly.

23.3.2023

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

(H.S.MADAAN)

JUDGE