

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

FAO No. 10100 of 2014

DATE OF DECISION :- March 21, 2023

Bijender

...Appellant

Versus

Mukesh and others

...Respondents

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

Present:- Mr. Ashish Singh, Advocate for the appellant (Amicus Curiae).

Mr. D.R. Bansal, Advocate
with Mr. Rahul Bansal, Advocate for respondent No. 3.

Mr. R.K. Bashamboo, Advocate for respondent No. 6.

Briefly stated the facts of the case are that petitioner claimant Bijender , aged about 35 years, son of Sh. Banwari Lal, resident of village Phogat (Sanjarwas), District Bhiwani had brought a claim petition under Section 166 of the Motor Vehicle Act, 1988 (hereinafter referred to as 'the Act') against respondents i.e. Mukesh, driver, M/s Himalayan Construction Company, Jind, owner and United India Insurance Company Limited, Bhiwani insurer of dumper bearing registration No. HR-39A-1532 besides Harpal driver, Ashu Gupta, owner and Reliance General Insurance Company Limited, Rohtak, insurer of dumper No. HR-46B-0006 on the allegations that he was travelling in dumper No. HR-46B-0006 in the capacity of cleaner and such dumper was being driven by Harpal. On 1.12.2011 at about 9.00 P.M he along with one Harpal were about to get down from the said vehicle after parking it at Bus Stand of village Sanjarwas, in the meanwhile dumper bearing Registration No. HR-39A-1532 (hereafter to referred to the offending vehicle) being driven in a rash and negligent manner by respondent No. 1 Mukesh came and struck against their vehicle as a result of

which petitioner claimant Bijender and Harpal suffered injuries. The petitioner claimant had received serious injuries especially on both the legs whereas Harpal had received only minor injury. The injured were moved to hospital.

Formal F.I.R No. 119 dated 2.12.2011 for offences under Sections 279 and 337 IPC was registered against respondent No. 1 Mukesh. According to the petitioner claimant as a result of suffering injuries his both legs were fractured and he remained in the hospital from 1.12.2011 to 23.2.2012 incurring around a sum of Rs.1,25,000/- on treatment and is still getting treatment, in addition to working as a cleaner on dumper he was engaged in avocation of dairy farming earning Rs.15,000/- from the said avocation. The claimant had approached the Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal') for grant of compensation to the tune of Rs.5 lakhs with interest.

On getting notice all the respondents appeared and contested claim petition. Issues on merits were framed. The parties were afforded opportunities to lead evidence. Thereafter hearing all the parties, the Tribunal vide Award dated 23.5.2014 accepted the claim petition partly and awarded a compensation of Rs.1,30,000/- with interest at the rate of 6% per annum from the date of filing of claim petition till actual realization payable by respondents No. 1 to 3 jointly and severally besides cost of the claim petition.

Finding the compensation so awarded to be on lower side the petitioner claimant has approached this Court by way of filing an appeal, notice of which was give to respondents. However, only respondent No. 3 United India Insurance Company Limited, Bhiwani and respondent No. 6 Reliance General Insurance Company, Rohtak have appeared to offer a contest.

I have heard learned amicus curiae appointed for the appellant and learned counsel for the Insurance Companies besides going through the record.

The Tribunal considering the pleadings of the parties and evidence available on record had returned a clear finding that the accident in which

petitioner claimant had suffered injuries had taken place on account of rash and negligent driving of offending vehicle by respondent No. 1 Mukesh. Neither respondent No.1 Mukesh, driver nor M/s Himalayan Construction Company, District Hisar, owner of that dumper have challenged such finding or the Award.

I do not see any reason to disagree with the Tribunal in that regard. It being so, the driver, owner and Insurance Companies of the offending dumper were rightly held to be liable to pay compensation to the appellant petitioner who had suffered injuries in the accident, their liability having been held to be joint and several. However, the compensation awarded is on the lower side. Section 164 of the Motor Vehicle Act, 1988 provides that when a person suffers grievous hurt due to any accident arising out of use of motor vehicle, a compensation of Rs.2½ lakh is to be paid. In that way that is minimum compensation payable.

However, in the present case the petitioner claimant had suffered 12% permanent disability in terms of disability certificate Ex.P16. It has come in evidence that he was working as a cleaner/helper on the dumper. Even if the minimum wages of an unskilled worker at relevant time to the tune of Rs.4643.89/- to make it round figure Rs.4644/- is taken, considering the age of injured at the time of accident which was below 40 years an addition of 40% is to be made towards future prospects. The total monthly income is thus calculated as Rs.6501/- with 12% disability. By using the multiplier of 16 considering his age the amount is worked out to Rs.1,49,783/- (6501 x 12 x 12/100 x 16) say Rs.1,50,000/-. The petitioner claimant had suffered fracture in both the legs and had to be operated upon as is born out from the record. He had remained hospitalized for a period of around three months. He is to be compensated for the loss of income for the period he could not work. Therefore, a sum of Rs.33,000/- is awarded to him on that account. Further a sum of Rs.50,000/- is awarded towards medical expenses whereas under the Head pain and suffering a sum of Rs.30,000/- is awarded, further a sum of Rs.25,000/- is awarded for special diet and

Rs.25,000/- for attendant charges are awarded. As a result of suffering injuries resulting in permanent disability to the extent of 12% the petitioner claimant would not be able to lead normal life. Therefore, he is awarded a sum of Rs.50,000/- on account of loss of humanities. Rs.30,000/- is awarded to the petitioner claimant towards shortening of life on account of suffering injuries. In that way the compensation amount to which petitioner claimant is found entitled is worked out to Rs.3,93,000/-. The Tribunal has awarded a sum of Rs.1,30,000/- only. In that way the claimants are entitled to get additional compensation of Rs.2,63,000/- (3,93,000 – 1,30,000). The petitioner claimant would be entitled to recover this amount with interest at the rate of 7.5% per annum from the date of filing of claim petition till actual realization. The liability to pay this amount being joint and several by respondents No. 1 and 3.

The appeal is partly allowed with costs.

(H.S. MADAAN)
JUDGE

March 21, 2023
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No