

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

105+208

FAO-4034-2013 (O&M)

Date of decision: 10.03.2023

Gaurav Gaba

...Appellant(s)

Vs.

Amritpal Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. V.B. Aggarwal, Advocate for the appellant.

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

NIDHI GUPTA, J.

Present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.79,565/- awarded by Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as "the learned Tribunal") vide Award dated 06.03.2013 passed in MACT Case No.67 of 2009 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that the appellant had suffered injuries in a motor vehicular accident that took place on 23.02.2008 due to rash and negligent driving of car bearing registration No.HR-68T-4430 (hereinafter referred to as "the offending vehicle") being driven by respondent No.1/driver, owned by respondent No.2 and insured by respondent No.3. Learned Tribunal awarded compensation as noted above along with interest @ 7.5% per annum from the date of filing the petition till its actual

realization. Respondents were held jointly and severally liable to pay the amount of compensation.

3. Learned counsel for the appellant seeks enhancement of compensation inter alia, on the ground;

a) that the appellant had suffered permanent disability and nothing has been granted towards loss of income; pain & suffering; operation charges; attendant charges; transportation charges; medical expenses, and future loss;

b) that the appellant was working as a Technician and earning Rs.10,500/- per month. However, now due to the accident in question, he is unable to do his job and therefore, his permanent disability ought to have been taken as 100% and not 4%;

c) that learned Tribunal did not take into consideration Income Certificate dated 01.07.2008 of the appellant which is on record as Exhibit PW2/A.

4. Per contra, it is submitted by learned counsel for respondent No.3;

a) that appellant had suffered only 4% permanent disability, which would be 2% functional qua the whole body;

b) that in the facts and circumstances of the case, compensation awarded by learned Tribunal is just and proper.

5. No other argument is raised on behalf of the parties.

6. I have heard learned counsel for the parties.

7. a) Perusal of record of the case shows that as per disability certificate (Exhibit C31), the appellant had suffered multiple injuries, main injury being fracture of left tibia, as well as fracture of left arm. As a result of the said injuries, permanent physical disability of the appellant, as per Disability Certificate (Exhibit C31), was assessed to the extent of 4% whereby his left leg was found to have shortened by half an inch and there was mild restriction of movement of left knee and ankle. However, even though concerned doctor was not examined by the appellant, yet, permanent disability was taken to be 4%. As the appellant had produced medical bills Exhibit C6 to Exhibit C30, which were proven on file, for a total amount of Rs.23,565/-, the same were reimbursed to him;

b) Further, learned Tribunal has granted Rs.12,000/- towards loss of income on the ground that healing of fracture usually takes 2 to 4 months;

c) Learned Tribunal granted Rs.10,000/- on account of pain and suffering; Rs.5,000/- towards transportation charges; Rs.2,000/- for special diet and Rs.2,000/- for attendant charges;

d) It has further come on record that though it is claimed by the appellant that he was working as a Technician, however evidence led by the appellant in this regard was not found to be reliable by the learned Tribunal. The appellant had examined PW2-Rajesh Sharma who had stated that the appellant was working as a Technical Manager in the video track Cable Network for a salary of Rs.10,500/-. PW2 had also proved on record salary certificate (Exhibit PW2/A). However, during cross-examination, PW2

had admitted that no formal certificate was issued to the appellant proving such salary being paid to him. Admittedly, even no appointment letter or accounts statement of either appellant or employer, were brought on record. Accordingly, I find no error in reasoning of learned Tribunal that just salary certificate Exhibit PW2/A was not sufficient to prove employment of the appellant.

8. No doubt Chapter-12 of the Motor Vehicles Act, 1988 is a beneficial legislation yet, as cautioned by the Hon'ble Supreme Court, the same cannot be allowed to be treated as a windfall or a source of profit. All that has to be determined in the facts of a given case is, that the compensation accorded is 'just'. In my considered view, in the present case, the learned Tribunal has awarded a very 'just' compensation, which is in accordance with the law laid down by the Hon'ble Supreme Court and therefore does not warrant the interference of this Court. In case of ***KSRTC Versus Susamma Thomas 1994 Volume-II SCC 176***, the Hon'ble Supreme Court has held that misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation.

9. For the reasons stated above, I find no ground is made out to interfere in the impugned Award. Present appeal stands, **dismissed**.

10. Pending application(s) if any also stand(s) disposed of.

10.03.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No