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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3962-2014 (O&M)

Date of Decision: 04.05.2023

Sarfaraj

....Appellant

Versus

Akram @ Akramdin and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ashish Gupta, Advocate
for the applicant/appellant.Mr. Rahul Noorie, Advocate &
Mr. Abhimanyu Singh, Advocate
for respondent No.1.Mr. Vinod Chaudhri, Advocate
for respondent No.2.

ARUN MONGA, J. (ORAL)

Appellant before this Court is claimant seeking enhancement of compensation and modification of impugned award dated 30.10.2013, rendered by learned Motor Accidents Claims Tribunal, Nuh (for brevity, "*Tribunal*"), whereby compensation of Rs.52,000/- alongwith interest @ 9% per annum was awarded to appellant/claimant, recoverable from respondent No.1, on account of injury suffered by him in an accident.

2. Succinct facts, as noted by learned Tribunal, are as below:

"The above claim petition under Section 166 of the Motor Vehicles Act (hereinafter referred to as 'the Act') has been filed for the grant of compensation on account of injuries suffered by the petitioner, in motor vehicular accident.

2. While providing the particulars as required under the Motor Vehicles Act and Rules framed thereunder, the claimants inter-alia alleged that on 27.7.2009, petitioner was going to ease the call of nature. His father was also behind him. In the meantime, at about 5.00 a.m., when petitioner reached near field of Kamru, a motorcycle

A/F bearing Engine No.19586 and Chasis No.10648, driven by respondent No.1 in a rash and negligent manner, came from Village side and struck with the petitioner. As a result of accident, the petitioner suffered grievous injuries on his person. The accident occurred due to rash and negligent driving of respondent No.1. A criminal case bearing FIR No.269 of 2009 under Sections 279, 337, 338 of IPC was registered in Police Station Punhana, against respondent No.1/driver regarding the accident in question. With these details, it was claimed that the accident took place on account of rash and negligent driving of respondent No.1-driver while driving the offending dumper.”

3. Upon notice, respondents put in appearance and contested the claim petition by filing separate written statements.

3.1. Respondent No.1 filed written statement taking preliminary objections regarding maintainability; *locus standi* and concealment of material facts from the Court. On merits, it was submitted that neither any accident alleged, ever took place nor the answering respondent was driving the vehicle in question on the date of alleged accident. It was further submitted that the amount claimed is exaggerated and false one. It was further alleged that a false FIR was registered pertaining to the alleged accident in the Police Station. However, it was submitted that the vehicle in question was/is insured with respondent No.2 insurance company. While denying the rest of the allegations, dismissal of the petitioner was prayed for.

3.2. Respondent No.2/Insurance company in its separate written statement took preliminary objections regarding maintainability; *locus standi*; cause of action, concealment of true facts. It was again claimed that the petition is bad for non-joinder and misjoinder of necessary parties and respondent No.1 was not having effective driving licence and there was inordinate delay of six days in lodging the FIR and the amount claimed was exaggerated amount. On merits, all the allegations were controverted and it was claimed that no injury or fracture was sustained by the petitioner and his hospitalization and treatment is also denied. It

was denied that the alleged accident was occurred due to rash and negligent driving of motor cycle by respondent No.1, as alleged. However, additional plea was also taken that in case the Court comes to the conclusion that the alleged accident took place due to rash or negligent driving of the offending vehicle, in that eventuality, the percentage of negligence as well as liability to pay the awarded amount of compensation, if any, is to be decided. While denying the other allegations, dismissal of the petition was prayed for.

4. Learned Tribunal framed the following issues for adjudication:

1. Whether the accident in issue took place on 27.7.2009 at about 8.00 a.m. near the field of Kamru S/o Munshi, Village Andhaki in the area of P.S. Punhana, because of rash and negligent driving of vehicle bearing Engine No.19586 and Chasis No.10648 by its driver/respondent No.1 as alleged? OPP
2. If issue No.1 is proved, whether the petitioner is entitled for the compensation. If so, to what extent and from whom?OPP
3. Whether the petition is not maintainable in the present form? OPR
4. Whether the petitioner has no locus standi to file the present petition? OPR
5. Relief.

5. On appraisal of record/evidence, learned Tribunal decided first issue in favour of claimants and against respondents; second issue in favour of claimants and against respondent No.1 and third and fourth issues were disposed of being not pressed. Claimant is held entitled to compensation of Rs.52,000/- along with interest @ 9% per annum and the same is recoverable from respondent No.1 while respondent No.2-insurance company has been exonerated by Ld. Tribunal.

6. Learned counsel for appellant/claimant would contend that Ld. Tribunal has granted no specific amount on account of special diet, medical attendant and transportation charges as it was proved on record that the appellant

admitted in hospital and he had to visit hospital frequently for follow up treatment

also and therefore Rs.1 Lakh has to be awarded separately for follow-up check up as well. He would further contend that appellant had suffered a lot and has to suffer through out his life and therefore the amount of Rs.15,000/- awarded on account of pain and suffering is too meager. As regards award of Rs.27,000/- on account of medical bills, learned counsel for appellant would contend that a person who has suffered many injuries and have to suffer throughout his life, an amount of Rs.3 Lakhs at least has to be awarded instead of a meager amount of Rs.27,000/- towards medical bills. He would further contend that since appellant has become permanent disabled on account of injuries sustained by him, his future has become dark. Therefore, future prospects has also to be awarded to the appellant. Further he is claiming award of Rs.2 Lakhs on account of the fact that since prospects of appellant's marriage have considerably reduced on account of injuries, he will not be able to enjoy the matrimonial life. Further he is claiming award of Rs.4 Lakhs under the head of loss of future earning since allegedly the appellant has become permanent disabled. Lastly, he is claiming compensation of Rs.2 lakhs towards loss of future enjoyment of life due to permanent disability.

7. Having perused the award, it transpires that the only ground for fastening the negligence on the driver of the offending motor-cycle i.e. respondent No.1 is the self-serving statement of father of the minor child who had filed the claim petition seeking compensation other than the oral testimony of rashly and negligently. There is nothing on record as to how the driver was negligent, more particularly, when the affirmative version pleaded by the claimant himself at the relevant time on fateful day was that the minor child was walking with him on the *kuccha* portion of the road. It is further stated by the claimant that it was around 8:00 am and the minor child had stepped out from the house to ease the call of nature, when the offending vehicle struck him from the behind without blowing

any horn, resulting in the fracture on right thigh of the minor child. Though the claimant also deposed that fracture of the thigh later resulting in shortening of the leg of the minor child which is permanent disability, but otherwise a self-serving statement. Copy of statement in the shape of evidence by way of affidavit of father of claimant is taken on record as **Mark 'A'**.

7.1. There is nothing on record, either any documentary medical evidence and/or opinion of any Medical Expert that shortening of the leg took place. It does appear that shortening of leg as stated by the claimant/father, without there being any corroborative proof thereof, was merely alleged to seek higher compensation.

7.2. Be that as it may, the minor child had suffered the fracture on his right thigh and at that time he may have been rushing to ease the call of nature not realizing that being 8 AM, it was a busy hour in the morning and there were traffic resulting in the unfortunate accident. However, on the wholesome premise, I am of the view that Ld. Tribunal has committed manifest error of law and misappreciation of evidence in determining the finding of contributory negligence on the part of motorcycle. The unfortunate incident happened in the peculiar circumstances where it is difficult to ascertain as to who was entirely negligent. Accordingly, to the extent the driver of the offending vehicle i.e. respondent No.1 is held liable and awarded amount has been ordered to be recovered from him, that finding is reversed.

7.3. There is another aspect of the matter that while ascertaining the pain and suffering of minor child of 6 years who suffered fracture on his right thigh, a meager amount of Rs.15,000/- was awarded. Accordingly, the same is increased to Rs.25,000/-. On the other hand, nothing has been awarded on account of medical attendant as admittedly the minor child admitted in hospital for 5 days and thereafter he regularly visited hospital for follow-up check-up and the plaster

would have remained for some weeks and during the period, he naturally required services of attendant. Consequently, I award Rs.5000/- per month towards attendant for a period of three months.

8. Accordingly, impugned award is modified in terms of above. 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 approaching the 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.

9. In the premise, appeal is disposed of in above terms.

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

(ARUN MONGA)
JUDGE

May 04, 2023
ashish

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No