

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

FAO-4115-2014(O&M)

Date of decision:-15.2.2023

Roshan Lal

...Appellant

Versus

Rajesh Kumar and another

...Respondents

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

Present: Mr.Arvind Bansal, Advocate
for the appellant.

Mr.S.S. Sidhu, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Petitioner/claimant Roshan Lal, aged about 55 years (since deceased) had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 before Motor Accidents Claims Tribunal, Kaithal(hereinafter referred to as the Tribunal) against respondents i.e. Rajesh Kumar – driver-cum-owner and National Insurance Company Ltd. - insurer of Nano Car bearing temporary registration No.HR99HQ-1083 (hereinafter referred to as the offending car) seeking compensation on account of the injuries suffered by him in a motor vehicular accident.
2. As per the case of the petitioner/claimant, on 17.10.2011, he along with his son Tinku was going to Panipat on a motorcycle bearing

registration No.HR41-C-7129; the motorcycle was being driven by Tinku on which the the petitioner/claimant was a pillion rider; when they had reached near village Deban at T-point near Baba Peer Mandir, the offending vehicle being driven by respondent No.1 Rajesh Kumar in a rash and negligent manner came from the side of village Songal and struck against their motorcycle, as a result, both the riders fell down; the petitioner/claimant Roshan Lal suffered multiple and serious injuries on various parts of his body including a fracture in the left leg; he was shifted to Civil Hospital, Kaithal, where he was medically treated and medico legally examined; keeping in view his serious condition, he was referred to Virk Hospital, Karnal, where he remained admitted as an indoor patient for six days and was operated upon; a sum of Rs.2,00,000/- was spent on his treatment, which includes hospitalization charges, medicines, special diet, transportation etc.

FIR No.112 dated 17.10.2011 for the offences under Sections 279, 333 and 427 IPC was registered against respondent No.1 Rajesh Kumar at Police Station Titram on the basis of statement of petitioner/claimant Roshan Lal.

3. According to the petitioner/claimant, he was hale and hearty prior to the accident and was running a grocery shop earning Rs.12,000/- per month and after the accident he had become permanently disabled.

4. On notice both the respondents had appeared and filed written statements.

5. In the written statement filed on behalf of respondent, he had raised various legal objections, on merits denying the accident contending

that a false FIR has been got registered against him by the petitioner/claimant in collusion with the local police; as a matter of fact the alleged accident had taken place due to sole rash and negligent drive of the motorcycle by its driver and the motorcycle had hit the vehicle of respondent No.1.

6. In the written statement submitted on behalf of respondent No.2, it had also raised various legal objections coming up with a plea that since petitioner/claimant was a pillion rider of the motorcycle, which was driven by his son, as such it was a case of contributory negligence and a false FIR has been got registered by the petitioner/claimant against the respondents.

Refuting the remaining assertions, both the respondents prayed for dismissal of the claim petition.

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

8. After hearing arguments, the Tribunal decided issue No.1 in favour of the petitioner/claimant against the respondents holding that the accident in which the petitioner/claimant had suffered injuries had taken place on account of rash and negligent driving of the offending car by respondent No.1 – Rajesh Kumar, whereas issues No.2 to 4 were decided holding that the petitioner/claimant is entitled to compensation of Rs.1,87,100/- as per details below:

(i)	Compensation on account of expenses borne by the petitioner for getting medical treatment which includes	Rs.1,27,100/-
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	hospitalization charges, expenses in purchasing medicines etc.	
(ii)	Compensation for pain and suffering	Rs.15,000/-
(iii)	Compensation on account of special diet	Rs.15,000/-
(iv)	Compensation on account of disability of particular limb	Rs.30,000/-
	Total	Rs.1,87,100/-

9. In that way, the Tribunal allowed the claim petition vide award dated 25.10.2013 and awarded compensation of Rs.1,87,100/- to the claimant along with interest @ 7.5% per annum from the date of filing of the petition till realization, payable by both the respondents jointly and severally.

10. 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. Respondent No.2 insurance company has put in appearance through counsel.

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

12. It may be mentioned here that the petitioner/claimant had expired during the pendency of the appeal. However, in view of the judgment referred to by learned counsel for the appellant i.e. **Oriental Insurance Company Ltd. Versus Kahlon @ Jasmail Singh Kahlon (deceased) through his Legal Representative Narinder Kahlon Gosakan and another, 2021(4) RCR(Civil) 1**, wherein it was observed that the motor accident claim does not abates on death of injured/claimant.

Therefore, the appeal is to continue and application bearing CM-3243-CII-2016 under Order 22 Rule 3 read with Section 151 CPC so filed for bringing on record LRs of appellant/deceased Roshan Lal detailed in para No.2 of the application, is allowed and they are directed to be brought on record. Registry to do the needful.

13. The Tribunal has awarded a sum of Rs.1,27,100/- to the petitioner/claimant on account of expenditure incurred for medical treatment including hospitalization charges, expenses in purchasing medicines etc. on the basis of bills and receipts produced. But then it is not possible to keep record of each and every penny spent on medical treatment or to get bills/receipts on account of purchase of medicines for comparatively small amount for undergoing tests or for purchasing any medical equipment for the treatment of the injured. According to the claimant, he had spent a sum of Rs.2 lakhs on his treatment, though he has been able to furnish documentary proof with regard expenditure of Rs.1,27,100/- only. In my considered view this figure needs to be enhanced to **Rs.2,00,000/-**.

14. With regard to compensation for pain and suffering awarded to the tune of Rs.15,000/-, I find the amount to be quite on lower side. It has been proved on record that the petitioner/claimant had suffered serious and multiple injuries in the mishap in which he was operated upon and he had suffered permanent disability to the extent of 24% as is evident from disability certificate Ex.P73. However, in judgment ***The Oriental Insurance Company Ltd. Versus Kahlon @ Jasmail Singh Kahlon*** (deceased) (supra), it was held by the Supreme Court that the

compensation under the head pain and suffering being personal injuries is held to be unsustainable and was disallowed. Therefore, compensation under that head cannot be allowed to the LRs.

15. However, with regard to the compensation on account of special diet, which has been awarded at Rs.15,000/-, the same is found to be on very lower side and is enhanced to **Rs.30,000/-**.

16. As regards compensation on account of disability of particular limb to the extent of 24% as per disability certificate Ex.P73, the claimant at the time of accident was aged 55 years, running a grocery shop earning Rs.12,000/- per month. As a result of suffering injuries, he would not have been able to do his job in the same manner as he would have done earlier. He is said to have expired. I find that the compensation awarded on that account to be on very lower side and the same is enhanced to **Rs.1,50,000/-**.

17. The petitioner/claimant would not have been able to work for considerable time on account of suffering injuries being hospitalized and having undergone surgeries. A sum of **Rs.30,000/-** is awarded to him on that count.

18. The Tribunal has not granted compensation to the petitioner/claimant under various conventional heads like attendant charges, transportation charges, loss of amenities that he would not able to walk and work like a normal person and shortening of life on account of suffering injuries. I award a sum of **Rs.25,000/-** each head i.e. attendant charges, transportation charges, loss of amenities and shortening of life.

19. Thus, the total compensation comes out to Rs.5,10,000/-.

20. The Tribunal has awarded compensation of Rs.1,87,100/-.

21. In this way, the enhanced amount comes out to Rs.3,22,900/- (5,10,000 – 1,87,100). The amount is rounded off to Rs.3,23,000/-. The LR's of 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 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.

15.2.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No