

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-3233-2015

Reserved on:- 24.07.2023

Pronounced on:- 18.08.2023

Israil

....Appellant

Versus

Ushman and Ors.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Arjun Atri, Advocate for the appellant.

Mr. Talim Hussain, Advocate
for respondents No.1 and 2.Mr. Yogesh Gupta, Advocate
for respondent No.3-Insurance Company.

AMARJOT BHATTI, J.

1. The appellant/claimant – Israil has filed the present appeal against impugned award dated 09.01.2015 passed by learned Motor Accident Claims Tribunal, Mewat vide which he has been granted compensation of Rs.10,67,300/- with interest at the rate of 7.5% per annum from the date of institution of the claim petition till realization of the awarded amount with the prayer to modify and enhance the amount of compensation awarded by learned Motor Accident Claims Tribunal, Mewat.

2. The facts of the case are that Israil has filed claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation to the tune of Rs.50,00,000/- taking the stand that at the time of accident he was 60 years old doing the business of scrap in Delhi. He

has mentioned his monthly income as Rs.30,000/-. On the fateful day of 03.10.2013, he along with Rajju was going from Shah Chokha to Indana on motor cycle No.HR-28-A-5327. He was driving the motor cycle and at about 4:00 PM they reached truck market Punhana and in the meantime the offending truck No.HR-55-F-2530 driven by respondent No.1 in a rash and negligent manner came from the side of Hodal and hit against his motor cycle by coming on the wrong side of the road. He along with his companion Rajju fell on the road and received injuries. The registration number of the truck was noted down by Yousuf. Initially, they were taken to a Government hospital but due to their serious condition they were taken to Metro Hospital, Faridabad. He remained admitted in the said hospital from 03.10.2013 to 25.11.2013, 24.01.2014 to 26.01.2014, 26.12.2013 to 29.12.2013 and 08.12.2013 to 09.12.2013 and he was still under treatment. He has already spent more than Rs.25,00,000/- on his treatment. Regarding this accident FIR No.451 dated 12.10.2013 was registered under Sections 279, 337 of IPC at Police Station Punhana. In this accident, he suffered multiple injuries including fractures. He suffered a lot on account of injuries suffered by him in the accident. He is not able to stand and walk independently without the help of attendant. He suffered permanent disability to the extent of 90%. He suffered pain, agony, mental tension. He suffered loss of business. It is prayed that he may be awarded compensation of Rs.50,00,000/- along with interest @ 18% per annum from the date of accident till realization of the amount from the respondents, who are liable to pay jointly and severally with costs.

4. The claim petition was contested by the Insurance Company alone. The written statement was filed taking several preliminary

objections including the objection that respondent No.1 was not holding a valid driving license and the said vehicle was being driven in violation of Section 66 of the Motor Vehicles Act as well as against the terms and conditions of the insurance policy. The claim petition was also contested on merits denying all the facts. The registration of FIR and quantum of compensation claimed by the claimant was also denied. The Insurance Company denied its liability as joint and several along with respondents No.1 and 2. It was prayed that the claim petition filed against the Insurance Company may kindly be dismissed with costs.

5. From the pleadings of the parties, following issues were framed by the Tribunal on 11.07.2014:-

- (1) *Whether the accident in question resulting into injuries to petitioner took place on 03.10.2013 at 4.00 p.m. in the jurisdiction of PS Punhana, due to the rash and negligent driving of vehicle bearing registration No.HR-55-F-2530 by its driver respondent No.1? OPP*
- (2) *If issue No.1 is proved, whether the petitioner is entitled to compensation. If so, to what amount and from whom? OPP*
- (3) *Whether respondent No.1 was not holding a valid and effective driving license at the time of alleged accident? OPR-3*
- (4) *Relief.*

6. In order to prove the claim petition, the claimant Israil examined Yousuf as PW-1, Rajju as PW-2, Dr. Sanjeev Kumar as PW-3, Rahul Chandila as PW-4 and he himself stepped into the witness box as PW-5.

7. In order to rebut the evidence of the claimant, the respondent No.3-Insurance company had not led any evidence despite availing

opportunities and ultimately, evidence of respondent no.3 was closed vide order dated 01.12.2014.

8. After hearing the arguments advanced by learned counsel for both the parties, the claim petition filed by the claimant Israil was allowed by passing impugned award dated 09.01.2015 vide which the compensation was awarded to the tune of Rs. 10,67,300/- as detailed therein by holding the liability of all the respondents as joint and several along with interest @ 7.5% per annum from the date of institution of the petition till realization of Award amount. Feeling aggrieved of this Award, the present appeal has been preferred by appellant/claimant – Israil.

9. I have heard the arguments of learned counsel for the appellant/claimant as well as learned counsel for respondent – Insurance Company. This appeal is filed regarding the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Mewat vide Award dated 09.01.2015. It is pointed out that the appellant remained in the hospital from 03.10.2013 to 26.01.2014 from time to time. He was operated upon four times. The long treatment received by the appellant/claimant has not been considered. The learned Motor Accident Claims Tribunal, Mewat has considered the hospital charges proved on record as Ex-P5 to Ex-P73 to the tune of Rs.10,47,285/- round figure Rs.10,47,300/- only. The other bills Ex-P83 to Ex-P113 have not been considered by the learned Motor Accident Claims Tribunal, Mewat without any reason. It is further pointed out that he has been granted meager amount of Rs. 10,000/- for pain and suffering and another sum of Rs.10,000/- for loss of basic amenities. No compensation has been awarded for special diet, expenditure of attendant, transportation. The

appellant was doing business of scrap in Delhi and earning Rs.30,000/- per month. Loss of income suffered by the appellant/claimant has not been considered. Therefore, considering the aforesaid facts, the appellant/claimant is entitled to the enhanced amount of compensation and the award dated 09.01.2015 passed by learned Motor Accident Claims Tribunal, Mewat may kindly be modified accordingly.

10. On the other hand, learned counsel for the Insurance Company pointed out that the learned Motor Accident Claims Tribunal, Mewat has rightly considered the evidence on record and adequate & just compensation has been awarded in favour of the appellant/claimant. The bills Ex-P83 to P-113 were not proved on file by examining owner of the shop or by any medical record. Therefore, these bills were rightly ignored. The appellant/claimant did not suffer any permanent disability. He was discharged from the hospital in a satisfactory condition. Therefore, the claim of appellant/claimant for enhanced amount of compensation is without any justification.

11. I have considered the arguments advanced by learned counsel for the appellant/claimant as well as the points raised by the learned counsel for the Insurance Company. This appeal has been filed with the prayer to enhance the amount of compensation already awarded by the learned Motor Accident Claims Tribunal, Mewat.

In the case in hand, the learned Motor Accident Claims Tribunal, Mewat has considered the bills Ex-P7 to Ex-P73 to the tune of Rs.10,47,285/- round figure Rs.10,47,300/- for the purpose of granting compensation to the appellant/claimant and has ignored the bills regarding purchase of medicines etc. Ex-P83 to Ex-P113 as the claimant did not

examine owner of the shop to prove the said bills. I have considered the bills Ex-P83 to Ex-P113. Except bill Ex-P86 and Ex-P87, all the bills are pertaining to the duration when the appellant remained under treatment from time to time. The said bills are of Fortis Escorts, Faridabad as well as of Artemis Hospitals. Some of the bills are pertaining to purchase of medicine from different pharmacy shops. It cannot be ignored that from the period 03.10.2013 to 26.01.2014 the appellant/claimant received treatment and even was admitted in the hospital. Even after the discharge from the hospital, the appellant/claimant must have required medicines from time to time. Therefore, considering the duration of medical treatment, the bills Ex-P83 to Ex-P113 except Ex-P86 and Ex-P87 are considered which are to the tune of Rs.40,751/- round figure Rs.40,750/-. It cannot be ignored that the learned Motor Accident Claims Tribunal, Mewat has granted only Rs.10,000/- for pain and suffering which is towards lower side, considering the period of treatment for which he remained admitted in the hospital. No compensation has been granted for special diet, expenditure on attendant and transportation. Similarly, no compensation has been granted for the loss of income. There is no direct evidence to establish the income of appellant/claimant to the tune of Rs.30,000/- per month by doing the business of scrap as alleged by him. Therefore, by way of guess work his monthly income is assumed as Rs.8,000/- per month and he remained under treatment for a long duration and it would not have been possible for him to continue his business atleast for a period of five months. Therefore, he is further entitled to the compensation to the tune of Rs.40,000/- (Rs.8000/- x 5) regarding loss of income. There is nothing on record to show that the appellant/claimant

suffered any permanent disability. Considering these facts, the appellant/claimant is entitled to receive compensation under the aforesaid heads as under:-

Head	Enhanced amount of compensation	Awarded by Tribunal
Medical Expenditure	10,47,300+40,750 = 10,88,050/-	10,47,300
Pain and suffering	50,000	10,000
Loss of basic amenities	10,000	10,000
Special diet	5,000	-
Expenditure of attendant	10,000	-
Transportation	5,000	-
Loss of income @ Rs.8,000/- per month for 05 months	40,000	-
Total amount	12,08,050	10,67,300

Considering the aforesaid detail the claimant is already granted compensation of Rs.10,67,300/- if already deposited it is liable to be adjusted in the aforesaid amount and the enhanced amount of compensation comes out to be Rs.1,40,750/- which the claimant is entitled to receive from the respondents who are liable to pay this amount jointly and severally as per the terms of Award dated 09.01.2015. The appellant/claimant is entitled to receive the aforesaid enhanced amount with interest @ 7% per annum from the date of filing of appeal till realization of the amount. Accordingly, the present appeal is accepted and the award passed by the learned Motor Accident Claims Tribunal, Mewat stands modified.

The copy of record received from the Tribunal be sent back to the concerned quarter.

18.08.2023
Sunil Devi

(AMARJOT BHATTI)
JUDGE

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