

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

FAO-3364-2015(O&M)

Reserved on:-21.4.2023

Date of Pronouncement:-1.5.2023

Charanjit Singh

...Appellant

Versus

Monu and others

...Respondents

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

Present: Mr.Jagtar Kureel, Advocate with
Mr.Baljinder Singh, Advocate
for the appellant.

Mr.Sachin Ohri, Advocate
for the respondent No.3 – insurance company.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that petitioner/claimant Charanjit Singh son of Hajara Singh, resident of House No.2040, Phase – II, Ram Darbar, Chandigarh had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Monu – driver, Inderjeet – registered owner and Reliance General Insurance Company through its Manager, Madhya Marg, Chandigarh – insurer of truck bearing registration No.HR69-A-8790 (hereinafter referred to as the offending truck), claiming compensation on account of suffering injuries in a motor vehicular

accident, which took place on 15.7.2012 at about 2.50 p.m. statedly on account of rash and negligent driving of the offending truck by respondent No.1 Monu.

2. After contest, the claim petition was accepted by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the Tribunal) vide award dated 28.10.2014 and compensation of Rs.12,273/- was awarded to the claimant payable by respondent No.3 insurance company with interest @ 6% per annum from the date of filing of the claim petition till realization. It was further observed that if the amount was not paid within three months then penal interest @ 12% per annum would be payable.

3. 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.3 – insurance company has appeared through counsel.

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

5. The Tribunal considering the facts and circumstances of the case including the evidence brought on record by the parties has returned a clear cut finding that the accident in which petitioner/claimant Charanjit Singh had received injuries had taken place on account of rash and negligent driving of the offending truck by respondent No.1 – Monu, as such the driver, owner and insurance company of the truck in question were found liable to pay compensation. As the truck was found to be duly insured with respondent No.3 at the relevant time with no violation of

terms and conditions of the insurance policy being noticed, respondent No.3 insurance company was directed to make the payment of compensation to the claimant.

6. However, the Tribunal has greatly erred while calculating the compensation. As comes out from the record, petitioner/claimant had got his statement recorded as PW1. In the affidavit filed by him, he has given his age as 22 years stating that he is a graduate and was doing private job as CSR Telecaller in Competent Synergy Pvt. Ltd. at SCO No.91-92-93, Sector 34-A, Chandigarh, getting salary of Rs.7,000/- per month plus incentives and on account of suffering injuries in the road side accident, he had suffered multiple fracture on leg and arm and multiple injuries on other body parts including head injury; he was initially treated by doctors at Government Hospital, Sector 16, Chandigarh, though later on he was referred to PGI, Chandigarh; he remained bed-ridden for 9 months from the date of accident suffering operations as surgical rod with nails were inserted in left arm and left leg and thereafter on 20.6.2013 surgical rod with nails were removed from his left leg; he has become permanently disabled due to said accident; he is unable to do physical activities since he cannot run or jump or pull weight; he is still undergoing treatment; he has got physiotherapy also; he has incurred Rs.1,50,000/- on the medical treatment. Some of the bills were proved in evidence as Ex.C3 to Ex.C24. According to the petitioner/claimant not only has he suffered financial loss but physical loss also besides mental agony and pain; he could not pass his examination of BA due to being bedridden. The petitioner sought compensation of Rs.7 lakhs.

PW3 Bir Bahadur Singh, Assistant Manager HR o/o Competent Synergies (P), Ltd. Sector 34-A, Chandigarh had proved salary certificate of petitioner/claimant reflecting that he was drawing salary of Rs.6,834/- per month having worked in that company from 18.12.2009 to 1.10.2013. The salary certificate was proved as Ex.PW3/2.

PW4 Dr.Shardaindu Sharma, Medical Officer, Department of Orthopedics GMSH, Sector 16, Chandigarh had brought the summoned record i.e. disability certificate of petitioner/claimant stating that patient had sustained fracture of right clavical, fracture humerous left for which plating was done, fracture shaft of the femur left for which intramedullary nailing was one; the patient was advised x-ray of left arm and left thigh before assessing the disability. He stated that physical disability with respect to left lower limb was assessed as 7% vide certificate Ex.PW4/1. He stated that patient being young the plate on the humerous left arm will have to be removed by another surgical process because of inability to bend the knee in the last 30 degree the patient will have difficulty in cross-legs and sitting on feet.

7. With such type of injuries being there on the person of claimant/injured and evidence being brought on record, the entire approach of the Tribunal in assessing the compensation was wrong and erroneous.

8. The Tribunal has adopted a hyper-technical approach completely ignoring the ground realities in assessing the compensation and compensation has not been awarded under various heads, which should have been done.

9. The Tribunal has awarded a meagre amount of Rs.10,273/- towards medical expenses as per receipts/medical bills. However, considering the nature and extent of injuries suffered by the claimant, period of his hospitalization and keeping in view the fact that it is not possible to keep record of each and every paisa 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, I find that there is no reason to disbelieve the version of the claimant that he had spent Rs.1,50,000/- on his medical treatment and hospitalization. Purchase of medicines and repeated surgeries cost a lot of amount these days and the Court is to remain alive to such situation. Therefore, a sum of **Rs.1,50,000/-** is awarded to the petitioner/claimant towards medical expenses.

10. With regard to the pain and suffering undergone by the petitioner/claimant having suffered multiple fractures and many injuries on his person, it is difficult to quantify the pain, suffering and agony undergone by the petitioner/claimant. Therefore, a sum of **Rs.1,00,000/-** is awarded to the petitioner/claimant under that head.

11. The Tribunal has rejected the version of the petitioner/claimant that he could not perform his normal work for a period of 9 months. I do not see any reason to disbelieve him on that count. Discarding his claim for the reason that he has not brought any evidence that he remained off duty for such a period is not a result of proper judicious approach. One can imagine that a person with so many fractures

and injuries undergoing repeated operations with rods being inserted and taken out, referred to PGI, Chandigarh for treatment would not be able to resume duty for a pretty long time and the claimant stating that he could not do it for 9 months need not be disbelieved. As it has come on record from the statement of PW3 Bir Bahadur Singh and salary certificate proved by him, the petitioner/claimant was getting Rs.6,834/- per month. For nine months, this amount comes out to **Rs.61,506/-**. I award such amount to the petitioner/claimant under the head loss of income during laid up period.

12. As per the disability certificate proved in evidence by the petitioner/claimant, he has suffered disability of 7% qua left limb. Even if it is taken that percentage of disability to be about 4% qua the entire body considering age of the deceased, his monthly salary, addition of future prospects, such amount comes out to Rs.4584 (382×12) $(6834 + 2733(40\%) = 9567$ $(382 \text{ i.e. } 4\% \text{ of } 9567)$. Considering the age of injured, multiplier of 18 is to be applied. Doing that the compensation under the head loss of future earning capacity comes out to **Rs.82,512/-** (4584×18) .

13. Keeping in view the period of hospitalization and nature of injuries and that claimant would have gone to the hospital for follow up treatment also, a sum of **Rs.25,000/-** is awarded to him on account of transportation.

14. The claimant having suffered injuries would have required help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of **Rs.50,000/-** is accordingly awarded to the appellant/claimant on that score.

15. The Tribunal has not awarded any compensation towards future medical expenses. I award a sum of **Rs.50,000/-** under that head.

16. As regards special diet, a person suffering injuries does need special diet for early and proper recovery. I award a sum of **Rs.25,000/-** under that head.

17. Thus, the total compensation comes out to Rs.5,44,018/-.

18. The Tribunal has awarded compensation of Rs.12,273/-.

19. In this way, the enhanced amount comes out to Rs.5,31,745/- (5,44,018 – 12,273). The amount is rounded off to Rs.5,31,800/-. The 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 of the impugned award shall apply to the enhanced amount as well.

20. 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.

1.5.2023
Brij

(H.S.MADAAN)
JUDGE

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