

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 3786/2016 (O&M)

Date of decision: 18.04.2023.

Sonu

.....Appellant

Vs.

Narender Kumar and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. SK Malhotra, Advocate for the appellants

Mr. Ramesh Malhotra, Advocate for the respondents.

Nidhi Gupta, J.

Present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs. 19,345/- granted by the Motor Accident Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal') vide Award dated 18.1.2016 passed in MACT Case NO.80/2014 filed u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act').

Ld. Tribunal on the basis of pleadings and evidence on record held that the appellant suffered injuries in a motor vehicular accident that took place on 24.3.2014 due to rash and negligent driving of bus bearing registration No. HR-58-8848 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3. The Tribunal awarded compensation as above along with interest @ 7% per annum from the date of filing of the claim

petition till realization. Liability to pay the compensation was joint and several.

Ld. counsel for the appellant seeks enhancement of compensation on the ground that prior to the accident the appellant was engaged in labour work, however, due to injuries suffered in the accident he has suffered 6% permanent disability which affects his whole body due to which he is unable to do his work. It is further submitted that though the disability of the appellant has been determined as 6%, but due to shortening of his leg he is unable to work as a labourer as a result of which he has lost his job in private sector/ as labourer and cannot earn his livelihood anymore. It is further submitted that nothing has been granted by way of future prospects, and even multiplier has not been applied.

Ld. Counsel for the appellant further submits that the ld. Tribunal has wrongly deducted 50% of the meager amount of compensation of Rs.19,345/- granted, on account of contributory negligence.

In response, it is submitted by the ld. counsel for the Insurance Company that at the time of accident appellant was travelling as an unauthorized passenger in the trolly which was hit by the offending bus and therefore, appellant is not entitled to enhancement of compensation.

No other argument has been raised.

Heard ld. counsel.

Perusal of the record shows that as per disability certificate, Ex.P-4, appellant had suffered 6% disability. As per testimony of PW-2 Dr. Ashok Saini, who was member of the Disability Board which examined the

appellant, the appellant had painful restricted movement of the right knee with mild loss of stability, and pain. It is further proven on record that as per the Discharge Summary, the appellant was hospitalized from 24.3.2014 to 30.3.2014. However, as appellant was hospitalized in a Govt. Hospital, he had to pay nothing for his treatment, except Rs. 2345/- on medicines as evident from bills Ex. P-5 to Ex. P-10. As no evidence to the contrary was led by the respondents, either before the Tribunal or before this Court, accordingly, above case of the appellant that he is not able to work as labourer, remains uncontroverted.

Further, as regards finding of contributory negligence by the Id. Tribunal on account of the fact that the appellant is stated to have been travelling as an unauthorized passenger in the trolly which was hit by the offending bus, I find the same to be patently erroneous as, Id. Tribunal framed no issue regarding contributory negligence. Impugned Award shows that vide order dated 30.1.2015, the Id. Tribunal framed the following issues:-

- "1. Whether Sonu had suffered injuries in a vehicular accident that took place due to rash and negligent driving of the offending vehicle No. HR 58 8848 by respondent as alleged in the petition? OPP
2. If issue no.1 is proved, whether the petitioner is entitled to compensation? If so to what amount? OPP
3. Whether the respondent no.1 was not holding a valid and effective driving licence on the date of accident? If so its effect? OPR
4. Relief".

Accordingly, as Id. Tribunal failed to frame any issue in respect of contributory negligence, appellant had no opportunity to lead any evidence to show that contributory negligence on his part was not made out.

As such, Id. Tribunal could not have held the appellant liable for contributory negligence to extent of 50%.

Accordingly, in view of the above facts, compensation payable to the appellant is reworked as follows:-

S.no.	HEAD	MACT (in Rupees)	Reworked in present appeal (in Rupees)
1.	Income	NIL. Total disability 6% as per disability certificate Ex.P4	$5500 \times 12 \times 18 = 11,88,000 \times 6 / 100 = 71,280$
2.	Loss of income	NIL	16,500/-
3.	Transportation charges	NIL	10,000/-
4.	Attendant charges	NIL	15,000/-
5.	Loss of earning on account of permanent disability	12,000/-	71,280/-
6.	Special Diet	2000/-	10,000/-
7.	Medical Expenses	2345/-	2345/-
8.	Future Medical Expenses	NIL	15,000/-
9.	Pain & Suffering	3000/-	50,000/-
10.	Total compensation	Rs.19,345/- in this 50% deducted as contributory negligence	Rs.1,90,125/-
11.	Interest	7%	9%

Appeal stands allowed in the above terms. Appellant shall be entitled to interest @ 9% on enhanced compensation, from date of filing claim petition till realization.

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

18/04/2023.
Joshi

(Nidhi Gupta)
Judge