IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7473-2014(O&M)
Reserved on:-4.7.2023
Date of Pronouncement:-10.7.2023

Tara Chand

...Appellant

Versus

Azad and others

...Respondents

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

Present: Mr.Namit Sharma, Advocate
for the appellant.

Mr.Punit Jain, Advocate
for the respondent No.3.

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<u>H.S. MADAAN, J.</u>

1. Briefly stated, facts of the case as per the version of the petitioner/claimant Tara Chand son of Parmanand, resident of village Barota, Tehsil and District Karnal are that on 19.12.2011 at about 9:00 a.m., while he was driving motorcycle bearing registration No.HR-05AB-7901 and had reached near bus stop Gogripur, then a three-wheeler bearing registration No.HR-45A-6387 (hereinafter referred to as the offending vehicle) being driven by respondent No.1 Azad in a rash and negligent manner, came from the opposite direction and by going on the wrong side of the road, hit against his motorcycle, resultantly, he received multiple injuries on his person; he was taken to Civil Hospital, Karnal and

provided treatment there and subsequently he was shifted to Shree Hari Hospital, where he remained admitted from 19.12.2011 to 31.12.2011 and he had spent a sum of Rs.50,000/- on his treatment.

FIR No.329 dated 23.12.2011 for the offences under Sections 279 and 337 IPC was registered against respondent No.1 – Azad.

2. According to the petitioner/claimant, he was aged about 50 years at the time of the accident and was employed as a Security Guard in Oriental Bank of Commerce, getting Rs.8,000/- per month; as a result of suffering injuries in the accident including fracture in the knee, he is not able to perform the arduous task of Security Guard and there is risk of his loosing the job.

3. In the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) filed by the petitioner/claimant against respondents i.e. Azad – driver, Maman Sharma – owner and Cholamandlam General Insurance Company Ltd., Karnal – insurer of the offending vehicle, he had claimed compensation of Rs.10 lakhs.

4. On getting notice, all the three respondents had appeared. Subsequently, respondent No.1 stopped putting in appearance. He had not filed any written statement even and he was proceeded against ex-parte. Respondent No.2 the registered owner of the offending vehicle had appeared and filed a written statement raising various legal objections, on merits stating that respondent No.1 was not at fault in happening of the accident and rather petitioner/claimant himself was negligent as he was driving his motorcycle carelessly; in that way, it was a case of

contributory negligence. He prayed for dismissal of the claim petition.

5. In the separate written statement filed by respondent No.3 – insurance company, it had also taken up various legal objections and defences under Sections 134C, 147, 149, 157 and 170 of the Act pleading that no accident had taken place with three-wheeler in question, which according to it had been falsely involved in the case by the claimant in collusion with respondents No.1 and 2 in order to get compensation from respondent No.3 – insurance company and a false FIR had been got registered. In the end, the respondent No.3 also craved for dismissal of the claim petition.

6. Issues on merits were framed and parties were afforded adequate opportunities to lead evidence.

7. After hearing arguments, the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as the Tribunal) vide award dated 24.2.2014 by giving issue-wise findings allowed the claim petition partly and granted compensation of Rs.2,61,000/- to the petitioner/claimant, payable by all the respondents jointly and severally along with interest @ 9% per annum from the date of filing of the claim petition till actual realization. However, it was directed that after paying the compensation to the claimant, respondent No.3 insurance company would have a right to recover it from respondents No.1 and 2 for the reason that the offending vehicle was being plied without a valid permit as required under Section 66 of the Act, which amounted to violation of the terms and conditions of the insurance policy and insurance company was absolved of its liability to indemnify the insured with regard to the compensation.

8. Finding the compensation so awarded by the Tribunal to be on lower side, the petitioner/claimant has approached this Court by way of filing the present appeal, notice of which was given to respondents. Respondents No.1 and 2 did not appear despite service. However, respondent No.3 – insurance company had put in appearance through counsel.

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

10. In this case, the Tribunal considering the statement of petitioner/claimant Tara Chand appearing as PW3, who had supported his case as given in the claim petition as well as final report under Section 173 Cr.P.C. Ex.P74 showing that respondent No.1 had been booked as an accused in the criminal case for causing the accident and had been sent up to face trial as well as MLR of petitioner/claimant Ex.P75, in light of the fact that respondents had not led any evidence and the respondent No.1 – Azad did not appear in the witness box to depose on oath that he was not at fault in happening of the accident, returned a clear finding that respondent No.1 was author of the accident by his rash and negligent driving of the offending vehicle in question resulting in causing injuries to petitioner/claimant Tara Chand. As such, respondent No.1 – Azad being driver, respondent No.2 Maman Sharma – owner and respondent No.3 Cholamandlam General Insurance Company Ltd., Karnal – insurer of the offending vehicle were held jointly and severally liable to pay compensation. Though on account of violation of the terms and conditions of the insurance policy, recovery rights were granted to respondent No.3 –

insurance company.

11. With regard to quantum of compensation, the Tribunal has taken note of the fact that PW1 Dr.Tarun Goel, who had brought the treatment record of Tara Chand injured, deposing that he was admitted in their hospital on 19.12.2011 and was discharged on 6.1.2012 and it was a case having alleged history of road side accident and further patient had communited fracture lower end femur with fracture clavicle and scapula right side; he was operated for femur fracture wherein plating was done and hospital had charged Rs.85,000/- towards stay, operation fee, nursing charges etc. vide final bill Ex.P1. The witness had proved the discharge summary of the patient as Ex.P2, follow up prescription Ex.P3, receipts Ex.P4 to Ex.P16 with regard to payment received from the patient.

12. PW2 Dr.Vinod Kumar had deposed regarding petitioner having suffered 35% disability. The Tribunal considering the medical record and cash memos and medical bills concluded that the petitioner had spent Rs.66,005/- on medicines and other examination charges. So adding amount of Rs.85,000/- paid vide final bill Ex.P1 to the hospital and Rs.66,005/- on medical expenses, the figure was arrived at as Rs.1,51,005/-, rounded as Rs.1,51,000/- as medical expenses.

13. However, the Tribunal lost sight of 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. In my considered view this figure needs to be enhanced to **Rs.2,00,000/-**. It is done accordingly.

14. With regard to the loss of future income to the petitioner/claimant on account of suffering 35% permanent disability as mentioned in disability certificate Ex.P18 proved by PW2 Dr.Vinod Kumar, the Tribunal relying upon judgment ***Ram Karan Goyal Versus SubDivisional Engineer, Mechanical & Others, 2008(2) RCR(Civil) 103*** had awarded compensation of Rs.70,000/- i.e. @ Rs.2,000/- for every one percent disability.

15. However, I find that the Tribunal ought to have used the multiplier method to assess that loss of income as has been held by the Apex Court in judgment ***Karthik Subramanian Versus B.Sarath Babu & Anr., 2021(2) RCR(Civil)303***. The Tribunal had taken the age of the petitioner to be 50 years and his monthly income as Rs.8,000/- as has been discussed in para No.20 of the award. Adding future prospects @ 25% in terms of the guidelines laid down in ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, the monthly income of the petitioner is assessed as Rs.10,000/-(8,000 + 2000).

16. With regard to 35% of permanent disability it is with respect to particular portion of the body and not the entire body. PW2 Dr.Vinod Kumar, who had proved the disability certificate of the petitioner/claimant in his cross-examination has stated that the disability is with regard to the upper limb and if disability is taken towards the entire body, then it comes out to 17.05 i.e. 50% of total disability. Doing that the monthly loss of income comes out to Rs.1,750/- and annual financial loss comes out to Rs.21,000/-(1750 x 12).

17. Considering the age of the injured, in terms of ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77***, multiplier of 13 is to be used. Thus total financial loss comes out to **Rs.2,73,000/-**(21000 x 13).

18. The Tribunal has awarded a sum of Rs.20,000/- to the petitioner/claimant for pain and suffering. In my view considering the number of injuries suffered by the claimant, period of hospitalization, though it is very difficult to quantify the pain and suffering undergone by a person, suffering injury requiring long hospitalization, surgeries and follow up treatment, yet this amount is on lower side and is enhanced to **Rs.60,000/-**.

19. Surprisingly, the Tribunal has clubbed all the heads of special diet, loss of income and service of attendant charges and future prospects, awarding a meagre amount of Rs.20,000/-. Such approach of the Tribunal cannot be appreciated.

20. I award a sum of **Rs.30,000/-** towards special diet, **Rs.30,000/-** on account of loss of income for inability to perform his normal work during the period of hospitalization and treatment. The petitioner would be requiring the assistance of a person to help him in doing his daily chores during the period of his hospitalization and thereafter going to hospital for follow up treatment. A sum of **Rs.20,000/-** is awarded to the petitioner in that regard.

21. The Tribunal has not awarded any amount under the head transportation charges ignoring the fact that money is spent in visiting the hospital during treatment and follow up. A sum of **Rs.20,000/-** is awarded

to the petitioner under that head.

22. The petitioner on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. A sum of **Rs.1,00,000/-** is awarded to him on account of loss of amenities and loss of expectation of life.

23. Thus, the total compensation comes out to Rs.7,33,000/-.

24. The Tribunal has awarded compensation of Rs.2,61,000/-.

25. In this way, the enhanced amount comes out to Rs.4,72,000/- (7,33,000 – 2,61,000). The interest awarded is somewhat on the higher side. 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.

26. 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.

10.7.2023 **(H.S.MADAAN)**
Brij **JUDGE**

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