

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

FAO-4355-2017(O&M)

Reserved on: 15.3.2023

Date of decision:-23.3.2023

Deepak Kumar

...Appellant

Versus

Pinkush Kumar and another

...Respondents

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

Present: Mr.Sanjeev Patiyal Advocate
for the appellant.

Mr.Amrinder Singh Sidhu, Advocate
for respondent No.2.

H.S. MADAAN, J.

1. Petitioner/claimant Deepak Kumar son of Sh.Ramesh Chand, resident of House No.855/2, New Indra Colony, Manimajra, U.T., Chandigarh had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) before Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the Tribunal) against Pinkush Kumar – driver and owner and IFFCO TOKIO General Insurance Company Ltd. - insurer of motorcycle bearing registration No.PB-65-AC-2866, on the averments that on 9.7.2015, the petitioner/claimant was pillion riding motorcycle bearing registration No.PB-65-AC-2866 being driven by respondent No.1 Pinkush Kumar at a

fast speed in a rash and negligent manner; when they were in the area of dividing road of Sectors 51 and 52, Chandigarh and time was about 3:30 p.m., then a rehri-puller came in front of their motorcycle; respondent No.1 could not control the motorcycle due to high speed and it skidded; resultantly both the riders fell down on the road along with the motorcycle and sustained injuries; the petitioner/claimant was taken to GMSH Sector 16, Chandigarh from where he was referred to PGI, Chandigarh. The petitioner claimed compensation to the tune of Rs.30 lakhs along with interest and cost.

2. On notice, both the respondents appeared and filed separate written statements contesting the claim petition. Issues on merits were framed and parties were afforded adequate opportunities to lead evidence in support of their respective claims.

3. After hearing arguments, the Tribunal allowed the claim petition vide award dated 22.12.2016 and awarded compensation of Rs.3,83,307/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realization to the claimant, payable by both the respondents jointly and severally.

4. 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 appeared through counsel.

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

6. In this case the Tribunal on analysis of the evidence adduced

before it had given a clear verdict that the accident in which the claimant had suffered injuries had taken place due to rash and negligent driving of motorcycle by respondent No.1 – Pinkush Kumar. I find such verdict to be proper and appropriate. For the said reason, the driver-cum-owner and insurance company of the motorcycle in question were held to be jointly and severally liable to pay compensation to the claimant. The compensation awarded to the petitioner/claimant by the Tribunal is detailed as under:

Sr. No.	Particulars	Amount
1.	Hospitalization charges, treatment expenses and expenses incurred on medicines	Rs.46,643/-
2.	Special Diet & attendant charges	Rs.24,000/-
3.	Transportation charges	Rs.5,000/-
4.	Pains and sufferings	Rs.15,000/-
5.	Loss of income	Rs.39,700/-
6.	Loss of future income due to permanent disability suffered	Rs.2,42,964/-
7.	Loss of amenities	Rs.10,000/-
	Total	Rs.3,83,307/-

7. Keeping in view the fact the petitioner/claimant was aged about 27 years at the time of accident and due to suffering injuries, he is said to have suffered permanent disability to the extent of 30% in the right upper limb in terms of disability certificate Ex.P25 and the fact that he remained hospitalized from 10.7.2015 to 16.7.2015 and again remained bed-ridden for four months, I find that the compensation awarded is on the lower side and the same calls for enhancement.

8. Under the first head i.e. Hospitalization charges, treatment expenses and expenses incurred on medicines, the Tribunal has awarded a

sum of Rs.46,643/-. But it has to be taken into view that 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. Therefore, this amount is enhanced to **Rs.75,000/-**.

9. The petitioner/claimant would be required to get treatment in future also and for that he is awarded a sum of **Rs.25,000/-**.

10. The Tribunal has awarded a sum of Rs.24,000/- to the petitioner/claimant as a consolidated amount towards special diet and attendant charges when amounts should have been allocated under the two heads separately. As regards special diet, a person suffering injuries does need special diet for early and proper recovery. A award a sum of **Rs.25,000/-** under that head.

The claimant having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of **Rs.25,000/-** is accordingly awarded to the appellant/claimant on that score.

11. The Tribunal has awarded a sum of Rs.5,000/- towards transportation charges. I find this amount to be on lower side. 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.

12. Although it is very difficult to quantify the pain and suffering undergone by a person suffering grievous injuries in an accident resulting

into permanent disability. However, the amount awarded by the Tribunal under that head to the tune of Rs.15,000/- is very low and the same is enhanced to **Rs.40,000/-**.

13. Similarly, the Tribunal has awarded a sum of Rs.39,700/- only towards loss of income as a result of claimant remaining immobilized due to the injuries. The same is enhanced to **Rs.50,000/-**.

14. However, under the head loss of future income due to permanent disability suffered, the compensation awarded by the Tribunal to the tune of Rs.2,42,964/- is slightly increased to **Rs.2,50,000/-**.

15. The amount awarded by the Tribunal under the head loss of amenities to the tune of Rs.10,000/- is very low. The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. Therefore, the amount awarded by the Tribunal is enhanced to **Rs.50,000/-**.

16. Under the head 'damages for loss of expectation of life' on account of injuries resulting in shortening of normal longevity, inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life, a sum of **Rs.50,000/-** more is awarded to him.

17. Thus, the total compensation comes out to Rs.6,15,000/-.

18. The Tribunal has awarded compensation of Rs.3,83,307/-.

19. In this way, the enhanced amount comes out to Rs.2,31,693/- (6,15,000 – 3,83,307). The amount is rounded off to Rs.2,31,700/-. 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.

23.3.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No