

FAO-3855-2018 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-3855-2018 (O&M)
Reserved on:- 25.07.2023
Pronounced on:- 22.08.2023

Lakhwinder Singh

...Appellant

Versus

Mohammad Babu and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Navjeet Singh, Advocate
for the appellant/claimant.

Mr. A.P.S. Sidhu, Advocate
for Mr. Surinder Garg, Advocate
for respondent No. 2.

Mr. Punit Jain, Advocate
for respondent No. 3 – Insurance Company.

AMARJOT BHATTI, J.

1. The appellant/claimant – Lakhwinder Singh has filed present appeal against impugned Award dated 08.12.2016 passed by learned Motor Accident Claims Tribunal, Ludhiana vide which the appellant/claimant has been awarded compensation of Rs. 4,57,429/- alongwith interest @7.5% per annum from the date of claim petition till actual realization.

2. The facts of the case are that claimant Lakhwinder Singh filed claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation of Rs. 30,00,000/- alongwith interest @24% per annum

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on account of injuries suffered by him in a motor vehicular accident on 19.02.2013. He was a Self-Laboratory Technician by profession and was earning Rs. 30,000/- per month. On the fateful day of 19.02.2013, at about 09:15 P.M. the claimant and his partner from laboratory started their journey from Raikot to Khanna on motorcycle bearing No. PB-26E-4410 of Marka Bajaj Platinum. When they reached opposite Green Land Hotel, G.T. Road, Khanna, they met with an accident with Truck bearing No. PB-13AB-4637 which was being driven by respondent No. 1 in negligent manner. The said truck hit behind their motorcycle. Due to the said accident, both of them suffered grievous injuries. The driver of the truck came down from the truck and disclosed his name as Mohammad Babu – respondent No. 1. The claimant was admitted to Civil Hospital, Khanna from there he was shifted to Rajindera Hospital, Patiala and thereafter, admitted at PGI, Chandigarh where operation of the claimant was conducted. The claimant is bed ridden and unable to move. On the statement of claimant, FIR No. 27 dated 19.02.2013 under Section 279, 337, 338, 427 of IPC has been registered at Police Station Sadar, Khanna against respondent No. 1. An amount of Rs. 3,10,000/- was spent on medical treatment. Hence the claim petition.

3. The claim petition was contested by all the respondents. In the written statement filed by respondent No. 2, she has taken preliminary objections qua maintainability and mis-joinder and non-joinder of necessary parties. On merits, it is submitted that no accident took place due to rash and negligent driving by respondent No. 1. It is denied that both the legs of claimant were fractured due to accident or that the claimant was firstly taken to Civil Hospital, Khanna and then referred to Rajendra

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Hospital, Patiala and then to PGI, Chandigarh. She submitted that the offending vehicle i.e. Truck bearing No. PB-13AB-4637 was insured with respondent No. 3 – Universal Sompo General Insurance Co. Ltd. It was prayed that the claim petition may be dismissed with costs.

4. In the written statement filed by respondent No. 3 – Insurance Company, preliminary objections regarding maintainability, non-joinder of necessary parties were taken. It was submitted that the answering respondent was not liable for payment of any compensation as respondent No. 1 was not having valid and effective driving license on the date of alleged accident. The offending truck was not having valid registration certificate, route permit and fitness certificate at the time of alleged accident. On merits, the facts were denied and the claimant may be put to strict proof thereof. The offending vehicle i.e. truck bearing No. PB-13AB-4637 was insured with answering respondent but liability was denied on the ground that the terms and conditions of Insurance Policy were not complied with. No accident took place as alleged in the claim petition. The claimant is not entitled to any compensation from the answering respondent. Hence, it was prayed that the claim petition may be dismissed with costs.

5. From the pleadings of the parties, following issues were framed by the Tribunal on 10.03.2016:-

(1) Whether on 19.02.2013 in the area of village City Khanna, near Green Land Hotel, G.T. Road Khanna, Ludhiana, Lakhwinder Singh suffered various injuries in an accident on the account of rash and negligent driving of Truck bearing registration No. PB-13-AB-4637 by respondent

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*No. 1? OPP**(2) Whether claimant 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? OPR3**(4) Whether petition is bad for non-joinder and mis-joinder of the parties? OPR**(5) Whether petition is not maintainable? OPR**(6) Relief.*

6. In order to prove the claim petition, the petitioner/claimant himself stepped into the witness box as CW-1 and deposed through duly sworn affidavit Ex.CA. He further examined Jatin Sehgal as CW-2 and Dr. Prabhjot Kaur as CW-3. Thereafter, learned counsel for the claimant after tendered documents Ex.C-96 to Ex.C-99 and closed the evidence on behalf of the petitioner/claimant.

7. In order to rebut the case of the petitioner/claimant, respondent No. 1 himself stepped into the witness box as RW-1 and deposed through his duly sworn affidavit Ex.RA. Thereafter, learned counsel for respondents No. 1 and 2 closed the evidence. Similarly, learned counsel for respondent No. 3 tendered into evidence documents Ex.R-1 to Ex.R-8 and closed the evidence.

8. After hearing the arguments advanced by learned counsel for the parties, the claim petition filed by the petitioner/claimant was allowed by passing impugned Award dated 08.12.2016, as referred above. Feeling aggrieved of this Award, the present appeal has been preferred by appellant/claimant for enhancement of the compensation amount.

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9. I have heard the arguments of learned counsel for the appellant/claimant as well as learned counsel representing the contesting respondents. The learned counsel for the appellant/claimant argued that while passing the impugned Award dated 08.12.2016, the learned Motor Accident Claims Tribunal, Ludhiana has failed to consider certain material facts and the compensation awarded by the Tribunal is inadequate and unjustified. The learned Motor Accident Claims Tribunal, Ludhiana has awarded compensation to the tune of Rs. 4,57,429/- alongwith interest @7.5% per annum from the date of filing of the claim application till actual realization and future interest @6% per annum till the realization of the whole amount. The learned Motor Accident Claims Tribunal, Ludhiana has failed to consider that the appellant/claimant remained admitted in PGI, Chandigarh from 19.02.2013 to 09.03.2013. He was operated upon and remained under treatment for a long duration. He is granted compensated of Rs. 1 lac only on account of permanent disability suffered by him. The appellant/claimant could not carry out his work for a long duration on account of injuries suffered by him. No compensation has been awarded regarding the loss of income. He is granted meager compensation of Rs. 20,000/- on account of pain and suffering suffered by him. Apart from this he was not granted any compensation under the other heads like expenditure of transportation and special diet. Due to his health condition and lack of legal knowledge, he could not file the present appeal within the period of limitation, as a result he has also filed application under Section 5 of Limitation Act for condonation of delay of 309 days in filing the appeal. It is prayed that the delay may be condoned and the impugned Award dated 08.12.2016 passed by the learned Motor Accident Claims

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Tribunal, Ludhiana may kindly be modified and he may be awarded enhanced amount of compensation by accepting the present appeal.

10. On the other hand, learned counsel for the Insurance Company argued that the delay in filing the appeal has not been explained by the appellant by giving any convincing reason. Therefore, he is not entitled to claim interest for the period there is delay in filing the appeal. There is no convincing evidence on record to prove the income of appellant/claimant or that he was working as a Lab Technician. Considering the nature of injury, the learned Motor Accident Claims Tribunal, Ludhiana has rightly granted the compensation pertaining to the permanent disability to the tune of Rs. 1 lac. He is granted compensation regarding the medical expenditure, pain and suffering, loss of life expectancy, adverse effect on marriage prospects and even litigation expenditure of Rs. 1,000/-. The compensation awarded by the learned Motor Accident Claims Tribunal, Ludhiana is fully justified and the Award passed by the learned Motor Accident Claims Tribunal, Ludhiana does not require any interference.

11. I have considered the arguments and have gone through the record. In the case in hand, there is delay of 309 days in filing the appeal. However, no reply is filed by the counsel for respondents to the said application. The present appeal is pertaining to the claim of enhanced amount of compensation on account of injuries suffered by the appellant/claimant in the motor vehicle accident. The Motor Vehicles Act is a beneficial legislation. Therefore, a lenient view is taken and accordingly, the delay of 309 days in filing the instant appeal is condoned and CM No. 13468-CII-2018 is accordingly allowed.

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12. Lakhwinder Singh – appellant/claimant met with an accident on 19.02.2013 while coming on his motorcycle from Raikot to Khanna when he was hit by the offending Truck bearing No. PB-13AB-4637 from backside, as a result of which he suffered multiple injuries. By filing this appeal, the appellant/claimant has prayed for enhanced amount of compensation regarding which specific Issue No. 2 has been framed. The facts of the case are proved on record by the appellant/claimant Lakhwinder Singh as CW-1 and he has also placed on record his treatment record, bills of the hospital as well as bills regarding purchase of medicine Ex.C-1 to Ex.C-93 and Mark A1 to Mark A82 and the total medical expenditure is calculated by the learned Motor Accident Claims Tribunal, Ludhiana to the tune of Rs. 2,11,429/-. The present appeal has been preferred mainly on the ground that the appellant/claimant has not been granted adequate compensation on account of permanent disability, pain and suffering, loss of income as well as for not granting compensation under other heads i.e. expenditure of transportation and special diet.

I have considered this aspect of the present case. The appellant/claimant examined Dr. Prabhjot Kaur (MD) (Med), Medical Officer, Civil Hospital, Khanna CW-3 and Jatin Sehgal, Computer Operator, Civil Hospital, Khanna CW-2 to prove the Disability Certificate Ex.C-93. As per this Disability Certificate, he suffered 40% permanent physical impairment pertaining to left leg which is not likely to improve and it is non-progressive. The Medical Officer Dr. Prabhjot Kaur CW-3 admitted that this Disability Certificate is qua particular organ and not regarding the entire body. The appellant/claimant claimed that he was working as Lab Technician. However, there is no proof regarding his

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qualification for working as Lab Technician nor there is any proof of his employment and salary. Lakhwinder Singh as CW-1 during his cross-examination admitted that he has studied up to 8th standard and he has not done diploma in any faculty or department of education. Therefore, the income of present appellant/claimant can be taken as that of a labourer as Rs. 5,695/- per month as minimum rate of wages in the State of Punjab in the year 2013 when the alleged accident took place. Since, the disability is pertaining to left leg, therefore, considering his age and the profession as labourer, the functional disability is taken as 20%. His annual income is taken as Rs. 68,340/- with functional disability of 20% and considering his age as 27 years, multiplier of 17 is applied and with this multiplier, the amount of compensation on account of permanent disability comes out of to be Rs. 2,32,356/-. Therefore, the compensation awarded by the learned Motor Accident Claims Tribunal, Ludhiana on account of permanent disability to the extent of Rs. 1 lac is inadequate and accordingly granted compensation of Rs. 2,32,356/- under this head.

The appellant/claimant has been adequately compensated for loss of marriage prospects, loss of life expectancy as well as litigation expenditure. However, it cannot be ignored that the appellant/claimant remained under treatment for a long duration. He had to spent huge money on his treatment. He suffered pain and agony. Therefore, he is granted Rs. 50,000/- towards pain and suffering, Rs. 5,000/- for transportation and Rs. 5,000/- for special diet.

It was not possible for the appellant/claimant to start his work even after discharge from the hospital. He must have remained bed ridden and confined to his house for a period of about 3 months. Therefore, in

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lump sum he is further granted compensation of Rs. 17,000/- on account of loss of income for three months.

The learned Motor Accident Claims Tribunal, Ludhiana has granted compensation under the following heads and enhanced amount of compensation by this Court is as under: -

SR. No.	Head	Enhanced amount of compensation (Rs.)	Awarded by Tribunal (Rs.)
1.	Loss of future earnings on account of permanent disability (40%)	2,32,356/-	1,00,000/-
2.	Medical expenditure	2,11,429/-	2,11,429/-
3.	Loss of marriage prospects	75,000/-	75,000/-
4.	Pain and suffering	50,000/-	20,000/-
5.	Loss of life expectancy	50,000/-	50,000/-
6.	Litigation expenditure	1,000/-	1,000/-
7.	Expenditure of Transportation	5,000/-	-
8.	Expenditure of Special Diet	5,000/-	-
9.	Loss of income for 3 months	17,000/-	-
	TOTAL	6,46,785/-	4,57,429/-
Difference of compensation Rs. 1,89,356/- (Rs. 6,46,785/- - Rs. 4,57,429/-)			

13. Therefore, the total amount of compensation comes out to be Rs. 6,46,785/- which the appellant/claimant Lakhwinder Singh is entitled to receive from respondent No. 3. As referred above, the learned Motor Accident Claims Tribunal, Ludhiana had already granted Rs. 4,57,429/- as compensation which is liable to be adjusted from the aforesaid amount, if already deposited, and the appellant is entitled to receive the balance amount of Rs. 1,89,356/- from the respondent No. 3 who is liable to pay the amount as held by the learned Motor Accident Claims Tribunal, Ludhiana. The appellant is entitled to receive the enhanced amount of

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compensation with interest @7% per annum from the date of filing of present appeal till realization of the amount.

Resultantly, the findings given by the learned Motor Accident Claims Tribunal, Ludhiana while passing impugned Award dated 08.12.2016 are modified regarding quantum of compensation by accepting the present appeal.

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

Pending application(s), if any, also stand disposed off.

22.08.2023

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(AMARJOT BHATTI)
JUDGE

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