

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
FAO-4652-2018 (O&M)
Date of decision: 25.04.2023

ANAND KUMAR ...Appellant
VS
ROOP SINGH AND ORS ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashwani Arora, Advocate,
For the appellant.

Mr. Rajesh K. Sharma, Advocate,
For respondent No.3-NIAC.

ARUN MONGA, J. (ORAL)

Aggrieved by inadequate compensation, the claimant has assailed herein an Award dated 09.04.2018 rendered by learned Motor Accidents Claims Tribunal, Chandigarh (for brevity, "Tribunal"), seeking enhancement thereof.

2. Succinct facts, as noted by learned Tribunal, are as below:

"...On 30.10.2014 at about 3.30 pm, the claimant was going on road leading from Ballopur to Lalru, while sitting on the pillion seat of a motorcycle which was being driven at slow speed and on the left side of the road by his brother Shatrudhan Kumar alias Shatrughan. They both were coming from their college in Malikpur to their house in village Jalapur, When they reached near Kumbh Factory, Lalru, at that time a truck Trola bearing no. PB-11-BK3683 came at fast speed from the opposite direction and while it was in the process of overtaking another vehicle, it came on the wrong side of the road and struck against their motorcycle. As a result of this accident they both fell down on the road and both received serious injuries. They were taken to Civil Hospital-Derra Bassi immediately and from there they were referred to PGI, Chandigarh. The aforesaid truck trola was being driven at fast speed and in a rash and negligent manner by respondent No.1. The accident took place due to the rash and negligent driving of truck trola bearing registration no. PB-11-BK-3683 driven by respondent no.1. The claimant was not at all at fault. A criminal case was also registered against respondent no.1."

3. Upon notice of the claim petition, respondents No.1 and 2 driver and owner of the alleged offending vehicle pleaded in their reply that claimant had got a false FIR registered against the driver/owner just to receive compensation. No

such accident was caused by respondent No.1 on the alleged date and time. Rest of the averments of the claim petition were also denied.

3.2 Respondent No.3-Insurance Company *inter alia* raised objections that claim petition was filed in contravention of provisions of Motor Vehicles Act, 1988 viz. Sections 147, 149, 157 and 170 thereof. Negligence was not on the part of driver of vehicle No.PB-11-BK-3683. All the averments of the claim petition were denied too.

4. Based on the rival pleadings, learned Tribunal framed the following issues:

1. *“Whether on 30.10.2014, respondent no.1 caused the injuries to Anand Kumar by rashly and negligently driving the offending vehicle bearing no. PB-11-BK-3683? OPP*
2. *Whether the petitioner is entitled to compensation, if yes, how much and from whom? OPP*
3. *Whether respondent no.1 was not holding an effective and valid driving licence at the time of accident? OPR*
4. *Relief.”*

5. On appraisal of record/evidence, issue Nos. 1 and 2 were decided in favour of the claimant and issue No.3 against respondent No.3 by learned Tribunal. Consequently, compensation of Rs.4,30,858 was computed and awarded in favour of claimant.

6. I have heard the competing contentions of both the learned counsel and have gone through case file with their assistance.

7. Learned counsel for the appellant-claimant argues that appellant suffered permanent functional disability which will affect his earning capacity for life time. He would argue that appellant is unable to do anything effectively. At the time of accident, appellant was 17 years of age and his disability, as medically assessed, is 100%. Learned counsel submits that appellant is now dependent on others for his livelihood.

8. Per contra, learned counsel for respondent No.3-Insurance Company would argue that accident took place due to rash and negligent driving of claimant himself. Thus, no compensation is payable to claimant.

9. Having heard the rival contentions, first and foremost, since respondent No.3 has chosen to neither file any appeal nor cross objections to assail the finding of learned Tribunal, its contention of attributing 100% negligence on the claimant is not tenable and is rejected.

10. Impugned award is *inter alia* premised on the following reasoning:

“20. Claimant has placed on record medicine bills Ex.P12 to Ex.P128. During the pendency of claim petition, learned counsel for respondent no.3 raised objections regarding the genuineness of these bills. Accordingly, vide order dated 06.09.2017 all the bills were sent for verification. Later learned counsel for claimant brought on record the details of bills which were not verified Ex.P20 to Ex.P24, Ex.P26Ex.P29 to Ex.P32, Ex.P34 to Ex.P41, Ex.P43, Ex.P45, Ex.P47, Ex.P49, Ex.P50, EX.P53, Ex.P55, Ex.P102, Ex.P112 to Ex.P114 amounting to Rs. 55,988/-. Since these bills were not verified by the Chemist concerned, therefore, this amount cannot be granted. However, the claimant is entitled to bills of remaining bills amount which comes to Rs.70,858/- for the expenditure on medicines/treatment.

21. The claimant remained hospitalized and operated in PGI for treatment which is evident from the OPD cards and Medico Legal Case Summary Ex.P1 to Ex.P10Thus, he remained on bed restTherefore, for pain and sufferings he is awarded a sum of Rs.50,000/-. Claimant must have obtained he services of attendantso for services of attendant he is warded a sum of Rs20,000/-.

22. The claimant is resident of Dera Bassi. He was ated in PGIMER Chandigarh. Accordingly, a sum of 15,000/- is awarded to the claimant on account of enditure on transportation.

23.Claimant has suffered bone injury, for which he was treated upon in PGIMER Chandigarh. His requirement for special diet is made out for which a sum of Rs.25,000/- would be sufficient and awarded accordingly.

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“27.Keeping in view this and the legal yardsticks, this Court is of the opinion that no evidence has come on record which proves that claimant will not be able to conclude his studies. Admittedly, he is still doing his studies. Therefore, this Court is of the opinion that when there is no functional disability proved on record, the multiplier method would not be applicable. The Hon’ble Punjab and Haryana High Court in Bhupinder Singh Vs. Manjit Singh and others FAO no. 3815 of 2012 decided on 31.10.2014 and Mahjipal and Baljit Singh and others, FAO No. 2556 of 2000 decided on 28.10.2015, while awarding compensation, has not applied multiplier system, rather, it has been held that the claimant

is entitled to a sum of Rs.2000/- for every 100% disability by placing reliance upon Ram Kiran Goyal vs. Sub Divisional Engineer (Mechanical) 2008 (2)RCR (civil) 103. Accordingly, applying the legal yardstick, in this case when the claimant suffered 100% permanent disability vide disability certificate Ex.P130, therefore a compensation of Rs.2,00,000/- is liable to be awarded to the claimant for the disability suffered by him. Rs.50,000/- is granted on account of loss of marriage prospects.

28. In all petitioner is awarded a sum of Rs.4,30,858/”

11. Perusal of the above findings returned by learned Tribunal and the reasoning for the same reveals that though on one hand, learned Tribunal was of the view that there was 100% disability suffered by claimant-injured, but there being no corresponding functional disability the computation was made @ 2000/- per percent. Lumpsum compensation of Rs.2 lakh for 100% disability was thus awarded.

12. I am of the view that learned Tribunal mis-construed the unimpeached evidence on record *qua* 100% disability. Disability certificate Ex.P-130 states as below:-

DISABILITY CERTIFICATE

“This is to certify that Anand Kumar S/o Bhagwan Bhagat, 17 years male, CR No. 160901388 resident of # Lehil PO Dappar Tehsil DeraBassiSASNagar, Mohali-Punjab has been diagnosed asa post operated case of fracture both bone leg right side with fracture proximal humerus right side with brachial plexus injury right side with impairment of right hand functions with 1½” shortening right lower limb with injury right inguinal region. He is permanently physically disabled by 100% (One hundred percent only). In relation to whole body as evaluated according to the manual for orthopedics surgeon in evaluating permanent physical impairment/disability (compiled at ALMICO/AIIMS) RCI (Rehabilitation Council of India).

This certificate is valid for MACT/Court case)/Claim case.”

13. Above medical certificate was duly proved on record and is not disputed by the Insurance Company. That apart, the testimony of the expert physician orthopedician, who was summoned as a medical expert PW-2 remained unimpeached, as is borne out from out his examination-in-chief/cross-examination, which being apposite is reproduced herein below:

“The patient remained under prolong treatment for past about three years and will also require treatment during his life

time. Since there is 100% disability so the patient requires the service of attendant in his daily chores. And he also required a person to look after during his treatment.

XXX XXXI have never met the patient and never seen the patient. I am making my statement on the basis of record available with me including that of patient. It is correct that in the record it is not mentioned that the patient would require an attendant during his life time, however being an orthopedician and after going through record, I have stated. It is wrong to suggest that the disability is not permanent and is assessed on higher side. It is wrong to suggest that disability is not functional and is likely to improve. It is wrong to suggest that since I have not treated the patient and as such I cannot comment about medical history written in record. It is wrong to suggest that patient did not remain under prolong treatment for about 3 years and will not require treatment during his life time. It is wrong to suggest that no service of attendant is required. It is wrong to suggest that disability is not qua whole body. It is wrong to suggest that claimant was not advised for implant removal and rail fixation application. It is wrong to suggest that the patient is perfectly alright.”

14. It is proved on record from the disability certificate Ex. P-130 read with the oral testimony of the medical expert (PW-2) that the accident resulted into the claimant's fracture both bones of right leg with fracture proximal humerus right side with brachial plexus injury right side with impairment of right hand functions with one and half inches shortening of right lower limb with injury right inguinal region; he was rendered 100% permanent physically disabled in relation to the whole body; his 100% disability is functional which is not likely to improve and he requires life time treatment. The medical expert has categorically stated that the patient/claimant requires the services of an attendant in his daily chores and also requires a person to look after him during treatment.

15. Considering the multiple injuries, their nature and extent and the expert medical opinion as mentioned above, I am of the considered opinion that it is a case of 100% functional disability of the entire body and the learned Tribunal erred in holding that 100% functional disability had not been proved on record.

16. Another aspect of the matter which weighed with the learned Tribunal is that claimant-injured was since not earning at the relevant time being 17-year old student in second year of diploma in mechanical engineering. The

injury suffered by him no doubt jeopardized and completely finished his career prospects as well as severely denting other prospects, including marital.

17. In somewhat similar circumstances, when a young student of 20 years, who was undertaking a course in an air hostess training program, the Apex Court in case titled “*Joginder Singh and another Vs. ICICI Lombard General Insurance Co. Ltd.*” *CA-6291-2019 decided on 14.08.2019* reported in *2019 ACJ 2783* determined the notional monthly income as Rs.15,000/- when the accident took place in the year 2009.

18. Applying the yardsticks as adopted by the Apex Court, it would, therefore, be safe to assume by a common sense guesstimate to assess the income of claimant-injured herein at Rs.20,000/- per month, given that accident took place in the year 2014 i.e. 5 years later than in the case of Joginder Singh, *ibid*.

19. Learned counsel for appellant relies on the Apex Court’s judgment rendered in case *CA No. 735 of 2020* decided on *05.02.2020* titled “*Kajal Vs. Jagdish Chand and others*” reported in *2020 ACJ 1042*.

20. In **Kajal v. Jagdish Chand** supra, the girl claimant aged 12 years sustained injuries in the accident. As a result, she was suffering from incontinence, meaning that she did not have control over her bodily functions like passing urine and faeces. As she would grow older, she would not be able to handle her periods. She required such an attendant virtually 24 hours a day who would ensure that she does not suffer from bed sores. The Hon’ble Apex Court allowed compensation for re-imbursement of expenses of an attendant and assessed the same equivalent to the wages of a skilled labourer. Considering the facts and circumstances of the instant case in the light of the view taken by the Apex Court in the aforesaid judgment, I am of the view that the claimant does require the services of an attendant in his daily chores and to look after him during treatment. In the case *ibid*, it was observed that the multiplier system is used to balance out various factors and when compensation is paid in lump sum, the

court has always followed the multiplier system and it was also held that the multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges etc.

21. Apart from loss of income of claimant, the compensation for pain, suffering and loss of amenities of life and also for transportation charges, loss of marital prospects also deserve to be enhanced. In addition to claimant being compensated for services of an attendant, which are required for carrying out daily chores, as has been deposed by the medical expert Dr. Aseem Goyal PW-2, whose testimony in cross-examination remained unimpeached.

22. There is nothing on record to show that attendant is required round the clock to attend to the claimant, in the premise given that at the time of the accident, applicable minimum wages in State of Punjab as per the Gazette Notification were Rs.6660. Claimant is thus held entitled to 50% of the minimum wages to be paid towards services of attendant.

23. In view of the foregoing discussion, computation of compensation under various heads is determined/modified as below:

Injured	Anand Kumar
Date of accident	30.10.2014
Age	17 years
Permanent functional disability	100%
Notional monthly income	20,000
Add 40% for future prospects	8000
Total notional monthly income	28000
Loss of monthly dependency after deducting 50% for personal expenses	14000
Total loss of dependency by applying multiplier of 18	30,24,000
Expenses for an attendant (50% of 6660= 3330 per month) applying multiplier of 18	7,19,280
Loss of marriage prospects	3,00,000
Medical expenses as allowed by the Tribunal	70,858
Transportation charges	50,000
Special diet as allowed by the Tribunal	25000
Pain, suffering and loss of amenities of life	10,00,000

Total compensation (30,24,000+7,19,280+3,00,000+70,858+50,000+25000+10,00,000 =51,89,138)	51,89,138
Amount award by the Tribunal	4,30,858
Amount of enhancement	47,58,280

24. Accordingly, impugned award is modified in terms of above computations. Enhanced compensation shall be payable to the claimant along with interest, as awarded by learned Tribunal, from the date of filing of claim petition till actual date of payment. Same shall be payable to claimant within a period of 2 months of his approaching the insurance company along with web print of instant order, failing which additional penal interest of 3% p.a. shall be paid from the date of filing of claim petition till payment. Enhanced compensation amount after adjusting the compensation, if any, already paid, be disbursed to claimant.

25. Disposed of accordingly.

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

(ARUN MONGA)
JUDGE

25.04.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No