

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

FAO-6245-2012(O&M)

Reserved on:-5.5.2023

Date of decision:-16.5.2023

Amarinder Singh Sidhu

...Appellant

Versus

Rajesh Kumar alias Kala and others

...Respondents

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

Present: Mr.ADS Sukhija, Advocate
for the appellant.

Mr.Vinod Gupta, Advocate
for respondent No.3.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that petitioner/claimant Amarinder Singh Sidhu, aged about 22 years, resident of House No.3351, Sector 23-D, Chandigarh had suffered injuries in a motor vehicular accident, which took place on 24.5.2006 at about 4:15 a.m. near HMT factory on the road leading from Kalka to Patiala, statedly on account of rash and negligent driving of truck bearing registration No.HR-46-A-0909 (hereinafter referred to as the offending vehicle) by respondent No.1 Rajesh Kumar alias Kala.

2. The petitioner/claimant had filed 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 Rajesh Kumar @ Kala – driver, Pawan Kumar – owner and New India Assurance Company of offending vehicle, claiming compensation.

3. As per the case of the petitioner/claimant after suffering injuries in the accident, he was hospitalized and medically treated but could not be cured. According to the claimant, he had completed his Graduation in B.Com.(Hons.) in the year 2005 and was regularly preparing for examination of CAT; he had cleared the said examination by securing 93.13% marks on the basis of which he was admitted in IMI, Delhi for MBA; he had deposited Rs.3.75 lakhs towards fee, which was non-refundable; as a result of suffering injuries, he is unable to pursue his normal activities; while he was in Coma after receiving injuries in the road side accident, two attendants were hired to look after him for seven months @ Rs.6,000/- per month; two nurses were also engaged to whom Rs.32,000/- were paid, in addition a Physiotherapist treated him from 13.8.2006 to February, 2007 as recommended by the doctor and a sum of Rs.63,000/- was paid to him @ Rs.9,000/- per month; a sum of Rs.3,97,955/- was spent at Silver Oak Hospital, Mohali on account of treatment expenditure; a sum of Rs.56,388/- was spent on the treatment in PGI, Chandigarh. At the time of filing of the claim petition, the petitioner/claimant was being treated at Nimhans Hospital, Bangalore; a sum of Rs.1,70,000/- was spent in getting that treatment; as a result of suffering injuries the entire career of the claimant has been ruined and he has no scope of completing his studies on account of serious head injury

and loss of memory; the claimant will have to lead life as a handicapped person depending upon his parents, nears and dears. According to the claimant, an average student passing from IMI, Delhi gets package of Rs.12 lakhs per year and claimant being a brilliant student would have got package of Rs.18 lakhs per year; the claimant had suffered permanent disability to the extent of 58% in relation to his whole body and due to the injuries, he had also suffered moderate mental retardation; his IQ has been reduced to 67% and he has no chance of recovery.

4. The claim petition was contested by the respondents. However, the Tribunal vide award dated 4.6.2012 accepted the petition and granted compensation to the tune of Rs.18,83,405/- to the petitioner/claimant, payable by all the respondents jointly and severally along with interest @ 6% per annum from the date of filing of the claim petition till actual realization. It was observed that 50% of the compensation amount awarded to the claimant shall be deposited in his name in the form of a fixed deposit in some nationalized bank in a scheme fetching maximum interest for a period of 5 years, whereas the remaining amount be released in cash to the claimant.

5 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 the respondents. However, only respondent No.3 – insurance company has appeared through counsel.

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

7. The Tribunal on the analysis of the evidence adduced before

it considering the fact that an FIR with regard to the accident had been lodged against respondent No.1 Rajesh Kumar @ Kala, copy of FIR being Ex.P1 and eye-witness account provided by PW1 Sumit Dogra, who was author of the FIR as well, had returned a clear finding that the accident had taken place on account of rash and negligent driving of truck by respondent No.1 Rajesh Kumar @ Kala. For that reason Rajesh Kumar @ Kala being driver, Pawan Kumar – owner and New India Assurance Company Ltd. insurer of the truck were held liable to pay compensation amount jointly and severally. This has been correctly done but it is to be seen as to whether the compensation has been properly assessed or not?

8. Learned counsel for the appellant has referred to judgment *Kajal Versus Jagdish Chand & Ors., 2020(2) RCR(Civil)27* wherein principles for grant of compensation were laid down holding that on account of injuries sustained in the accident, the claimant may suffer consequential losses such as (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc.;(iii) loss or diminution to pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity and damages can be pecuniary as well as non-pecuniary, but all have to be assessed in Rupees and Paise.

9. While assessing the compensation, the Tribunal has taken the monthly income of the deceased to be Rs.10,000/-. However, keeping in view the educational qualification of the injured inasmuch after completing B.Com (Hons.) he had completed MBA from a prestigious institute of Delhi, he could have found a good job getting handsome

package. Now with type of injuries suffered by him resulting in permanent disability to the extent of 58%, his chances of getting a good job have almost come to an end. The petitioner/claimant would not be able to lead life like a normal human being and perform normal functions. The percentage of disability suffered by the petitioner/claimant is to be taken as functional disability resulting in a reduction of earning capacity substantially. The income of the claimant taken as Rs.10,000/- per month appear to be somewhat on lower side and I find it proper and appropriate to take notional income of the claimant to be Rs.15,000/- per month with disability of 58%. The loss of earning capacity thus comes out to Rs.8,700/- (58% of 15,000). As per the judgment **National Insurance Company Ltd. Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,** 40% of the income is to be added as future prospects when a person/victim is below 40 years. The Tribunal has not made any addition towards future prospects. Doing that, the amount is worked out to be Rs.12,180/-(8700 + 3480) per month and (12180 x 12)= Rs.1,46,160/- per annum. Keeping in view the age of the claimant/petitioner, multiplier of 18 is to be used. Therefore, the loss of earning comes out to be (Rs.146160 x 18) = Rs.26,30,880/-. This amount is on account of loss of earning in future.

10. From the testimony of PW5 Vishwas and PW6 Shri Kant, it comes out that an amount of Rs.397,955/- was charged by Silver Oak Hospital out of which Rs.1,63,822/- was reimbursed by the department of claimant's father and out of medicines bills of 56,388/-, amount of Rs.49,067/- had been reimbursed. But then 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. After making necessary adjustment, I award a sum of **Rs.3 lakhs** under that head.

11. Keeping in view the long period of hospitalization of 7 months from 1.7.2006 to 31.1.2007, granting a sum of Rs.16,000/- for attendant charges is on lower side. The same is enhanced to **Rs.40,000/-**.

12. In view of the period of hospitalization and nature of injuries and that claimant would have been going to the hospital for follow up treatment also, a sum of **Rs.25,000/-** is awarded to him as transportation expenses.

13. As regards special diet, a person suffering such of injuries does need special diet for early and proper recovery. A sum of **Rs.25,000/-** is awarded to the claimant under that head.

14. It is very difficult to quantify the pain and suffering undergone by a person suffering injuries requiring long hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, I award a sum of **Rs.30,000/-** under that head.

15. The Tribunal has awarded a sum of **Rs.1 lakh** towards loss of faculties and **Rs.1 lakh** towards loss of amenities, which in my considered view is sufficient and do not call for any interference.

16. With such type of injuries, the appellant/claimant may not be able to find a suitable life partner and lead life of a normal human being and her marital prospects have been adversely affected. His life

expectancy is also likely to be affected. Thus, I award a sum of **Rs.1,00,000/-** under that head to the claimant.

17. Thus, the total compensation comes out to **Rs.33,50,880/-**.

18. The Tribunal has awarded compensation of Rs.18,83,405/-.

19. In this way, the enhanced amount comes out to Rs.14,67,475/- (33,50,880 – 18,83,405). The claimant would be entitled to get interest @ 7.5% per annum on the enhanced amount 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.

16.5.2023

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

(H.S.MADAAN)

JUDGE