

**FAO No.1622 of 2006****#1#****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****FAO No.1622 of 2006****Date of Decision: 17.05.2024**

Shri Bhagwan

*.....Appellant**Versus*

Sanjay Kumar and Anr

*.....Respondents***CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. C.S. Singh, Advocate for the appellant.

Mr. Suvir Dewan, Advocate for respondent No.2.

SUDEEPTI SHARMA, J

1. Claimant-appellant has laid challenge to award dated 26.09.2005 passed by the learned Motor Accident Claims Tribunal, Rohtak (for short “the Tribunal”), dismissing the claim petition filed by him.
2. The facts, in brief, as emerged from the claim petition are that on 30.08.2004 at about 2.30 p.m, the claimant-appellant was coming on foot from Sukhpura side, Rohtak and when he reached near Bus Stand, Rohtak in front of STD booth, one Maruti Van bearing Registration No.DL-3CG-2863 (for short “the offending vehicle”) driven in rash and negligent manner came from Shila Bye pass, Rohtak and caused the accident as a result of which the claimant-appellant sustained multiple injuries including head injury. He became unconscious. The accident was witnessed by Mandeep son of Ramphal, Suresh and Rajmal who asked Van driver to hospitalize the claimant in PGIMS, Rohtak but respondent No.1 fled the spot. Statement of the claimant was recorded, though he was not in his senses and FIR No.453 dated 31.08.2004 under Sections 279,337,338 IPC was registered at Police Station, Civil Lines, Rohtak against respondent No.1.



3. Upon notice, respondent No.1 filed written statement denying the averments made in the claim petition. It was averred that the accident had taken place due to fault of the claimant, who came all of sudden on the road and that the answering respondent was driving his vehicle at a slow speed.

4. Respondent No.2-Insurance Company in its written statement filed separately, stated that the accident took place due to rash and negligent driving of the truck, registration number of which could not be noted down and that said Maruti Van has been falsely implicated. It was also averred that the driver was not holding a valid driving licence and that the insured had violated the terms and conditions of the Policy.

5. No replication was filed by the petitioner. On the pleadings of the parties, following issues were framed for adjudication on 12.01.2005:

“1. Whether the accident took place due to rash and negligent driving of Maruti Van No.DL-3CG-2863 by respondent No.1 Sanjay Kumar resulting into injuries to claimant Shri Bhagwan, as alleged?OPP

2. If issue No.1 is proved, whether the claimant is entitled to compensation, if so, to what amount and from whom?OPP

3. Whether the respondent No.1 Sanjay driver of Maruti Van No.DL-3CG-2863 was not having a valid driving licence and the van in question was being driven in violation of terms and conditions of the insurance policy at the time of accident?OPR.

4. Whether the present petition is liable to be dismissed?

5. Relief.”

6. In order to prove his case, claimant Shri Bhagwan himself appeared as PW1 and tendered copy of FIR, MLR, medical bills Ex.P1 to

Ex.6, receipts regarding transportation charges and photocopy of statements



of Mandeep and Suresh Mark P7 to P12 whereas on the other hand, Sanjay Kumar-respondent No.1 also appeared as RW1 and respondent No.2 tendered in evidence Insurance Policy as Ex.R.3.

7. After hearing learned counsel for the parties and going through the material evidence produced on record, learned Tribunal dismissed the claim petition, hence the present appeal.

8. Learned counsel for the appellant contends that the learned Tribunal has gravely erred in not appreciating the evidence led by the claimant and fell in error in deciding issue No.1. He contends that at the time of recording his statement, the claimant was not in his full senses and merely because he had told the police that a truck was also involved in the said accident, cannot be made the basis to reject his claim especially when respondent No.1 in his written statement has admitted the factum of the accident. The claimant in fact, suffered severe injuries in the accident caused by respondent No.1 who was driving the offending vehicle.

9. Per contra, learned counsel representing the respondent-Insurance Company submits that the accident took place due to rash and negligent driving of the truck, registration number of which could not be noted down and that said Maruti Van has been falsely implicated.

10. I have heard learned counsel for the parties and perused the record with their able assistance.

11. A perusal of record shows that the learned Tribunal by relying upon the statement of the claimant (Ex.R.1), which was recorded under Section 161 Cr.P.C has rejected the claim of the claimant-appellant. Learned Tribunal has totally ignored the statement of the claimant-appellant/PW1 (Shri Bhagwan), who in his cross examination had denied the mentioning of

Truck as the offending vehicle in his statement recorded under Section 161



Cr.P.C (Ex.R.1) and stated that it was wrongly mentioned by the police in his statement. In his cross-examination, the claimant further denied the suggestion of accident having not been caused with the said Maruti Van but with the unknown Truck. It is not appreciable on the part of the Tribunal to rely upon the statement, which was recorded under Section 161 Cr.P.C instead of relying on the examination of (claimant), who appeared as PW1 wherein he was cross examined as well. Learned Tribunal has totally ignored the factum of release of the vehicle i.e Maruti Van bearing DL-3CG/2863 on superdari in favour of its registered owner-Sanjay Kumar son of Gobind Singh by the Chief Judicial Magistrate, which is a part of record in case FIR No.453 dated 31.08.2004 under Sections 279/337 IPC. Disability Certificate of the claimant is also on record as Ex.P14, which states that the injured suffered permanent disability to the extent of 30%.

12. After having perused the whole record of the case, the factum of the accident with the offending vehicle is duly proved. Lodging of the FIR and the release of the vehicle as mentioned above on superdari, which is also part of record, shows that the learned Tribunal has committed grave error in dismissing the claim petition.

13. Hon'ble Supreme Court has settled the law regarding grant of compensation with respect to the disability. The Apex Court in the case of Raj Kumar Vs. Ajay Kumar and Another (2011) 1 Supreme Court Cases 343, has held as under:-

“General principles relating to compensation in injury cases

5. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make



good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 Supreme Court 376, R.D. Hattangadi v. Pest Control (India) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467).

6. The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses. Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that



compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

xxx

xxx

xxx

xxx

19. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

20. The assessment of loss of future earnings is explained below with reference to the following

Illustration 'A' : *The injured, a workman, was aged 30 years and earning Rs. 3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as*



follows:

- a) Annual income before the accident : Rs. 36,000/-.
- b) Loss of future earning per annum
(15% of the prior annual income) : Rs. 5400/-.
- c) Multiplier applicable with reference to age : 17
- d) Loss of future earnings : (5400×17) : Rs. 91,800/-

Illustration 'B' : The injured was a driver aged 30 years, earning Rs. 3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows :

- a) Annual income prior to the accident : Rs. 36,000/- .
- b) Loss of future earning per annum
(75% of the prior annual income) : Rs. 27000/-.
- c) Multiplier applicable with reference to age : 17
- d) Loss of future earnings : (27000×17) : Rs. 4,59,000/-

Illustration 'C' : The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected.

The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows :

- a) Minimum annual income he would have got if had been employed as an Engineer : Rs. 60,000/-
- b) Loss of future earning per annum
(70% of the expected annual income) : Rs. 42000/-
- c) Multiplier applicable (25 years) : 18
- d) Loss of future earnings : (42000×18) : Rs. 7,56,000/-

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra (supra)].



14. In view of the above, impugned award dated 26.09.2005 is set aside. Issue No.1 is accordingly decided in favour of the claimant appellant. Since all the relevant documents including the medical bills with regard to expenditure being made on treatment as well as the Disability Certificate etc. are on record, the matter is remanded back to the learned Tribunal to decide the issue regarding grant of compensation to the claimant-appellant in the light of judgment of Hon'ble Supreme Court in **Raj Kumar's case(supra)** expeditiously, preferably within a period of two months from the receipt of certified copy of this order.

15. All the pending misc application(s), if any, shall stand disposed of.

(Sudeepti Sharma)
Judge

May 17, 2024

manoj

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No

FAO No.1622 of 2006

#9#

2024:PHHC:074741

