



231

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

FAO-547-2017 (O&M)
Date of decision: 15.01.2025

Deepak Jain

...Appellant

Versus

Sewak Lal Maurya and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Akhil Dadwal, Advocate for the appellant.

Mr. Akshay Jindal, Advocate and
Mr. Mannat Sibal, Advocate for respondent Nos.1 and 2.

Mr. Abhimanyu Batra, Advocate for respondent No.3.

VIKAS BAHL, J. (ORAL)

1. Claimant is in appeal. Prayer in the same is for modification of the award dated 29.08.2016 passed by the Motor Accident Claims Tribunal, Gurgaon (hereinafter to be referred as “the Tribunal”) to the extent that the compensation awarded in favour of the claimant/present appellant be enhanced.

2. The Tribunal had awarded a compensation of Rs.4,88,038/- on account of injuries suffered by the present appellant in the accident. Para 24 of the said award wherein relief has been granted to the claimant is reproduced hereinbelow:-

“RELIEF:



24. As a sequel to my above discussion, the petition is accepted partly with costs and the claimant is awarded Rs.4,88,038/- as compensation on account of injuries suffered by him in the accident. All the respondents are liable to pay the compensation amount jointly and severally alongwith 9% per annum interest from the date of filing of the claim petition till payment.

On realisation of the awarded amount, 50% shall be deposited in a nationalized bank fetching maximum interest for a period of two years. Remaining amount of 50% shall be deposited in his bank account. However, the claimant is held entitled to get the monthly interest on the FDR from the bank and the concerned bank is directed to do the needful. Counsel fee is assessed at Rs.2200/-. Memo of costs be prepared accordingly. File be consigned to record room after due compliance.

Pronounced in open Court.

Sd/- (Vivek Singal),

29.08.2016

Motor Accident Claims Tribunal,
Gurgaon.”

3. It would be relevant to note that in the present case, vide order dated 17.11.2015 the Tribunal had framed the following issues:-

“5. On pleadings of parties, vide order dated 17.11.2015, following issues were framed:-

1. Whether the accident took place as alleged? If yes whether it occurred due to rash or negligent driving of vehicle No.HR-55K-1814 driven by Sewak Lal Maurya, respondent No.1? OPP.
2. If issue No.1 is proved in favour of the petitioner then whether the petitioner is entitled to compensation on account of injuries suffered by him in the accident and if yes how much and from whom? OPP.
3. Whether the vehicle was being driven in contravention



of terms and conditions of the insurance policy? OPR.

4. *Relief.”*

4. Issue No.1 was decided in favour of the claimant and against respondents. Under issue No.3, it was observed that the offending vehicle was insured with the Insurance Company i.e., present respondent No.3 on the date of the alleged incident. The findings on issue Nos.1 and 3 are not under challenge and it is only the finding under issue No.2 with respect to the amount of compensation to be paid to the claimant, which is the subject matter of challenge. It is not in dispute that the Insurance Company as well as the driver and owner of the offending vehicle i.e., respondent Nos.1 to 3 have not filed any cross appeal/cross-objections challenging the finding on the said issue.

5. Learned counsel for the appellant has submitted that the appellant had filed two applications under Order 41 Rule 27 CPC. First application is CM-1785-CII-2017 for placing on record the disability certificate dated 05.10.2016 and the second application is CM-17326-CII-2022 for placing on record the medical bills, the new disability certificate dated 11.07.2022 as well as the fitment proposal dated 16.09.2022. It is submitted that the said documents are very much necessary for the proper and final adjudication of the case and for awarding the due amount of compensation to the present appellant. It is argued that the said material evidence would help in proper and final adjudication of the case.

6. Learned counsel for the respondents, on the other hand, have submitted that the documents annexed alongwith the applications under Order 41 Rule 27 CPC have not been proved in accordance with law and in



case the said documents are to be relied upon by the learned counsel for the appellant, then the same would have to be duly proved by the appellant and even the respondents would have to be given due opportunity to rebut the said documents.

7. During the course of arguments, a consensus has been arrived at between learned counsel for the appellant as well as learned counsel appearing on behalf of the respondents and with their consent, the present appeal is disposed of in the following terms:-

- i) The finding on issue No.2 be set aside and the case is remitted to the Tribunal for fresh decision on the said issue No.2. While deciding the said issue No.2, the evidence already led by the parties would be taken into consideration, in addition to the additional evidence which would be led by all the parties after giving them due opportunity. In case, any of the party examines any witness in support of their evidence led then, due opportunity would be given to the other side to cross-examine the said witness. The Tribunal would then, after taking into consideration the entire evidence including the additional evidence produced by either of the two parties, would re-decide issue No.2.
- ii) Issue Nos.1 and 3 have already been decided as has been stated hereinabove and are not the subject matter of challenge in the present appeal nor any cross-objections/cross-appeal has been filed by the respondents and thus, the findings on the said two issues are not to be disturbed and the fresh order passed by the Tribunal would record the fact that issue Nos.1 and 3 have been decided in the manner they had



been decided in the award dated 29.08.2016.

- iii) The present appellant/claimant would not be liable to return the amount which had been awarded vide award dated 29.08.2016 till the final decision of the case by the Tribunal. After the final decision on issue No.2, in case, the Tribunal comes to the conclusion that the compensation to be awarded to the claimant would be higher than the amount already awarded vide award dated 29.08.2016 then, the amount which had already been awarded and paid to the claimant/present appellant would be adjusted against the said amount and for the balance amount, it would be open to the present appellant/claimant to seek appropriate remedy.

8. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

15.01.2025

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No