

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2276-2018 (O&M)

Pronounced on : 02.05.2023

Himanshi

...Appellant

Versus

Ranjit Singh @ Vicky and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Gagan Inder Singh, Advocate
for the appellant-claimant.

None for respondents No.1 and 2 despite service.

Mrs. Madhu Sharma, Advocate
for respondent No.3-Insurance Company.

RITU TAGORE, J.

1. The appellant/claimant Himanshi, has filed an appeal as she is dissatisfied with the compensation granted to her by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') in the award dated 20.11.2017.

2. Parties in this appeal will be referred to as they were before the Tribunal.

3. Despite being served, respondents No.1 and 2 have not preferred to contest the appeal.

4. Brief facts of the case for adjudication are hereunder:-

On 23.04.2016, claimant-injured (Himanshi) was on the pillion ride of the scooter of her friend, Daman Preet Kaur, when they were involved in an accident near small Rotary (chownk) of Sector 36/42 Chandigarh.

5. The accident was caused by respondent No.1, who was driving the offending vehicle, a Swift car bearing registration No.CH-01-AN-9477, in a rash and negligent manner. Claimant-Himanshi and her friend sustained multiple serious injuries, as a result. An FIR No.88 dated 28.04.2016 under Sections 279, 337 and 338 IPC was registered at P.S. Sector-36, Chandigarh against respondent No.1.

6. Claimant received initial treatment from Govt. Medical College and Hospital, Sector-16 and then from PGI, Chandigarh. She also underwent dental treatment at Bansal Clinic Sector-7, Panchkula. Due to her injuries, claimant suffered permanent physical disablement of 24%, which is progressive in nature and not likely to improve.

7. Claimant filed a petition under Section 166 of the Act seeking compensation of ₹78,15,500/- along with 24% per annum interest from the respondents (driver-cum-owner and the insurer) jointly and severally.

8. Respondents filed their respective pleadings on appearance before the Tribunal. The Tribunal framed the issues based on the pleadings and called the parties to lead their evidence.

9. After considering the evidence, the Tribunal came to a definite finding that the accident was caused by respondent No.1 driving the offending vehicle in a reckless and negligent manner. The Tribunal awarded the compensation of ₹3,68,077/- along with 6% interest per annum from the date of filing of the claim petition. Tribunal further directed that, if payment is not (sic) made within a period of 3 months from the date of award, an interest @ 8% per annum will be payable from the date of claim petition till payment. The Tribunal directed the insurance company to make the payment to the claimant as the first priority and gave recovery rights to respondent No.3 to recover the compensation from respondents No.1 and 2.

10. I have heard learned counsel for the parties and have gone through the record and the paper book.

11. Learned counsel for the claimant by referring to the disability certificate (Exh.CW-4/1) has urged that compensation awarded by the Tribunal for the loss of future earnings is insufficient, given the claimant's disability is progressive in nature as declared by the Board of Doctors, PGI, Chandigarh. Meaning thereby, the disability will worsen over the time. The learned counsel for the claimant also argued that compensation for personal injuries is also inadequate and fails to account for the claimant's pain and sufferings, loss of further opportunities for work and marriage and the overall impact of the injuries on her life. As a result, learned counsel for the claimant, requested that just and adequate compensation be re-determined to reflect the claimant's true loss.

12. In response, learned counsel for the insurance company submits that compensation awarded by the Tribunal is just and fair, taking into account the nature of the injuries sustained, the claimant's physical disability and the potential impact on her future prospects as to her marriage and work opportunities. It is argued that there is no evidence that claimant's physical disability has worsened since the assessment made by the Board of Doctors that issued disability certificate (Exh.CW-4/1). Accordingly, it is requested that the appeal be dismissed as lacking merits.

13. I have considered the submissions of learned counsel for the parties in the light of evidence and the law governing the issue. My findings and reasoning is as below.

14. Claimant-injured Himanshi examined herself as CW-1 and re-counted the version of her petition with respect to her injuries sustained in the accident, treatment taken by her, loss of academic year, physical disability

suffered by her as a result of the injuries and also tendered the medical record (Exh.CW-1/4 to Exh.CW-1/8) and medical bills (Exh.CW-1/9 to Exh.CW-1/19). Dr. Chethan (CW-3) proved the discharge and follow-up card (Exh.CW-1/4) and also deposed that he treated the claimant along with other members of the treating team. Learned counsel for the insurance company was unable to point out any infirmity in the testimonial account of Dr. Chethan (CW-3) and the record adduced by him. The above evidence, indeed, has remained undisturbed on record.

15. Upon reviewing the discharge and follow-up card (Exh.CW-1/4) it is evident that the claimant was admitted in the hospital on 23rd of April, 2016 with fracture injuries to her left forearm including both bones median flexor tendon, ulnar artery cut. For the injuries, claimant underwent plastic surgery and remained hospitalized for 5 days. She attended follow up treatment until September, 2016. Additionally, the claimant suffered teeth fractures and received dental treatment, as noted in the Medical report (Exh.CW-1/8).

16. The disability certificate (Exh.CW-4/1) indicates that claimant was assessed having 24% permanent physical disability on account of locomotor disability due to post traumatic deformity in her left hand and same is considered progressive and unlikely to improve. The medical board recommended the reassessment of disability after three years.

17. The Tribunal assessed loss of income due to the disability at 10%, and applied a multiplier of 16 based on notional income at ₹8,000/-. The total compensation awarded was ₹1,72,000/- (calculated as ₹8,000 x 10/100 x 12 x 16 by the Tribunal).

18. The disability certificate (Exh.CW-4/1) notes that the disability is progressive in nature and not likely to improve over the time. However, the

Tribunal failed to note this important fact when assessing the loss of income due to disability and did not account for the functional loss that the claimant would suffer as a result of her physical disability. The claimant did not provide evidence of reassessment of her disability as recommended by the medical board while preparing her disability certificate (Exh.CW-4/1). Nonetheless, the progressive nature of claimant's disability must still be taken into account. It should be noted that the disability is limited to left hand and not her entire body. Therefore, it is appropriate to consider a functional loss of 20% due to the progressive nature of disability to the claimant.

19. The process of determining compensation is essentially a very difficult task and can never be an exact science. Perfect compensation is hardly possible, particularly in claims of injury and disability. The Motor Vehicle Act is a beneficial piece of legislation. The principle essentially followed by the Courts in assessing motor vehicle compensation claims is to grant 'just compensation', which include all elements that would go to place the victim in as near a position as she or he was in before the occurrence of the accident. It is true that no amount of money or other material compensation can renew a physical frame that has been bettered in accident, however, some measure by way of restitution in form of monetary compensation can be provided to those who survive or the victims who have to face their lives.

20. The evidence presented indicates that the claimant stayed in the hospital for five days and suffered from fracture injuries in both the left forearm including flexor tendon injury and ulnar artery cut, and had to undergo surgical operations to manage these injuries. The aforesaid injuries have resulted in permanent physical disability for the claimant. Additionally, the claimant also sustained dental injuries and received treatment for them. The claimant also had to follow up the treatment at the hospital, for which she

may had to spend money on transportation. Furthermore, due to the injuries sustained, the claimant may have had to follow a special diet for one or two months and may have required the services of an attendant for at least two months to recover from the injuries. The Tribunal did not grant the compensation for expenses related to diet, transportation and attendant which is an oversight.

21. The compensation under the head of 'pain and suffering' category is relatively lower considering the nature of injury sustained; the medical treatment/surgery undergone by the claimant and the impact on the claimant's prospects for marriage. Therefore, the compensation needs to be enhanced reasonably.

22. Disability certificate (Exh.CW-4/1) records claimant's date of birth as 13.03.1995. Since respondent No.2 (Insurance Company) did not challenge the same, the claimant's age at the time of accident is considered 21 years. According to the ruling '*Sarla Verma and others vs. Delhi Transport Corporation and another*', 2009 (3) R.C.R. (Civil) 77, a multiplier of 18 is required to calculate the compensation for loss of future income due to permanent disability. The notional income taken by the Tribunal at ₹8,000/- inclusive of future prospects is justified, since the claimant was a student at the time of accident and there no evidence on record to suggest that she was an earning member at that time of accident. Additionally there is no evidence that the claimant will require any medical treatment in future. The grant of compensation by the Tribunal of ₹1,21,077/- for expenses on medical bills does not require modification as it is based on evidence presented.

23. Keeping in view the above discussion, the compensation is reassessed as under:

Sr. No.	Heads	Compensation awarded by the Tribunal	Compensation reassessed by this Court
1.	Compensation for permanent disability/earnings	$\square 8,000 \times 10/100 \times 12 \times 16 = \square 1,72,000/-$	$\square 3,45,600/-$
2.	Pain and suffering and loss of enjoyment of amenities	$\square 25,000/-$	$\square 50,000/-$
3.	Medical Bills	$\square 1,21,077/-$	$\square 1,21,077/-$
4.	Marriage prospects	$\square 50,000/-$	$\square 75,000/-$
5.	Transportation Charges	Nil	$\square 5,000/-$
6.	Nourished diet charges	Nil	$\square 6,000/-$ ($\square 100/-$ -per day x 2 months)
7.	Attendant Charges	Nil	$\square 4,000/-$ ($\square 2,000/-$ per month x 2 months)
8.	Amount awarded by the Tribunal	$\square 3,68,077/-$	$\square 6,06,677/-$
9.	Difference in amount of compensation	-	$\square 2,38,600/-$

24. The Tribunal made an error in granting recovery rights to Regional Manager, New India Assurance Company (respondent No.3) and directing him to recover the compensation from respondents No.1 and 2 in the relief clause. This is because the Tribunal had already concluded in the issue No.3. that respondent No.1 had a valid and effective DL at the time of the accident and the Insurance Company (respondent No.2) failed to provide any evidence to prove otherwise during the course of arguments. The Annexure R-1 and R-2 (available on lower Court record at Page No.91 and 93) show that DL No.CH02-215731 of 2007 issued by Licensing Authority, Chandigarh is valid till 27.01.2024 and certificate-cum-policy schedule indicates that insurance policy was valid till 27.03.2017 w.e.f. 28.03.2016 at the time of accident. The above evidence shows that the driver was having valid and

effective DL and insurance policy was also alive at the time of the accident. Therefore, the directions given by the Tribunal in this regard are hereby set aside and respondents are held jointly and severally liable to pay the assessed compensation.

25. The respondent-insurance company is, hereby, directed to pay to the claimant an enhanced amount of compensation ₹2,38,600/- (Rupees Two Lakh Thirty Eight Thousand and Six Hundred only) awarded hereinabove, over and above, the compensation amount as awarded by the Tribunal, at the rate of interest as granted by the Tribunal from the date of filing of the claim petition till its realisation, and deposit the same with the Tribunal, within a period of thirty days from the date of receipt of certified copy of this judgment. Remaining conditions of disbursement of the amount as given by the Tribunal shall remain unaltered. Needless to mention that the amount, if any, already deposited by the insurance company shall be adjusted.

26. Additionally, claimant is ordered to be given ₹15,000/- as litigation expenses, to be payable by the insurance company, in view of the judgment passed by Hon'ble the Supreme Court in case titled '*Sidram vs. The Divisional Manager, United India Insurance Co. Ltd. and another*' 2023 (1) R.C.R. (Civil) 44.

27. The appeal stands partly allowed in the aforesaid terms. No order as to costs.

28. Pending miscellaneous application(s), if any, is/are disposed of accordingly.

(RITU TAGORE)
JUDGE

Pronounced on 02nd May, 2023
Manpreet

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