

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

FAO No. 299 of 2003

Reserved on : 14 .11.2018

Date of decision: 28.01.2019

Puneet Batra

Appellant

Versus

Vinod Kathuria alias Bijender Kumar and others

Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. A. P. Bhandari, Advocate,
for the appellant.

Mr. Ravinder Arora, Advocate,
for respondent No.3.

None for respondents No.1 and 2.

Arun Monga, J.

1. The claimant/appellant herein feeling dissatisfied with quantum of compensation awarded by the Learned Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as "MACT"), preferred this appeal under Section 173 of Motor Vehicle Act, 1988 for enhancement of compensation allowed vide award dated 17.10.2002, whereby the claim petition under Section 166 of Motor Vehicles Act, 1988, had been allowed partly.

2. The brief facts for disposal of this appeal are that appellant was returning to his house from Sector-16/A, Faridabad

via Daulatabad, on his scooter bearing Registration Number HR-29/E-1441 on 28.10.1998. At about 9:30 PM, when he reached near Geeta Mandir at College Road, Faridabad, a Maruti car bearing Registration Number DL-3-CB -4785 being driven in a rash, negligent and reckless manner by Respondent No.1 came from opposite side and hit against the scooter of the appellant. In the said accident claimant suffered multiple injuries on his both thighs, hand, forehead, chest, face and other parts of the body and his scooter was also totally damaged. Accident was witnessed by one Ashish Bhatia, who along with others took him to Sunflag hospital, where appellant remained under treatment and spent ₹2,64,000/- on his treatment followed by more money spent afterwards. FIR No. 1324 dated 29.10.1998 under Sections 279/337 IPC was registered at police station Central Faridabad.

3. The appellant preferred claim petition before MACT, claiming total compensation of ₹14,25,000/-.

4. In pursuance to notice, Respondent No. 1 filed written statement taking objection that the petition is barred by limitation and the petitioner has no locus standi. All the other material allegations of the claimant have also been denied. Respondent No. 2 was proceeded ex parte after service by way of proclamation. Respondent No.3 filed separate written statement pleading that no such accident ever occurred. Driver of the vehicle was Bijender Kathuria while Vinod Kathuria is his brother.

The insurance company admitted the policy but denied that claimant is entitled to any compensation.

5. The MACT after appreciating the evidence allowed the claim petition partially and awarded compensation to the extent of Rs. 2,01,100/- as under :-

Sr. No.	Heads under which compensation granted	Amount (in ₹)
01	Purchase of Medicines	1,36,069.09
02	Pain, sufferings, mental shock, future prospects	30,00.00
03	Special diet	5000.00
04	Conveyance expenses	5000.00
05	Loss of income	25,000.00
	Total	2,01,069.00

Hence this appeal for enhancement of compensation.

6. There was a fire in the record room of this High Court. The office photocopied the papers from the salvaged record of the partially burnt case and reconstructed the paper-book. The grounds of appeal, memo of parties and impugned order of the Motor Accident Claims Tribunal are available on the file.

7. I have heard learned counsels for the appellant and respondent No.3. None appeared for the respondents No.1 and 2 at the time of hearing of appeal.

8. Learned counsel for the appellant contends that the claimant was previously an electrical engineer working in Bhartiya Udyog Limited. Thereafter he joined Thermo Tech Furnaces as an electrical engineer. Due to the accident, he could not go for his work and his services were dispensed with and he

suffered salary loss. The claimant got operated for the affected part of femur of left side and right side. The claimant had suffered pain and suffering, but the MACT had not awarded compensation under various heads. The compensation awarded is inadequate.

9. Learned counsel for respondent No.3 argued that no case was made out for interfering with the Award of the Tribunal.

10. I have given my thoughtful consideration to the arguments addressed by learned counsel for the appellant and respondent No.3 and have perused the record on file.

11. In the present appeal accident has been proved by the witnesses.

12. It would be appropriate to refer to some relevant judgements of the Supreme Court for determining compensation in injury cases.

In the case of ***Jai Bhagwan v. Laxman Singh and Others [(1994) 5 SCC 5]*** the Supreme Court made reference to *In Clerk and Lindsell on Torts (16th Edn.)*, wherein while referring to damages for personal injuries, it was stated that:

"In all but a few exceptional cases the victim of personal injury suffers two distinct kinds of damage which may be classed respectively as pecuniary and non-pecuniary. By pecuniary damage is meant that which is susceptible of direct translation into money terms and includes such matters as loss of earnings, actual and prospective, and out-of-pocket expenses, while

non-pecuniary damage includes such immeasurable elements as pain and suffering and loss of amenity or enjoyment of life. In respect of the former, it is submitted, the court should and usually does seek to achieve restitutio in integrum in the sense described above, while for the latter it seeks to award 'fair compensation'. This distinction between pecuniary and non-pecuniary between 'special' and 'general' damages, for while the former is necessarily concerned solely with pecuniary losses – notably accrued loss of earnings and out-of-pocket expenses – the latter comprises not only non-pecuniary losses but also prospective loss of earnings and other future pecuniary damage."

In the case of ***Subulaxmi v. Managing Director, Tamil Nadu State Transport Corporation and Another [(2012) 10 SCC 177]*** the Hon'ble Supreme Court observed that Compensation can be granted towards permanent-disability as well as loss of future earnings. The Apex Court made the following observations:

"The Court in the case held that compensation can be granted towards permanent-disability as well as loss of future earnings, for one head relates to the impairment of person's capacity and the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself.

If the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not

only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to the accident, loss of earning and the victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

In case of **Kavitha v. Deepak and Others [(2012) 8 SCC 604]** the Apex Court observed **that the** Courts to adequately compensate the victim for not only of physical injury but also for leading a normal life.

13. Adverting to the present case, learned MACT took note of the testimony of Dr.Puneet Mittal of Sunflag Hospital, Faridabad, to the effect that Puneet Batra-claimant remained admitted in the said hospital from 03.11.1998 to 14.11.1998 for treatment for fracture shaft femur left side, shaft femur right side and fracture galeazzi left forearm. He was operated on 09.11.1998; inter locking nailing was done for the fracture shaft of the femur both sides and plating was done for fracture galeazzi left forearm; after discharge from the hospital, patient was still under treatment and nails and plating had not been removed till the date of his examination as a witness; the same would be removed in a year; due to the accidental injuries, the patient was having problem in walking and daily routine and he had been advised not to do heavy work. To the same effect is the statement of the claimant/appellant noticed by the learned Tribunal.

14. Further, learned Tribunal took note of the testimony of the claimant/appellant to the effect that due to the effect of medicines, he has become bald; due to the operation of his head and skull, there has been difference in his eyes and nose and his nose has been turned to left side and his full face has been disfigured. The Tribunal observed that appellant's photographs placed on record showed that there had been disfigurement of his face.

15. Learned Tribunal also took note of the evidence on record showing that at the relevant time, the claimant was employed with M/s Thermotec Furnace as engineer on a monthly salary of ₹9,000/- up to 04.12.1998 when his services were terminated following accidental injuries; he had engaged Prabhu Dyal (PW) as an attendant from 15.11.1998 to 30.04.1999 on monthly salary of ₹2,500/-.

16. At the time of accident, the appellant was a young engineer, aged about 29 years and was unmarried. Disfigurement of his face and overall impact of the accidental injuries, must have caused great mental trauma, besides adversely affecting his marriage prospects and chances of further employment.

17. To my mind, the pain and suffering undergone, loss of employment chances, loss of marriage prospects and the pecuniary losses suffered by the appellant cannot be said to have been adequately compensated by the amount awarded by the learned Tribunal.

18. In the totality of circumstances, this Court is of the opinion, that the compensation, as mentioned below, would be fair and adequate :

a) Re-imbursement of actual cost of medicines etc= ₹1,36,070/-

b) Wages for the period of hospitalization, compensation for total loss of income following termination of employment from 04.12.1998 and reduced prospects of employment due to impact of accidental injuries= ₹2,00,000/-

c) Mental shock, trauma and physical pain and suffering on account of accidental injuries = ₹1,00,000/-

d) Compensation for reduced marriage prospects due to disfigurement of face, impact of accidental injuries and enjoyment of amenities of life = ₹2,00,000/-

e) Reimbursement of salary paid to attendant = ₹15,000/-

f) Transport expenses = ₹7,000/-

g) Special diet = ₹7000/-

h) Total compensation(a) to (g)= ₹6,65,070/-

19. Accordingly the impugned award is modified and the compensation is enhanced to ₹6,65,070/-, payable jointly and severally by all the respondents. The amount of the award will

bear interest @ 9% per annum from the date of filing of the claim petition before the learned Tribunal till payment. Amount, if any, already realized under the impugned award shall be adjusted against the amount of the enhanced compensation.

20. The appeal is thus disposed of. Pending applications, if any, also stand disposed of accordingly.

(ARUN MONGA)
JUDGE

JANUARY 28, 2019
shalini

- | | |
|--------------------------------|--------|
| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |