

MOTOR ACCIDENTS CLAIMS TRIBUNAL: JAMMU

File No.14228/C

(e-file no:020022162015)

U.I.D. No. JK 00023

Parmo Devi, W/o Thoru Ram, R/o village Malpur (TCP) Tehsil & District,
Jammu.Petitioner

Through:- Mr. Kamal Kishor, Advocate.

Versus

1. Mohd Abas, S/o Masoom Ali, R/o Ward No.71 Sidra, Jammu.
2. Dinesh Kumar Bakshi, S/o Sh. Sham Kumar Bakshi, R/o H.No.41, Lane
No.27, Rajpura Mangotrian, Jammu.Respondents

Through:- Respondents proceeded exparte.

Claim petition under sections 166 M.V.Act.

Coram: K.S. Parihar

AWARD

1. Petitioner Parmo Devi has filed the instant claim petition against the respondents for grant of compensation in her favour with these averments that she is a house wife and of 65 years of age with her monthly income as R. 8,000/-. That on 23rd of December, 2014, the petitioner was standing on road side at Sua no.1 NHW Akhnoor when a vehicle (Tata Mobile) bearing registration no.JK02BD-1173 coming from the Akhnoor side towards Jammu at about 7.00 p.m. and being driven rashly and negligently by its driver, respondent no.2, went to the wrong side and hit the petitioner causing grievous injuries to her which led to her subsequent disablement to the extent shown in the disability certificate.
2. It has been further alleged that after the accident, the petitioner remained admitted in GMCH, Jammu from 23.12.2014 to 14.02.2015 for treatment of the grievous injuries suffered by her and during this period, the petitioner was operated twice and iron plates were implanted in her leg and after her discharge from the hospital, she has also visited the hospital for follow up treatment as advised by the doctors. That the petitioner has spent about Rs. 1.00 lakh on her hospitalization and purchase of medicines. That the offending vehicle on the date of accident was owned by respondent no.1 and was being driven by respondent no.2 at the relevant time and therefore both

the respondents are jointly and severally liable to satisfy the award that may eventually be passed in favour of the petitioner and against the respondents. It has been finally prayed that compensation as prayed for in para-21 of the petition be awarded in favour of the petitioner.

3. Along with this petition, photocopies of the FIR, Challan, treatment record of the hospital, Discharge & Follow up Card, R/C of the offending vehicle and original disability certificate issued by the Medical Board have been annexed as proof of the facts stated therein.
4. After the institution of the petition notices were issued to the respondents. Respondent no.2 initially appeared in person as well as through counsel, Sh. Sanjay Mehta, Advocate, but thereafter, absented from the court proceedings and was set exparte, whereas respondent no.1 was served through publication in a News Paper, State Times, as his service through ordinary mode could not effected, but despite service through publication, respondent no.1 did not choose to appear before this Tribunal and contest the claim of the petitioner therefore was also set ex parte.
5. Thereafter, the petitioner was directed to lead exparte evidence. The petitioner during the course of her evidence has filed her affidavit as well as affidavit of her witness PW Ram Lal as evidence. The petitioner has also examined Dr. V.K. Sharma.

Petitioner's evidence:

6. PW-Parmo Devi in her affidavit has reiterated the same facts as stated in the claim petition.
7. PW Ram Lal in his affidavit has stated that on 23.12.2014, he had come for purchasing vegetables at Sua no.1 NHW road jammu where he saw the petitioner standing and at about 7.00 p. m, a vehicle (TATA Mobile) bearing registration no.JK02BD-1173 came from wrong side from Akhnoor towards Jammu being driven rashly and negligently by its driver on reaching Sua no.1 NHW road jammu lost control and hit the petitioner from wrong side as a result which, petitioner sustained grievous injuries and fracture to hip and other part of her body. That the petitioner was shifted to GMCH, Jammu for treatment and that this accident occurred due to sole negligence of driver of the offending vehicle (TATA Mobile) bearing registration no.JK02BD-1173.
8. PW V.K. Sharma in examination in chief by learned counsel for the petitioner has stated that on 29.07.2017, the petitioner Parmo Devi was

examined by the Medical Board of which he was one of the members and issued the certificates which is exhibited as EXPW-VKS. That the overall cumulative disability of petitioner is to the extent of 40% and is permanent in nature. That the medicines mentioned in the bills/cash memo attached with the file are normally required for treatment of patients afflicted with injuries similar to those of the petitioner in the present case.

9. After the closure of the petitioner's evidence, arguments were heard. Heard ld. counsel for petitioner and have gone through the material on record including the ex parte evidence as well as disability certificate issued by the board of doctors.
10. It may be stated at the outset that the nature of proof required in accidental cases for compensation under M. V. Act is akin to the nature of proof required in Civil Cases. It is on the basis of the preponderance of probabilities that the petitioner is legally required to prove his case and discharge the onus placed upon him vis-à-vis a particular issue.
11. In *Parmeshwari V. Amir chand & Ors*, AIR 2011 SUPREME COURT 1504 , the Apex court observed as under :-

"12... The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observation of this Court in Bimbla Devi and others V. Himachal Road Transport Corporation and Others (2009) 13 SCC 530) :AIR 2009 SC 2819. are very pertinent.

"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied"

12. The petitioner in order to prove the rash and negligent driving on the part of respondent no.2 on the date and time of accident has placed reliance upon the documentary as well as oral evidence. The copy of the challan placed on record by the petitioner supplies prima facie proof of the fact that on 23.12.2014, petitioner was standing on roadside at Sua no.1 when the offending vehicle (TATA Mobile) bearing No. JK02BD/1173 on its way from

Akhnoor towards Jammu and allegedly being driven rashly and negligently by its driver/respondent no.2, hit the petitioner causing grievous injuries and fractures to her. For this occurrence, FIR No.236/2014 under sections 279/337 RPC came to be registered in police station, Kana Chak and after the completion of investigation, the concerned investigating agency has found the commission of offences under sections 279/337/338 RPC amply made out against the driver/respondent no.2 and resultantly preferred a charge-sheet against the accused, respondent no.2 herein, before the court of learned CJM, Jammu for disposal under law. This Challan has been prepared by the concerned police agency in the discharge of its official duties assigned to it under the Code of Criminal Procedure and a presumption of this duty having been lawfully discharged by it is attached to it under clause [e] of section 114 of Evidence Act.

13. The disability certificate issued by the board and the testimony of PW Dr. V.K.Sharma mentioned above who is one of the members of the medical board also provide corroboration to the version of the petitioner regarding the cause of injuries and alleged disablement to the extent described in the certificates annexed with petition by petitioner.
14. So far as oral evidence is concerned the petitioner is the sufferer of the alleged accident and under law is the best person to describe the manner in which the accident took place on the date of accident and his deposition has clearly established the involvement of the offending vehicle in the alleged accident and the rash and negligent driving of the respondent no.2, the driver, causing the accident. There is nothing elicited in his cross-examination to discredit his version about the cause of accident. The testimony of petitioner finds ample corroboration from the deposition of PW Ram Lal . PW Ram Lal does not figure in the list of witnesses annexed with challan who in his affidavit has claimed to have witnessed the occurrence. In my opinion even if his deposition is excluded from consideration on this ground that his presence on the scene of occurrence at the time of accident is not supported by the challan, the other evidence on record particularly the testimony of injured claimant who as already stated is the best person to disclose the manner in which the accident took place and the involvement of the offending vehicle as well as rash and negligent driving on the part of respondent no.2, is sufficient to prove the aforementioned three aspects relating to accident under law. Therefore, Documentary evidence finds ample support from the direct evidence as well.

15. Therefore, from the oral as well as documentary evidence, it is proved that on 23rd of December, 2014, the petitioner was standing on road side at Sua no.1 NHW Akhnoor when a vehicle (Tata Mobile) bearing registration no.JK02BD-1173 coming from the Akhnoor side towards Jammu at about 7.00 p.m. and being driven rashly and negligently by its driver, respondent no.2, went to the wrong side and hit the petitioner causing grievous injuries to her which led to her subsequent disablement to the extent shown in the disability certificate.
16. As already stated above that respondents despite service did not choose to appear before this Tribunal to contest the claim of the petitioner, therefore, the claim of the petitioner has remained un-rebutted.
17. The petitioner in her petition has stated her age as 65 years and her occupation as house wife and her monthly income as Rs. 8,000/. Under law a multiplier of 7 is applicable to a person falling in the age group of 61 to 65 years. The petitioner is admittedly a house wife and therefore for the purpose of calculating just compensation notional income of petitioner is treated as Rs. 6,000/- per month, therefore the annual income of the petitioner would work out to Rs. 72,000/- . The petitioner has suffered permanent disablement as per the disability certificate to the extent of 40%. PW Dr. V.K. Sharma in his statement before this Tribunal has given discretion of injuries and the treatment given to the petitioner and has deposed that the overall cumulative disablement amounts to 40% and is permanent in nature and that because of this disability, the petitioner is unable to perform routine household activities.
18. It is well settled law that a person who suffers permanent disability in a motor vehicle accident is entitled to compensation both for his permanent disability as well as for loss of his earning power due to the said disability. Reference in this connection can be made to *S. Manickam v. Metropolitan Transport Corporation Ltd.*, (2013) 12 SCC 603.
19. In the case of *Rekha Jain v. National Insurance Co. Limited and Ors.*, (2013) 8 SCC 389, the Apex Court drew a very relevant distinction between permanent disability which was found to be 30% and functional disability which the Court held to be 100% on account of serious disfigurement of the face of the Appellant because it was bound to cause loss of career for the Appellant who in that case was an actress in films/T.V. features. It observed that it must be taken as a trite law that functional disability of an accident victim requires determination on the basis of nature of disability in the light

of the career or profession which he or she was pursuing in life. It should not be computed mechanically only on percentage of physical disability.

20. The personal sufferings of the survivors of the road accidents have been emphatically expressed by the Hon'ble Supreme Court of India in LAXMAN VS.DIVISIONAL MANAGER, ORIENTAL INSURANCE COMPANY (2012 A.C.J 191) and the same read as follow:-

“The personal sufferings of the survivors of the road accidents and those who are disabled in such accidents are manifold. Sometimes they can be measured in terms of money but most of the times it is not possible to do so. If an individual is permanently disabled in an accident, the cost of his medical treatment and care is likely to be very high. In cases involving total or partial disablement, the term compensation used in Section 166 of the Motor Vehicles Act, 1988 would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident]The petitioner in his petition has stated his age as 44 years and his occupation as barber running a barber shop in his own house and his monthly income Rs. 8000/-. So far as the age of the petitioner is concerned, the petitioner in his statement recorded in the first round on 18.07.2012 has stated his age as 48 years and in the second round of litigation, in his affidavit evidence, has stated his age as 53 years which corresponds to the age stated in petition. In fact there is no serious dispute raised by the respondents regarding the age of the petitioner, therefore, for the purpose of calculation of just compensation, his age is treated in the age range of 41 to 45 years at the time of accident to which a multiplier of 14 is applicable but having regard to the uncertainties of life it is reduced by 2 units and is treated as 12.”

21. As per the law laid down in Raj Kumar vs. Ajay Kumar and Another [[2011] SCC 343] compensation to petitioner is required to be assessed and paid under the following heads;--

Pecuniary damages (Special Damages)

- a) Annual income before the accident Rs. 72, 000/-.
- b) Loss of future earnings per annum (40% of the prior

annual income) = 28,800/-.

c) Multiplier applicable with reference to age: 7

d) Loss of future earnings: $(28,800 \times 7 = \text{Rs. } 2,01,600/=)$

E. Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure—

The petitioner has placed on record the medical bills reflecting the expenditure to the tune of Rs. 2,54,808/-. As per the medical record annexed with the petition, the petitioner has remained admitted in Government Medical College Hospital, Jammu from 23.12.2014 to 14.02.2015 which establishes that the petitioner has necessarily incurred expenditure on transportation during her hospitalization and during follow up visits besides other misc. expenditure including attendant charges, special diet etc. Therefore an amount of Rs 2, 75, 000/= -would be fair compensation under this head.

Non-pecuniary damages (General Damages)

Damages for pain, suffering and trauma as a consequence of the injuries. Rs.25,000/=

Disability----Loss of amenities and Loss of expectation of life (shortening of normal longevity). Rs.25, 000/=

Total Rs. $2,01,600 + 2, 75, 00 + 25,000 + 25,000 = 5,26, 600/-$ [Rupees Five lacs twenty six thousand six hundred only]

22. Accordingly an award for an amount of Rs. Rs. 5,26, 600/- [Rupees Five lacs twenty six thousand six hundred only] along with interest @ 7.5% per annum from the date of institution of this petition till realization of the award amount except under the head 'Loss of future earnings' is passed in favour of the petitioner and against the respondents, who shall be jointly and severally liable to satisfy the award within a period of 30 days from the date of receipt of copy of this award. The payment of court-fee shall first charge on the award amount. This petition is accordingly disposed of. Be consigned to records.

Announced
25-9-2019

[K.S. Parihar]
Presiding Officer
MACT, Jammu

RAJINDER SINGH
(P.A.)