IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-2920-2023 (O&M)

The Oriental Insurance Co. Ltd.

...Appellant

VERSUS

Anshul Bhan and others

...Respondents

(ii) XOBJC-93-2023

The Oriental Insurance Co. Ltd.

...Appellant

VERSUS

Anshul Bhan and others

...Respondents

Date of Decision: July 23, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Meenakshi Bali, Advocate
for the appellant.

Mr.Narender Kaajla, Advocate
for respondent No.1-cross objector.

Mr.Mukesh Pandit, Advocate
for respondents No.2 and 3.

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ARCHANA PURI, J.

The appeal has been filed by appellant-insurance company, thereby, assailing the Award dated 04.05.2023 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted to the

claimant-Anshul Bhan, on account of injuries sustained by him, in a motor vehicular accident.

Cross-objections have been filed by respondent No.1-claimant, for seeking enhancement of the compensation.

For the convenience of discussion, the parties are referred to, as making appearance before learned Tribunal.

The essential facts, pleaded by the claimant, are as follows:-

That, on 15.04.2022, at about 5.00-6.00 p.m., claimant Anshul Bhan alongwith his two friends, was coming from Morni, Panchkula to his house, while riding motorcycle bearing registration No.PB-70G-4249. When they reached 6 kms. prior to Morni T-point, an I-20 car bearing registration No.PB-53B-5315, driven by respondent-Abhishek, at a high speed and in rash and negligent manner, came from Morni T-point side and struck the motorcycle of the claimant, as a result whereof, all the three occupants of the motorcycle fell from the motorcycle and sustained injuries. Also, it was pleaded that claimant Anshul Bhan was initially taken to General Hospital, Sector-6, Panchkula, where from, he was taken to Alchemist Hospital, for his treatment. FIR No.179 dated 24.04.2022 was registered at Police Station Chandimandir under Sections 279 and 337 IPC. Claimant Anshul Bhan remained admitted w.e.f. 15.04.2022 to 18.04.2022 and was operated upon for fracture suffered by him, in the accident in question.

Also, further it was pleaded that he is a student and was preparing for joining Haryana Police/Defence services and temporarily joined Health Department under Saksham Policy in Haryana in March 2022 and was earning Rs.6000/- per month. However, on account of disability suffered,

his dream to join the defence services has been shattered.

In pursuance of the notice issued, the respondents made appearance and filed the respective replies.

Respondent No.1-Abhishek, in his separate written statement had denied taking place of the accident and involvement of his vehicle in the same. Respondent No.2-Harmandeep Singh, owner of the offending I-20 car was proceeded against ex-parte. Respondent No.3-insurance company also filed reply and denied the accident and all other averments, with regard to the age of the injured and his status of student and preparing for the defence services as well as injuries sustained in the accident in question.

From the pleading of the parties, following issues were framed:-

1. *Whether claimant Anshul Bhan son of Shri Bhim Singh received injuries in a roadside vehicular accident occurred on 15.04.2022 due to rash and negligent driving of offending i-20 Car bearing registration No.PB-53B-5315 by respondent No.1, as alleged? OPP*
2. *If issue No.1 is proved, whether the claimant is entitled to any compensation and if so, to what extent and from whom? OPP*
3. *Whether the offending vehicle is being plied with contravention of the terms and conditions of the insurance policy, as alleged? OPR-3.*
4. *Relief.*

Both the parties led evidence. On appraisal of the evidence, brought on record, it was concluded by learned Tribunal that the accident had taken place, due to rash and negligent driving of i-20 car, driven by respondent No.1 and the same resulted into injuries on the person of

claimant Anshul Bhan. While considering the disability and taking into consideration, various other counts, learned Tribunal had worked upon the compensation, as follows:-

Sr.No.	Head of compensation	Amount
1.	Medical expenses	Rs.1,84,900-00
2.	General expenses i.e. conveyance, special diet, attendant etc.	Rs.20,000-00
3.	Loss of earning during treatment	Rs.30,000-00
4.	Pain and sufferings	Rs.30,000-00
5.	Future loss of earning due to functional disability of 35%	Rs.7,56,000-00
	Total	**Rs.10,20,900-00**

Thus, learned Tribunal awarded compensation to the extent of Rs.10,20,900/-.

Being aggrieved, appellant-insurance company, has filed the present appeal, for setting aside the impugned Award, whereas, the respondent-claimant has filed the cross-objections, thereby, seeking enhancement of the compensation.

Learned counsel for the parties heard.

At the very outset, it is submitted by learned counsel for the appellant-insurance company that no such accident had taken place with the alleged i-20 car, driven by Abhishek and no injuries, as such, were sustained by Anshul Bhan, on account of the alleged accident. In fact, it is submitted that false version of the accident has been set up by the claimant, in collusion with driver and owner of the i-20 car. Furthermore, it is submitted that though Anshul Bhan himself stepped into witness box as PW-2, but however, while facing cross-examination, he has admitted about the accident to have taken place, due to his rash and negligent driving and therefore, it is submitted that claim petition is not maintainable, keeping in view this

conduct of the injured-claimant. As such, he made a prayer for acceptance of the appeal and setting aside the impugned order.

On the other hand, learned counsel for the respondents-claimants/cross-objectors, has refuted the claim of the appellant. In fact, it is submitted that compensation awarded by learned Tribunal is on lower side, which calls for enhancement. Thus, counsel made a prayer for enhancement of the compensation.

No doubt, for seeking compensation under Section 166 of the Motor Vehicles Act, rashness and negligence, ought to be proved by the person, who knocks the door of the Court. However, suffice to consider the testimony of Anshul Bhan injured, who has categorically deposed about the manner of taking place of the accident. This Court has carefully gone through the cross-examination of the said witness. Much emphasis has been laid upon the suggestion given to PW-2 Anshul Bhan, which reads as herein given:-

> *"It is wrong to suggest that no such accident as alleged took place with the Car, rather I myself was rash and negligent and driving the motorcycle without observing the traffic rules."*

In the light of the aforesaid suggestion, it is submitted that Anshul Bhan had admitted about the accident to have taken place, due to his rash and negligent driving.

However, learned Tribunal had correctly appraised and interpreted the said suggestion. Counsel for the insurance company is not reading the entire suggestion given. Rather, he is taking half of the sentence to assert that the witness admitted about their being rash and negligent

driving on his part. However, close perusal of the aforesaid suggestion reveals that it was a suggestion given that no such accident, as alleged, took place with the car and in the suggestion form only, further suggestion, in couched manner was given, rather, he himself was rash and negligent and driving the motorcycle without observing the traffic rules.

It is nowhere evident that half of the sentence, with regard to the rash and negligent and driving the motorcycle, without observing the traffic rules was stated by the claimant Anshul Bhan of his own. Only sense made out is that it was the suggestion coming forth, in a couched manner, which has been totally denied by the claimant. Besides the aforesaid suggestion, nothing as such, elicited out in his cross-examination to dislodge the version put forth by the claimant. In fact, the claimant has categorically imputed rashness and negligence, on the part of respondent No.1-Abhishek, while driving the offending car.

No doubt, FIR was got registered at the instance of father of the claimant, namely Bhim Singh, who stepped into witness box as PW-4 and the same was got recorded, after delay of 9 days, but however, this delay *ipso facto*, is not to be taken into consideration. One cannot lose sight of the fact that priority of the family, whose member had sustained such kind of injuries, is to firstly take care of the injured. No doubt, Bhim Singh is not an eye witness, but however, from the testimony of PW-5 Arun Kumar, Criminal Ahlmad, various documents relating to the FIR in question, have been proved. In fact, Abhishek was facing trial, at the relevant time and mechanical report as well as copy of the challan have been proved by the said witness. The MLR of the claimant has also been proved as Ex.P49.

Also, learned counsel for the appellant had raised plea of contributory negligence to be there, on the part of the claimant also, as they were three persons travelling on a motorcycle, at the relevant time and on this account, it is submitted that the entire negligence, as such, cannot be fastened upon the driver of the i-20 car, namely Abhishek. However, the aforesaid submission is not tenable.

It is pertinent to mention that in the reply filed, the accident has been denied by respondent No.1 in toto. Despite the same, he had not bothered to step into the witness box. Respondent No.1, in the capacity of being driver of the offending vehicle was the most important person, to rebut the version of accident, put forth by the claimant. However, he has not stepped into witness box to assert about there to be contributory negligence, on the part of the occupants of the ill-fated motorcycle also. Not only this, even the insurance company had denied the accident and has also not bothered to summon driver of the offending car, namely Abhishek, as a witness. It is pertinent to mention that when three persons are travelling on a motorcycle, they may be held guilty of traffic offence, but there is no reason or ground to make any inference regarding negligence, as contributory, by the only fact that three persons were going on a motorcycle. A finding of contributory negligence is not a matter of conjectural inference, but it has to be on the basis of specific evidence, which is given amiss in the case in hand. Moreover, there is nothing coming on record, about the driver of the motorcycle, to be not having any effective control over the motorcycle in question, at the relevant time. But, for the violation of law, while travelling of three persons, on a motorcycle, without anything more coming on record,

it cannot lead to a finding of contributory negligence, unless, it is established that this very act of the driver of the motorcycle, riding along with two other persons, contributed either to the accident or to the impact of the accident.

Precisely, while considering there to be total denial, on the part of driver of the offending car, who has also not stepped into witness box to explain or impute rashness and negligence, on the part of driver of the motorcycle, the contention raised, vis-a-vis, contributory negligence is hereby rejected.

The medical record of the claimant, qua his admission and treatment has also been proved on record. Ex.P1 is the discharge summary of Alchemist Hospital, relating to patient Anshul Bhan and from the same, it is evident that he was got admitted in the hospital on 15.04.2022 and was discharged on 18.04.2022. He was diagnosed to be a case of crush injury foot with comminuted fracture medial navicular with lispane fracture D/L with multiple tendon cut over the dorsum of foot with lacerated wound right foot. Open reduction internal fixation with K wires right done on 15.04.2022 by Dr.Sandeep Kumar Jindal. Repair AHL, EDC 3th, 4th & 5th with 1 repair of multiple lacerations by Dr.Varun Singla. At the time of discharge, follow up advise was given and he was also advised to undergo physiotherapy. Various bills relating to the admission and treatment undergone have also been proved in evidence.

In the given circumstances, considering the evidence in entirety, learned Tribunal had appropriately recorded findings on issue No.1, which calls for further intervention.

Even cross-objections have been filed for seeking enhancement.

The detail of the compensation awarded by learned Tribunal has been reproduced in the earlier portion of the judgment.

Throughout the arguments, much emphasis has been laid upon the doctor having not been examined. May it be so. It has to be kept in mind that the proceedings under the Motor Vehicles Act are summary proceedings and any evidence, coming on record, has to be appraised. There are ample documents, coming on record, with regard to the nature and kind of injuries sustained by the claimant and the period of his hospitalization stands amply established. This ought to be taken into consideration. But anyhow, the '**work on**' of the compensation, as detailed aforesaid, do call for re-determination.

At the very outset, it is required to be taken into consideration that time and again, the Courts have held that the compensation awarded by learned Tribunal, ought to be '**just**' compensation i.e. adequate compensation. Therefore, while the money awarded by Courts, can hardly redress the actual sufferings of the injured victim (who is deprived of the normal amenities of life and suffers the unease of being a burden on others), but the Courts can make a genuine attempt to help restore the self-dignity of such claimant, by awarding '**just compensation**'.

Suffice to make reference to the decision rendered by the Hon'ble Supreme Court in ***Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343***, wherein the Hon'ble Supreme Court brought out difference between personal disability and functional disability, resulting in the loss of earning capacity. It was laid down that compensation, on account of loss of earning capacity, has to be granted in accordance with the nature of job

undertaken by the victim of the motor vehicular accident. The test for determining the effect of permanent disability, on future earning capacity involves the three steps, as was laid down in ***Raj Kumar's case (supra)***, which was further reiterated in ***Chanappa Nagappa Muchalagoda vs. Divisional Manager, New India Insurance Company Limited, 2020 (1) SCC 796***.

Thus, it goes without saying that in matters of determination of compensation, the Tribunals/Courts are statutorily bound with the responsibility of fixing '**just**' compensation, which obviously suggest an application of fair and equitable principles and reasonable approach, on the part of Tribunals/Courts. However, the measures have to be applied proportionately, so that the compensation, cannot be equated to bonanza nor it should be a niggardly amount.

From the medical evidence, brought on record, it stands amply established that the claimant had crushed injury, for which he remained admitted in Alchemist Hospital from 15.04.2022 to 18.04.2022. He had undergone the procedure for Open reduction internal fixation with K wires and repair of multiple lacerations was also done. Besides the aforesaid, even medical bills have been proved and total amount of whereof is Rs.1,84,879/-, which has been appropriately rounded off by learned Tribunal as **Rs.1,84,900/-**.

Also, it is established that the claimant was 21 years old and he was a student. He was preparing for joining Haryana Police/Defence services and he had temporarily joined Health Department, Haryana under the Saksham Policy in Haryana in March 2022 and was earning Rs.6,000/-

per month. Also, it stands established that the claimant had applied for the post of Male Constable in Haryana Police and the admit card for the written examination has been proved as Ex.P24 and an application for Multi-Tasking (non-technical) staff and Havaldar (CBIC & CBN) examination 2021 is Ex.P25.

Therefore, these documents do establish the inclination, on the part of the claimant, to join the Police/Defence services. However, he had sustained injuries, which caused disability. Dr.K.K.Bansal, Senior Medical Officer, Civil Hospital was examined as PW-3, who was one of the members of the Medical Board. He proved the disability certificate Ex.PW3/A, which mentions about the detail of the injuries on the person of the claimant, which are as herein given:-

"(A) He is case of Locomotor Disability.

(B) The diagnosis in his case is operated case of fracture navicular and lisfranc dislocation of right foot with tendon injury with restriction of toe movement swelling at ankle present. Disability 25% in relation to right lower limb.

(C) He has 25% permanent disability in relation to his foot knee as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person included under RpwD Act, 2016 notified by Government of India vide S.O. 76(E) dated 04.01.2018)."

Considering the seat of injuries and also considering impact of the same, more particularly, while considering the inclination, on the part of the claimant, to join Police/Defence services, the functional disability, as such, has been appropriately considered by learned Tribunal as 35%.

The notional earnings of the claimant, on the basis of the Notification issued by the Haryana Government, prevalent at the relevant time, has been taken at the minimum tier as Rs.10,000/-, which is appropriate amount. However, future prospects ought to be taken into consideration. Considering the age of the claimant, it has to be to the extent of 40%. Thus, the earnings of the injured-claimant comes to be Rs.10000+4000(40%)=Rs.14,000/-, annual whereof, comes to be Rs.1,68,000/-. The appropriate multiplier to be applied is '18' and also multiplying the same with 35% of disability and dividing the same by 100, as per standard multiplier process, on account of the same, the loss is assessed as **Rs.1,68,000x18x35/100=Rs.10,58,400/-**.

Besides the aforesaid, learned Tribunal had awarded Rs.30,000/- as compensation for the period of three months, soon after the accident, thereby, taking into consideration the inability, on the part of the claimant, not to follow his pursuit. However, the period of three months is on lesser side. Taking into consideration the kind of treatment undergone by the claimant, definitely, the rest required, at least for a period of six months and thus, the loss of income worked upon, comes to be **Rs.60,000/-**.

Consolidated amount has been granted to the extent of Rs.20,000/- on account of special diet, conveyance, attendant charges. However, this amount also calls for enhancement. Taking into consideration all the three counts, amount awarded by learned Tribunal is enhanced from Rs.20,000/- to **Rs.40,000/-**. On the count of 'pain and suffering', learned Tribunal has appropriately granted **Rs.30,000/-**.

Considering the same, the compensation payable to claimant-

Anshul Bhan, is re-computed, as herein given:-

1.	**Medical Bills**	**Rs.1,84,900/-**
2.	**Disability**	**Rs.10,58,400/-**
3.	**Loss of earning**	**Rs.60,000/-**
4.	**Conveyance, special diet and attendant charges**	**Rs.40,000/-**
6.	**Pain and suffering**	**Rs.30,000/-**
Total		**Rs.13,73,300/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.13,73,300-10,20,900=Rs.3,52,400/-**. On the enhanced amount of the compensation i.e. **Rs.3,52,400/-**, the claimant shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the cross-objections, till realization of the enhanced amount of compensation.

The impugned Award dated 04.05.2023 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, the appeal filed by appellant-insurance company stands dismissed, whereas, the cross-objections filed by the respondent No.1-claimant stands allowed.

July 23, 2025 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**