

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 4839 of 2002

Date of decision : September 29, 2015

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Rajbir

.....Appellant

Versus

Som Nath and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Ms. Monica Arora, Advocate for
Mr. Pritam Saini, Advocate for the appellant.

None for respondent no.1.

Mr. Rohit Goswami, Advocate for
Mr. Suvir Dewan, Advocate for respondent no.2.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The present appeal has been filed by Rajbir, appellant-claimant seeking enhancement of compensation amount awarded by the Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal') vide award dated 25.7.2002 on account of injuries received by him in a vehicular accident which took place on 14.11.1999.

FACTS NOT IN DISPUTE

On 14.11.1999 at about 9:00 a.m, Karambir alias Karma

Hari Chand, Ram Phal, Titu, Rajbir and Dharambir Singh were standing on the main road of Village Atawala and were waiting for some conveyance. In the meanwhile, a TATA vehicle bearing registration no. HR-45-3591 being driven in a rash and negligent manner came there. Driver of the said vehicle lost control over the vehicle and consequently it was turned turtle upon the passengers standing by the roadside. In the said accident Karambir alias Karma, Ram Phal, Titu had died, whereas Hari Chand, Rajbir and Dharambir had suffered injuries. The driver of the vehicle himself died in the accident. In this regard, FIR No.283 dated 14.11.1999 under Sections 279 and 304-A of Indian Penal Code was lodged at Police Station, Madlauda.

COMPENSATION ASSESSED BY THE MACT

On account of injuries suffered by him in the accident, appellant-claimant Rajbir filed claim petition under Sections 166 and 140 of the Motor Vehicles Act, 1988. The Tribunal returned a finding in favour of the claimant that the accident in question took place due to the rash and negligent driving of TATA 709 vehicle bearing registration no. HR-45-3591 by its driver. This finding was based on the deposition PW-5 Hari Chand, PW-6 Dharambir and PW-9 Rajbir all injured. They were subjected to lengthy cross-examination. Moreover, their testimonies were coupled with the close chain of events like immediate lodging of the first information report and reports of post mortem examination on the dead bodies of Kailash Ex. P.1, Ram Phal Ex. P-3. In the accident in question, appellant-

claimant Rajbir had suffered grievous injuries including fracture and was permanently disabled. He had sustained injuries on his leg, left arm including fracture on his hip joint and other parts of the body. He was treated by the doctors at Civil Hospital, Panipat. Dr. Pankaj Aggarwal of Civil Hospital, Panipat who appeared as PW-8 has proved the disability certificate Ex. PW8/A and medical bills amounting to Rs. 6500/-. As per the disability certificate Ex.PW8/A, claimant had suffered disability to the extent of 60% with regard to left lower limb and 20% with regard to fracture of bones of left fore arm with restriction of movement and weakness of forearm. Total disability was 80% and a total compensation of Rs.1,00,000/- was awarded to the claimant-appellant by the Tribunal.

REASSESSED COMPENSATION

Feeling dissatisfied with the impugned award, the injured claimant-appellant came up in this appeal.

I have heard the learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. A reference can be made to the judgment of Hon'ble the Supreme Court of India in the case of **V. Mekala vs. M. Malathi and another 2014 (6) JT 212**, wherein bones of both the legs of victim were fractured and victim required crutches for life to walk. Victim was a brilliant student and her notional income was assessed at Rs.10,000 per month for computation of just and reasonable compensation under the head of loss of income. Claimant was also held entitled to 50% increase

towards future prospects of income. Total amount of compensation under the head 'loss of income' by applying the multiplier of 18 was calculated as Rs.22,68,000/- [Rs.10,000/- x 70/100 + 10000 x 70/100 x 50/100) x12 x18]. An amount of Rs.2,00,000 was awarded on account of 'pain and suffering'. An amount of Rs. 2,00,000 was awarded under the head 'loss of amenities and attendant charges'. An amount of Rs.3,00,000/- was awarded under the head of 'Loss of enjoyment of life and marriage prospects'. Further an amount of Rs.50,000/- was awarded for the purchase of crutches periodically.

In the case of **Kavita vs. Deepak and others, 2012 (4) RCR (Civil) 273**, Victim suffered 100% permanent disability. She lost her capacity for hearing, understanding, speaking and establishing interaction. The victim required an attendant at all times and continued physiotherapy. Victim was 30 years of age earning Rs.2000/- p.m. Multiplier of 17 was applied. She was also awarded Rs.2000 per month as attendant charges for 25 years. Victim was awarded compensation of Rs.34,38,747/-.

In the present case, there is no evidence with regard to the income of the claimant Rajbir, the accident took place on 14.11.1999. The income of daily wager be attributed to the claimant as Rs.3000/- per month. It is not in dispute that as per the disability certificate Ex. PW8/A, he has suffered disability to the extent of 60% with regard to left lower limb and 20% with regard to fracture of bones of left fore arm with restriction of movement and weakness of forearm. Total disability was 80%.

By applying the ratio laid down in the case of **V. Mekala's case (supra) and Kavita's case (supra)**, compensation is hereby reassessed as under:

HEAD	COMPENSATION
Annual income (Rs.3000x12)	Rs.36000
Future prospects (50%)	Rs.36000+Rs.18,000=Rs.54,000/-
Loss of future earnings on account of permanent disability of 80%	Rs.43,200 x 18= Rs.7,77,600/-
Pain and sufferings	Rs.2,00,000/-
Loss of amenities and attendant charges	Rs.2,00,000/-
Loss of enjoyment of life and marriage prospects	Rs.3,00,000/-
TOTA COMPENSATION AWARDED	Rs.14,77,600/-
ENHANCED AMOUNT OF COMPENSATION	(Rs.14,77,600/-)-(Rs.1,00,000/-)=Rs.13,77,600/-

The enhanced amount of compensation of Rs.13,77,600/- shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539.*** Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

September 29, 2015
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(RITU BAHRI)
JUDGE