

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1148 of 1997

Date of Decision: 02.09.2015

Barender Pal Singh

.....Appellant

Vs.

Pritam Singh and Others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Jagjit Singh, Advocate for the appellant.

Mr.Lalit Garg, Advocate for the respondent/Insurance Company.

RITU BAHRI, J.

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Kapurthala (hereinafter referred to as 'the Tribunal') vide award dated 31.03.1997 on account of injury suffered by him in an accident.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 30.08.1993, injured-Captain Barender Pal Singh was coming from a new house under the construction towards his old house on his motorcycle No.HM12-D-2126 at about 6:00 p.m. on Jalandhar-Kapurthala road. He alleged that on truck having registration No.PBK-5194 owned by M/s S.P.K. and Company and driven by Pritam Singh came from opposite direction at very high speed and struck him without giving any horn and he had brought the truck to the wrong side and the petitioner could not save himself. He has also alleged that truck driver had dragged him alongwith the motor cycle about 20ft. The truck driver had only stopped the truck after alarm raised by Dharam Veer Singh and Surjit Singh. The complainant alleged that he was taken out from under the truck and he suffered serious injuries and fractures

Kapurthala and later on he was removed to Military Hospital, Jalandhar Cantt.

COMPENSATION ASSESSED BY THE MACT

In this accident, injured-appellant suffered 50% permanent disability of the left leg and reduction of joint space and injury on the spine. As such, the claim amount was fixed in such a way as to give the return of sufficient income to him equal to the pay drawn by him according to Certificate Ex.A4. The total compensation assessed by learned Tribunal is as under:-

Sr.No.	Heads of claim	Amount
1	Loss of income	Rs.8,00,000/-
2	Medical and other allied expenditure	Rs.1,00,000/-
3	Loss of amenities and comforts of life	Rs.1,00,000/-
4	Pain and suffering	Rs.1,00,000/-
5	Loss of future prospects and promotion and loss of prospectus of marriage	Rs.1,00,000/-
	Total	Rs.12,00,000/-

Feeling dissatisfied with the impugned award, the claimant-appellant have preferred the present appeal.

REASSESSED COMPENSATION

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

As far as 50% disability is concerned, reference has been made to a judgment passed by the Delhi High Court in a case of **Angad Kumar Vs. Gopal Bahadur and others, 2014 AAC 2353** wherein the claimant was aged 19 years and was working as a labourer, suffered 80% disability due to accident. His monthly salary was assessed at Rs.3953/- applicable to unskilled worker. He suffered loss of amenities of life and his face also disfigured. Chances of his getting employment became minimal. Award of Rs.20,000/- towards pain and

suffering enhanced to Rs.50,000/-, Rs.30,000/- towards loss of amenities enhanced to Rs.50,000/-, Rs.80,000/- towards loss of disfigurement and marriage prospect enhanced to Rs.1,00,000/-. Compensation of 50% towards future prospects also granted and total amount of compensation was enhanced from Rs.7,37,563/- to Rs.10,63,782/-. In para 12 it has been observed as under:-

“12. Admittedly, the appellant suffered injury at the young age, which has made him disable and he is not able to do the labour work. In the present era even a healthy person is unable get employment and the person, who is with disability of 80% which pertains to his left lower limb has very minimal chances of getting employment and that too on a very meagre salary. Due to the injury, he has suffered loss and amenities of life. It is established that he has become disabled, disfigured and thus marriage prospects has also drastically reduced.”

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 **Syed Sadiq etc. vs. Divisional Manager, United India Ins. Co. 2014(1) RCR (Civil) 765**, where the accident victim was aged 24 years and was vegetable vendor. It was held that a vegetable vendor is reasonably capable of earning Rs.6500/- per month with 50% increment in the future prospect of income. Multiplier of 18 was applied for calculating the amount of compensation.

Reference at this stage can also be made to a judgment of Hon'ble the Supreme Court of India in a case of **Govind Yadav vs. The New India Insurance Co. Ltd., 2011 (4) RCR (Civil) 817** wherein a claimant who was working as a helper met with an accident and his leg was amputated resulting in 70% permanent disability. Since , he could not prove his salary, his salary was taken at Rs.3000 per month and his notional annual income comes to Rs.36,000/- and loss or earning

on account of 70% permanent disability came at Rs. 25,200/- per annum and multiplier of 18 was applied. Further Rs. 2 Lacs was awarded towards future treatment and Rs. 1.50 lacs towards pain and suffering and trauma and further Rs.1.50 Lacs towards loss of amenities. In para 17, 18, 19 and 20 of the judgment, it has been observed as under:-

17. A brief recapitulation of the facts shows that in the petition filed by him for award of compensation, the appellant had pleaded that at the time of accident he was working as Helper and was getting salary of Rs.4,000/- per month. The Tribunal discarded his claim on the premise that no evidence was produced by him to prove the factum of employment and payment of salary by the employer. The Tribunal then proceeded to determine the amount of compensation in lieu of loss of earning by assuming the appellant's income to be Rs.15,000/- per annum. On his part, the learned Single Judge of the High Court assumed that while working as a Cleaner, the appellant may have been earning Rs.2,000/- per month and accordingly assessed the compensation under the first head. Unfortunately, both the Tribunal and the High Court overlooked that at the relevant time minimum wages payable to a worker were Rs.3,000/- per month. Therefore, in the absence of other cogent evidence, the Tribunal and the High Court should have determined the amount of compensation in lieu of loss of earning by taking the appellant's notional annual income as Rs.36,000/- and the loss of earning on account of 70%

permanent disability as Rs.25,200/- per annum.

The application of multiplier of 17 by the Tribunal, which was approved by the High Court will have to be treated as erroneous in view of the judgment in [Sarla Verma v. Delhi Transport Corporation](#) (2009) 6 SCC 121. In para 42 of that judgment, the Court has indicated that if the age of the victim of an accident is 24 years, then the appropriate multiplier would be 18. By applying that multiplier, we hold that the compensation payable to the appellant in lieu of the loss of earning would be Rs.4,53,600/-.

18. The award made by the Tribunal for future medical expenses was wholly inadequate. In [Nagappa v. Gurudayal Singh](#) (2003) 2 SCC 274, this Court considered whether it was permissible to award compensation in installments or recurring compensation to meet the future medical expenses of the victim. After noticing the judgment of M. Jagannadha Rao, J. (as he then was) in [P. Satyanarayana v. I. Babu Rajendra Prasad](#) 1988 ACJ 88 (AP), the judgment of the Division Bench of the Kerala High Court in [Valiyakathodi Mohd. Koya v. Ayyappankadu Ramamoorthi Mohan](#) 1991 ACJ 140 (Kerala), this Court observed:

"In this view of the matter, in our view, it would be difficult to hold that for future medical expenses which are required to be incurred by a victim, fresh award could be passed. However, for such medical treatment,

the court has to arrive at a reasonable estimate on the basis of the evidence brought on record. In the present case, it has been pointed out that for replacing the artificial leg every two to three years, the appellant would be required to have some sort of operation and also change the artificial leg. At that time, the estimated expenses for this were Rs 18,000 and the High Court has awarded the said amount. For change of the artificial leg every two or three years no compensation is awarded. Considering this aspect, if Rs one lakh is awarded as an additional compensation, the appellant would be in a position to meet the said expenses from the interest of the said amount." After the aforesaid judgment, the cost of living as also the cost of artificial limbs and expenses likely to be incurred for periodical replacement of such limb has substantially increased. Therefore, it will be just and proper to award a sum of Rs.2,00,000/- to the appellant for future treatment. If this amount is deposited in fixed deposit, the interest accruing on it will take care of the cost of artificial limb, fees of the doctor and other ancillary expenses.

19.The compensation awarded by the Tribunal for pain, suffering and trauma caused due to the amputation of leg was meager. It is not in dispute that the appellant had remained in the hospital for a period of over three months. It is not possible for the Tribunals and the

Courts to make a precise assessment of the pain and trauma suffered by a person whose limb is amputated as a result of accident. Even if the victim of accident gets artificial limb, he will suffer from different kinds of handicaps and social stigma throughout his life. Therefore, in all such cases, the Tribunals and the Courts should make a broad guess for the purpose of fixing the amount of compensation. Admittedly, at the time of accident, the appellant was a young man of 24 years. For the remaining life, he will suffer the trauma of not being able to do his normal work. Therefore, we feel that ends of justice will be met by awarding him a sum of Rs.1,50,000/- in lieu of pain, suffering and trauma caused due to the amputation of leg.

20. The compensation awarded by the Tribunal for the loss of amenities was also meager. It can only be a matter of imagination as to how the appellant will have to live for the rest of life with one artificial leg. The appellant can be expected to live for at least 50 years. During this period he will not be able to live like normal human being and will not be able to enjoy the life. The prospects of his marriage have considerably reduced. Therefore, it would be just and reasonable to award him a sum of Rs.1,50,000/- for the loss of amenities and enjoyment of life.

The fact of accident is admitted and proved. The injury suffered by the

appellant as a result of the accident. Accordingly, the compensation is re-assessed as under:-

<i>Sr.No.</i>	<i>HEADS</i>	<i>CALCULATION</i>
1	Income	Rs.6264/-
2	50% of (i) added for future prospect	(Rs.6264+ Rs.3132-)/=Rs. Rs.9396/-
3	Loss of Income	Rs.9396/- X 12 X 17=Rs.19,16,784/-
4	Pain and suffering	Rs.1,50,000/-
5	Loss of amenities	Rs.1,50,000/-
6	Medical expenses	Rs.1,00,000/-
7	Loss of future prospects of promotion	Rs.1,00,000/-
8	Special diet, transportation and attendant charges	Rs. 50,000/-
9	Total	Rs.24,66,784/-
	Enhanced amount of compensation	(Rs.24,66,784/-) - (Rs.12,00,000/-)= Rs.12, 66,784/-

The enhanced amount of compensation of Rs.12,66,784/- 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 the 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 is partly allowed.

(RITU BAHRI)
JUDGE

02.09.2015
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