

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

FAO No.333 of 2001 (O&M)

Date of decision: 04.12.2015

Vijay Kumar Malhotra

.....Appellant

Versus

Yunus Masih and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Meenakshi Poswal, Advocate,
for Mr. R.S. Mamli, Advocate,
for the appellant.

None for respondent No.2.

Mr. Neeraj Khanna, Advocate,
for respondent No.3-Insurance Company.

Ritu Bahri, J.

Respondent No.1 was the driver of offending truck. On the last date of hearing, learned counsel for the appellant had sought time to file correct address of respondent No.1.

Even today, learned counsel for the appellant has informed that he has not been able to get the fresh address of respondent No.1. He prayed that since he was an employee of respondent No.2, his services may be dispensed with as they both were represented by one and the same counsel before the Tribunal.

In this view of the matter, service of respondent No.1 is dispensed with in the absence of correct address.

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal,

Jagadhri (hereinafter referred to as 'the Tribunal') vide award dated

14.12.1999 on account of injuries suffered by him in a vehicular accident, which had taken place on 07.10.1997.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 07.10.1997, the appellant was coming towards ITI Chowk from the side of Bus Stand, Yamuna Nagar on a scooter bearing registration No.HP-02-C-0691. When he reached near the ITI Chowk, a truck bearing registration No.HR-01-GA-0967 being driven by Yunus Masih-respondent No.1 in a rash and negligent manner came from Jagadhri side and struck against the scooter of claimant-appellant, as a result of which, claimant suffered multiple grievous injuries on his body. He was taken to Gaba Hospital, Yamuna-Nagar, from where he was referred to PGI, Chandigarh. However, he was taken to Christian Medical College, Ludhiana, where he remained admitted. Operation of his right leg was conducted, but the same could not be cured and ultimately, on 08.01.1997, his right leg was amputated above the knee, due to which, he became permanently disabled. Scooter of the claimant was also badly damaged. With regard to the accident, FIR No.656 dated 07.10.1997, under Sections 279/336/337 IPC was registered at Police Station, City, Yamuna Nagar. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal has returned a finding on issue Nos.1 and 3 that the accident had taken place on account of rash and negligent driving of offending vehicle by Yunus Masih-respondent No.1. This finding is rightly based on the deposition of Vijay Kumar Malhotra-claimant (PW-5). In his deposition, this witness has

corroborated the version given in the FIR (Ex.P4). After registration of FIR, driver-respondent No.1 was facing trial. His original driving licence was proved on record as Ex.P3. Ultimately, the claim petition was allowed and the compensation had been assessed as under:-

1. For medical expenses and for repair of scooter : Rs.50,000/-
2. For permanent disability of 80% : Rs.1,60,000/-
3. For Transportation : Rs.5,000/-
4. For pain and sufferings, general damages, special diet, mental agony etc. : Rs.20,000/-
5. Loss of earning : Rs.40,000/-

Thus, the claimant-appellant was awarded compensation to the tune of Rs.2,75,000/-.

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

REASSESSED COMPENSATION

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

The fact of accident is admitted and proved. It stands established that the claimant-appellant has received injuries as a result of the accident.

The claimant-appellant was an employee of the Irrigation Department and was 46 years of age at the time of accident. He has suffered 80% disability on account of amputation of right leg. Dr. Deepak Jain, M.O. G.H. (PW-1), deposed that he was the member of the Board constituted by Civil Surgeon, Yamuna Nagar. He had examined Vijay Malhotra-appellant,

aged 46 years, for assessing of his handicap. His percentage of handicap

was found to be 80% due to right mid thigh amputation. Certificate in this regard was proved on record as Ex.P1. Shiv Charan, Clerk (PW-3) proved the salary certificate injured-Vijay Malhotra as Ex.P2, according to which, he was drawing Rs.8024/- per month. Once, the disability of the injured-claimant stood proved, the compensation is required to be re-assessed. Reference at this stage, can be made to a judgment passed by the Hon'ble Supreme Court in **Sanjay Kumar Vs. Ashok Kumar and another**, 2014 (1) RCR (Civil) 875, wherein it has been observed as under:-

10. Further, in the case of [Raj Kumar v. Ajay Kumar & Anr.](#)[3], this Court has succinctly explained the guidelines and heads for awarding compensation in cases of disability due to a motor accident. The relevant paragraphs are extracted below:

“6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only

under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under Item (i) and under Item (ii) (a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses—Item

(iii)—depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages—Items (iv), (v) and (vi)—involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability—Item (ii)(a).”

In view of the aforesaid citation of the Hon'ble Supreme Court, the compensation is re-assessed as under:-

SR. No.	HEADS	CALCULATION
(i)	For medical expenses and repair of scooter	Rs.50,000/-
(ii)	For permanent disability, mental pain and sufferings	Rs.1,50,000/-
(iii)	Loss of amenities	Rs.1,00,000/-
(iv)	Special Diet and attendant charges	Rs.75,000/-
(v)	Costs of litigation	Rs. 25,000/-
(vi)	Future medical expenses	Rs.75,000/-
(iv)	TOTAL COMPENSATION AWARDED	Rs.4,75,000/-
	Enhanced amount of compensation	Rs.4,75,000 – 2,75,000/- = Rs.2,00,000/-

The enhanced amount of compensation of **Rs.2,00,000/-** 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 appeal is partly allowed.

04.12.2015
ajp

(RITU BAHRI)
JUDGE