IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2544 of 2004 (O&M)
Date of Decision: February 26, 2015

Nasib Kaur

..Appellant(s)

Versus

Sukhdev Singh & others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. I.P.S. Bains, Advocate
for the appellant.

Mr. Abhishek Goyal, Advocate
for Mr. Pardeep Goyal, Advocate
for respondent no.3.

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ANITA CHAUDHRY, J.

CM No.10038-CII of 2004

For the reasons set out in the application which is supported by an affidavit, same is allowed and delay of 5 days in filing the appeal is condoned.

FAO No.2544 of 2004

1. This is the claimant's appeal seeking enhancement of the compensation allowed to her by the Motor Accident Claims Tribunal Rupnagar (here-in-after referred to as the Tribunal). The claimant had suffered disability in an accident which occurred on 14.07.1997.

2. The submission made on behalf of the appellant is that the income was taken on the lower side and lump sum amount was awarded for permanent disability which was 60% and the amount be increased. It was urged that the claimant had remained in the hospital for about 15 days and there was loss of income for the period she could not work and the claimant was entitled for compensation for the economic loss. It was urged that no amount for loss of future amenities and discomfort has been allowed. Reliance was placed upon ***Mohan Soni Vs. Ram Avtar Tomar and others 2012 ACJ 583, G. Dhanasekar Vs. M.D., Metropolitan Transport Corporation Limited 2014(1) RCR (Civil) 993 and Ramachandrappa Vs. Manager, Royal Sundaram Alliance Insurance Company Ltd. 2011 ACJ 2436***.

3. Supporting the judgment, the counsel for the respondent no.3-insurance company had urged that claimant was 60 years old when she met with an accident and the plea was that she was running a dairy and was earning Rs.5,000/- per month but as no evidence was led, the Tribunal had taken the annual income at Rs.15,000/- and had allowed Rs.60,000/- for the disability and had awarded adequate compensation which by no means was less compared to the income of the year 1997. It was urged that there was no amputation and the disability assessed by the Medical Officer was of the one limb and the functional disability would have been much lesser.

4. The claimant's plea was that she was running a dairy farm but failed to lead any evidence. The claimant did not disclose the avocation of her husband. It would have given some idea of the income group she belonged to. The Medical Officer had assessed the disability of the appellant at 60% of a limb. There was no amputation.

5. The appellant had referred to two judgments. Both of them are not applicable as the case is to be tested on the basis of its individual facts.

6. Compensation is based upon the loss of the claimant's earnings or earning capacity. The Tribunal has to award compensation not measured by nature, location or degree of the injury but rather by the accident or degree of the incapacity resulting from the injury. The term disability as used ordinarily means loss or impairment of earning power. The compensation is calculated if the physical efficiency because of the injury has been substantially impaired or if he/she is unable to perform the same work with ease as he/she was able to do previous to the injury.

7. The Hon'ble Apex Court in ***Raj Kumar Vs. Ajay Kumar 2011(1) SCC 343*** had detailed out how the amount to be awarded in cases of disabilities is to be calculated. It was observed that where a person suffers permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent

disability on his earning capacity and the Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity and it is the functional disability which had to be considered for calculating the compensation.

8. Returning to the present case, the claimant was 60 years old and there was a shortening of the leg by three inches. The claimant had failed to lead evidence to show that she was running a dairy. The husband had taken the notional income of Rs.15,000/- per annum. Even if the minimum wages in the year 1997 are taken into account, the same were not more than Rs.1,500/- per month that year. The annual income would not be more than Rs.18,000/-. The functional disability would not be more than 30% and the annual loss would be Rs.5,400/- and if multiplier of 9 is applied considering the age, the loss would be less than what was allowed by the Tribunal, therefore, no increase can be given.

9. The counsel for the respondent-incurance company also pointed out that the Tribunal had calculated the total incorrectly and had awarded Rs.91,000/- but total amount added would come to Rs.88,000/-.

10. I find that there is mis-calculation. The total comes to Rs.88,000/-. Instead of decreasing the amount, Rs.3,000/- can be added on the head of special diet.

11. I find that no amount had been awarded for pain & suffering and loss of income for the period of treatment, I would add Rs.1500/- X 3 = Rs.4,500/- and Rs.10,000/- for pain and suffering; raising the additional compensation to Rs.14,500/-. This amount shall be paid within two months, failing which the appellant would be entitled to interest @ 6% from the date of filing of appeal till realization.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

February 26, 2015
sunil