

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

**FAO No.2739 of 2004 (O&M)
Date of decision: 21.12.2015**

Roshan Lal @ Roshan Singh

....Appellant

Versus

Dharamvir Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sanjay Gupta, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate
for respondent No.3.

RITU BAHRI J. (Oral)

For the grounds mentioned in the application, the same is allowed and the delay of 01 day in filing the appeal stands condoned.

MAIN CASE

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as 'the Tribunal') vide award dated 13.10.2003, on account of injuries sustained by him in a motor vehicular accident which took place on 23.02.1998.

FACTS NOT IN DISPUTE

On 23.02.1998, Roshan Lal @ Roshan Singh along with

Avtar Singh was going from Sajawalpur to Hoshiarpur on his scooter bearing No.PBR-5939 for his personal work. When at about 02:30 p.m., they reached near Garhshanker and were going on G.T. Road, then from the side of Garhshanker, a maruti car bearing No.DL1C-B-2517, came which was being driven by respondent No.1 rashly and negligently and at a high speed. It struck against the scooter of the claimant-appellant. Due to said impact, the claimant-appellant received multiple grievous injuries on his head, left leg, waist and his backbone was got fractured. He was removed to Civil Hospital, Nawan Shehar, where he was getting treatment.

In this regard, First Information Report Ex.P-1, in respect of the accident in question, was got registered.

Consequently, the claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

Before the Tribunal, the claimant-appellant appeared as PW-1 to prove the accident in question. PW-2-Chaman Lal has also corroborated the version of PW-1. The claimant-appellant has also produced on record, the copy of FIR Ex.P-1, Disability Certificate Ex.P-2 and cash memos Ex.P-3 to Ex.P-254.

Neither the driver of the offending vehicle nor any other person claiming to have witnessed the accident appeared in the witness-box to rebut the statements of PW-1 and PW-2 and the

Tribunal has returned the finding on Issue No.1 in favour of the claimant-appellant.

Ultimately, on the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident was caused on account of rash and negligent driving by respondent No.1.

The claim petition was accepted by the Tribunal and a sum of Rs.1,78,800/- was awarded as compensation on account of injuries sustained by the claimant-appellant along with future interest @ 9% per annum from the date of filling the petition till actual realization.

The Tribunal has awarded the amount of compensation under various heads. The same reads as under :-

SR. NO.	HEADS	CALCULATIONS
1.	Annual Income (Rs.2,100 x 12)	Rs.25,200/-
2.	Compensation after multiplier of 10	Rs.2,52,000/-
3.	Loss of future earnings after deducting 50% disability	Rs.1,26,000/-
4.	Expenses on medicines, etc.	Rs.29,600/-
5.	Transportation charges	Rs.2,000/-
6.	Special diet	Rs.2,000/-
7.	Attendant charges	Rs.4,000/-
8.	Loss of enjoyment and amenities of life and pain and sufferings	Rs.15,000/-
9.	Total	Rs.1,78,800/-

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

REASSESSED COMPENSATION

The learned counsel for the claimant-appellant contends that the compensation awarded by the learned Tribunal is on the

lower side and deserves to be enhanced, as per the judgment of Hon'ble the Supreme Court of India in **“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 36000/- and loss of 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.”

On the other hand, the learned counsel for the respondent-Insurance Company has vehemently opposed the present appeal. He has further submitted that he is not disputing the permanent disability to the extent of 60% suffered by the claimant-appellant in the aforesaid accident.

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 sustained injuries as a result of the accident.

While assessing the compensation the Tribunal has rightly awarded the amount of Rs.29,600/- on account of medical expenses incurred by the claimant-appellant. Thus, this finding does not call for any interference by this Court.

However, keeping in view the fact that the accident took place in the year 1998, the amount of compensation in respect of pain and sufferings, special diet, transportation and attendant charges are being re-assessed/modified as under:-

SR. NO.	HEADS	CALCULATIONS
1.	Salary	Rs.2,100/- per month
2.	Annual salary	Rs.25,200/-
3.	Loss of earning on account of 60% disability	Rs.15,120/-
4.	Compensation after multiplier of 18	Rs.2,72,160/-
5.	Pain and sufferings and loss of amenities	Rs.75,000/-
6.	Medical treatment	Rs.29,600/-
7.	TOTAL COMPENSATION TO BE AWARDED	Rs.3,76,760/-
8.	Enhanced amount of compensation	(Rs. 3,76,760/-) – (Rs.1,78,800/-) =Rs.1,97,960/-

The enhanced amount of compensation of **Rs.1,97,960/-** 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.

(RITU BAHRI)
JUDGE

21.12.2015

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