

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

FAO No.4894 of 2004 (O&M)

Date of decision: 19.11.2015

Jona @ Jonas

....Appellant

Versus

Ram Avtar and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. A.K. Goel, Advocate
for the appellant.

Mr. Ravinder Arora, Advocate
and Mr. Neeraj Khanna, Advocate
for respondent No.4.

RITU BAHRI J. (Oral)

For the grounds mentioned in the applications, the same are allowed and the delay of 25 days in filing the appeal and 40 days in re-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, Bhiwani (hereinafter referred to as 'the Tribunal') vide award dated 12.03.2004, on account of injuries sustained by Jona @ Jonas, in a motor vehicular accident which took place on 27.04.1999.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 27.04.1999, Jona @ Jonas along with his father after extracting wheat crop was going on foot to his house on Ranila road in the area of village Sanjarwas, when the offending tractor bearing No.HR-19-7712 being driven rashly, negligently and at a high speed came from Ranila side and hit the claimant-appellant. As a result of the said impact, the claimant-appellant fell down and received multiple grievous injuries and was removed to General Hospital, Bhiwani.

In this regard, FIR No.40 dated 27.04.1999, under Sections 279 and 337 IPC, in respect of the accident in question, was got registered at Police Station Bound Kalan at the instance of Ramesh Chander (father of the claimant-appellant).

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-3 and also examined his father, namely, Ramesh Chander, as PW-4 who tendered his affidavit Ex.PW-4/A, to prove the accident in question.

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.82,000/- was awarded as compensation on account of injuries sustained by Jona @ Jonas 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.	Compensation on account of 36% disability after applying the multiplier of 15 (Rs.400 x 12 x 15)	Rs.72,000/-
2.	Special diet	Rs.5,000/-
3.	Pain and sufferings	Rs.5,000/-
4.	Total	Rs.82,000/-

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

REASSESSED COMPENSATION

Learned counsel for the appellant has referred to the Disability Certificate (Ex. P-6), which reads as under:-

“It is an old case of fracture lateral condyle with K. wise fixation, elbow joint malunited. Clinically deformity (L) elbow seen along with several restricted movements of (L) elbow along with working of muscular-ness of forearm and hand.

Permanent Disability is 36% (Thirty-six percentage).”

Learned counsel for the appellant further states that the claimant-appellant while appearing as PW-3 has stated that his left hand become permanent disable. Learned counsel for the appellant placed reliance on *“Master Mallikarjun vs Divisional Manager,*

The National Insurance Company Limited and another”, 2013

(4) RCR (Civil) 295.

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.

The Hon'ble Supreme Court in *Master Mallikarjun's case (supra)* has laid down a criteria for making the payment in case of permanent disability suffered by the children in motor accident cases. In that case, the surgeon had assessed the disability to the extent of 34% of right lower limb and 18% to the whole body and the Hon'ble Supreme Court has awarded the compensation of Rs.3,00,000/- in respect of pain and suffering, mental and physical shock, hardship, inconvenience and discomforts, etc.

In the present case as well, the surgeon has assessed the permanent disability of the claimant-appellant at 36% *qua* left hand and hence, as per the criteria laid down by Hon'ble Supreme Court, the compensation is being re-assessed/modified as under:-

SR. NO.	HEADS	CALCULATIONS
1.	Pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience and discomforts, etc., and loss of amenities in life on account of permanent disability	Rs.3,00,000/-

2.	Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization	Rs.25,000/-
3.	Medical and incidental expenses during the period of hospitalization	Rs.25,000/-
4.	Future medical expenses for correction of the mal-union of fracture and incidental expenses for such treatment	Rs.25,000/-
5.	TOTAL COMPENSATION TO BE AWARDED	Rs.3,75,000/-
6.	Enhanced amount of compensation	(Rs.3,75,000/-) – (Rs.82,000/-) =Rs.2,93,000/-

The enhanced amount of **Rs.2,93,000/-** 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.

(RITU BAHRI)
JUDGE

19.11.2015
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