

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

F.A.O No. 2098 of 2007

Date of decision:- 20.08.2015

Baljinder Singh @ Balwinder Singh

...Appellant

Versus

Rameshwar Dass & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. L.S. Sandhu, Advocate
for the appellant.

None for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

1. The present appeal has been preferred by the injured/claimant-appellant (for short 'the appellant'), seeking enhancement of the amount of compensation awarded by the learned Motor Accident Claims Tribunal, Sirsa (for short, 'the Tribunal') to the tune of Rs.70,00/- along with interest @ 7.5 per cent from the date of filing of the petition till realization of the amount, vide impugned award dated 27.09.2006.

FACTS NOT IN DISPUTE

2. Petitioner who is 21 years of age is working as a driver

CHANDIGARH
2015.09.21 14:06
I attest to the accuracy and
integrity of this document

under Jaspal Singh and on 01.01.2003, he during his employment under Jaspal Singh, was driving Car bearing No. DL-5C-5466 and when the car reached near Bhaini Maharaj Pur, a bus bearing registration No. DL-AA-PA 2839 overtook a truck, which was parked by the side of the road, and struck the back side of the car, driven by the petitioner, in which the petitioner sustained injuries and became unconscious and was taken to the hospital with multiple injuries including compound fracture of right hip joint. He remained admitted at PGI Rohtak from 01.01.2003 to 12.01.2003 and was operated upon. F.I.R. No. 98 dated 25.03.2003 under Sections 279/337/338 IPC etc was registered in this regard.

3. P.W.3 Dr. Kulbhushan Garg who was member of the Board of Directors who medico-legally examined the petitioner and found it to be an old case of fracture left femur with interlocking nailing done in the right side. Fresh X ray was advised. Disability certificate was issued on 25.01.2006, vide which the disability was assessed at 20 percent. However, in cross examination, the witness made clear that ***the disability pertains to a particular limb (right lower limb) only.***

The petitioner produced medical bills regarding purchase of medicines and implants for operation Ex PW4 to PW12 for an amount of Rs.14,201/-.

ARGUMENTS ADVANCED

4. The learned counsel for the appellant contends that the Tribunal has erred in awarding the compensation to the appellant to the tune of Rs.70,000/- only, as the appellant had suffered multiple injuries including fracture on the right hip joint and remained in hospital and a rod was inserted in the right leg. He is not able to walk properly and cannot drive and has become disabled to the extent of 100%.

4. To give force to its contention, 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 at 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 disabled 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.”

5. Reference has been further made to a judgment of Hon'ble the Supreme Court in a case of ***Master Mallikarjun vs. Divisional Manager, the National Insurance Co. Ltd and another, 2013(4) RCR (Civil) 295*** wherein Hon'ble the Supreme Court has laid down a criteria for awarding compensation in disability case suffered by the injured, which reads as under:-

“12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of

various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick.

COMPENSATION ASSESSED BY MACT

HEAD	COMPENSATION AMOUNT
<i>Pain and suffering and expenses on treatment (including medicines implants etc.)</i>	<i>Rs.20,000/-</i>
<i>Compensation for disability resulting into loss of income & loss of enjoyment of life</i>	<i>Rs.50,000/-</i>
<i>TOTAL COMPENSATION AWARDED:-</i>	<i>Rs.70,000/-</i>

6. In the facts of the present case, as per disability certificate Ex PC was issued on 25.01.2006 whereas the accident took place on 01.01.2003 after a gap of almost 03 years. Further, P.W.3 in his cross examination assessed the disability to 20% and stated that ***the disability pertains to a particular limb (right lower limb) only.*** The appellant remained in hospital and a rod was inserted in the right leg. So, there was permanent disability in the right lower limb.

RE-ASSESSED COMPENSATION

7. In view of the above judgments, the compensation is re-assessed as under:-

HEAD	COMPENSATION AMOUNT
<i>Pain and suffering</i>	<i>Rs.3,00,000/-</i>
<i>Loss of earnings</i>	<i>Rs.50,000/-</i>
<i>Special Diet and Transportation Charges</i>	<i>Rs.10,000/-</i>
TOTAL COMPENSATION AWARDED:-	Rs.3,60,000/-
ENHANCED AMOUNT OF COMPENSATION	Rs.3,60,000-Rs.70,000=Rs.2,90,000/-

8. The enhanced amount of compensation of Rs.2,90,000/- shall be payable within a period of forty five days 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 a 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.

9. Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

August 20, 2015

G Arora

(**RITU BAHRI**)
JUDGE