

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

\* \* \* \* \*

**FAO No. 1877 of 2011**

Date of decision : August 27, 2015

\* \* \* \* \*

Rajinder Prasad

.....Appellant

Versus

Ram Lagan and others

.....Respondents

\* \* \* \* \*

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

\* \* \* \* \*

Present: Mr. Kamal K. Chaudhary, Advocate for the appellant.

Mr. Vinod Gupta, Advocate for respondent no.3.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

**RITU BAHRI, J**

The present appeal has been filed by the appellant-claimant seeking enhancement of compensation amount awarded by the Motor Accident Claims Tribunal, Panchkula (hereinafter referred

to as 'the Tribunal') vide award dated 25.10.2010 on account of injuries received by him in a vehicular accident on 17.11.2008.

**FACTS NOT IN DISPUTE**

The brief facts of the case are that on 17.11.2008, the appellant-claimant Rajinder Parsad was travelling in a three-wheeler bearing registration No. PB-65-B(T)-2955 being driven by respondent no.1 and was going from bus stand Sector 17, Chandigarh to bus stand Sector 43, Chandigarh for boarding a bus for Kalka. As per the appellant-claimant, the respondent no.1 was driving rashly and negligently and at a very high speed. Despite being asked by the appellant-claimant to drive the vehicle at moderate speed, respondent no.1 did not pay any heed. When they reached near traffic lights, Sector 22, near Aroma Hotel, Chandigarh, respondent no.1 tried to cross the red light and in the meantime, a car bearing registration No. CH-04-C-3884 came from the direction of Sector 21, Chandigarh and the three-wheeler driver caused accident with the car due to which appellant-claimant received severe and multiple injuries. He was taken to General Hospital, Sector-16, Chandigarh from where he was taken to Joint and Bone Surgical Centre Hospital, Manimajra, UT, Chandigarh. In this regard, FIR No. 579 dated 17.11.2008 was registered under Sections 279, 337 and 338 IPC at Police Station, Sector 17, Chandigarh against respondent no.1.

**COMPENSATION ASSESSED BY THE MACT**

On account of injuries suffered by him in the accident, appellant-claimant Rajinder Prasad filed claim petition under Section 166 of the Motor Vehicles Act,1988. Apart from his own testimony as PW-1, the appellant-claimant has examined Dr. Pardeep Aggarwal as PW-3 who deposed that the claimant-appellant Rajinder Parsad was admitted in hospital on 17.11.2008 with left thigh fracture and he was operated upon and was discharged on 1.12.2008. He further deposed that thereafter, he had been visiting his OPD from time to time. As per him due to the fracture received in the accident the claimant suffered permanent disability and that he had prescribed him medicines up to September 2009 and he was also advised to take special diet. PW-3 also proved the documents Ex. P-3 to P-12. PW-2 Dr. Umesh Modi deposed that Rajinder Parsad appeared before the Medical Board on 9.12.2009 and he was suffering from operated case of fracture proximal femure left side with complaints of pain, limp, shortening of one inch, stiffness of hip and inability to squat. PW-2 deposed that his physical disability was assessed to be 25% and proved the disability certificate as Ex.P-13.

The claim petition was allowed by the Tribunal. The compensation on account of the injuries suffered by him in the accident in question was assessed as under:

| <i>Head</i>                                                                    | <i>Compensation amount</i> |
|--------------------------------------------------------------------------------|----------------------------|
| Compensation on account of suffering permanent disability to the extent of 25% | Rs.50,000/-                |
| Hospitalization and pain and sufferings                                        | Rs.6000/-                  |

| <i>Head</i>                     | <i>Compensation amount</i> |
|---------------------------------|----------------------------|
| Treatment charges               | Rs.47,465/-                |
| Special diet and transportation | Rs.4000/-                  |
| Attendant charges               | Rs.2000/-                  |
| TOTAL COMPENSATION AWARDED      | Rs.1,09,465/-              |

**REASSESSED COMPENSATION**

Feeling dissatisfied with the impugned award, the injured claimant-appellant came up in this appeal.

I have heard the learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. *Reference, at this stage can be made to a judgment of Hon'ble the Supreme Court of India in the case of M. Mani vs. Divisional Manager, New Delhi Assurance Co. Ltd. And another, 2013(11) SCC 444, wherein the appellant, a coolie sustained grievous injuries in an accident which took place on 2.3.2002. Orthopaedic Surgeon opined that the appellant had sustained permanent disability of about 50% of left lower limb, 40% of right upper limb and 39% of whole body and that he cannot do manual labour agriculture farming or any other work where sitting or standing is involved. Two more operations were required to correct angulation and malunion deformity of bones of left leg. The appellant claimed compensation of Rs.6,00,000/- alleging that accident was caused due to rash and negligent driving of motor cycle belonging to respondent no.1 and that as a result of injuries, he was not in a position to do work of coolie which he was doing prior to accident. Tribunal awarded Rs.45,000/-towards permanent disability sustained by appellant,*

*Rs.25,000 towards loss of amenities, Rs.15,000/- in lieu of medical expenses, Rs.13,500/- for loss of income during treatment period and Rs.1,15,830/- towards loss of future income. Total compensation of Rs.2,14,330 with interest @ 6% p.a was awarded by Tribunal. On appeal compensation under different heads was not assessed by High Court and it granted a lump sum increase of Rs.48,110/-. Hon'ble the Supreme Court held that High Court was not justified in granting meagre enhancement of Rs.48,110/-. Appellant was held entitled to total compensation of Rs.6,00,000/-. In paragraph 18 of the judgment, Hon'ble the Supreme Court observed as under:*

*18. We may have set aside the impugned judgment and remitted the case to the Tribunal for fresh determination of the compensation in the light of the principles laid down by this Court but, as the matter is more than 8 years old, we do not consider it proper to adopt that course and feel that ends of justice would be served by awarding lump sum compensation to the appellant under the aforementioned heads. It can only be a matter of sheer imagination as to how much pain and agony the appellant must have suffered as a result of the injuries caused in the accident and consequential*

*permanent disability. He has been totally disable from doing the work of Coolie which he was doing prior to the accident. He has serious problem in sitting or standing. His leg has been shortened by 4 cms. and two more operations will be required to correct the angulation and malunion deformity of the bones of both the legs. He will also require constant medical supervision and physiotherapy. In the days of high cost of living and medical treatment, it is difficult to make a guess of the expenses likely to be incurred in two surgeries. Therefore, we feel that it will be just and proper to award total compensation of Rs. 6,00,000/- to the appellant.*

In view of the facts and circumstances of the case, the compensation is reassessed as under:

| HEAD                                                                        | COMPENSATION AMOUNT  |
|-----------------------------------------------------------------------------|----------------------|
| <i>Pain and suffering on account of 25% permanent disability</i>            | <i>Rs.2,00,000/-</i> |
| <i>Loss of amenities</i>                                                    | <i>Rs.50,000/-</i>   |
| <i>Medical and incidental expenses during the period of hospitalization</i> | <i>Rs.47,465/-</i>   |
| <i>Special Diet and Transportation Charges</i>                              | <i>Rs.20,000/-</i>   |

| HEAD                            | COMPENSATION AMOUNT                               |
|---------------------------------|---------------------------------------------------|
| Attendant charges               | Rs.5000/-                                         |
| TOTAL COMPENSATION AWARDED:-    | Rs.3,22,465/-                                     |
| ENHANCED AMOUNT OF COMPENSATION | (Rs.3,22,465/-)-(Rs.1,09,465/-)<br>=Rs.2,13,000/- |

The enhanced amount of compensation of Rs.2,13,000/- 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 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.

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

August 27, 2015  
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( RITU BAHRI )  
JUDGE