

In the High Court of Punjab and Haryana, at Chandigarh

FAO No. 3976 of 2011

Date of Decision: 17.08.2015

Sourav Oberai

... Appellant(s)

Versus

Puran Chand and Others

... Respondent(s)

CORAM: Hon'ble Ms. Justice Ritu Bahri.

Present: Mr. Sherry K. Singla , Advocate
for the appellant(s).

Mr. Dheeraj Narula, Advocate
for respondent No.1.

Mr. Baldev Singh Dhillon, Advocate
for respondent No.2.

Mr. R.S.Dhull, Advocate
for respondent No.3.

Ritu Bahri, J.(Oral)

The claimant has come up in appeal against the impugned award dated 7.10.2010, passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as "the Tribunal"), whereby he has been awarded compensation amount of ₹ 2,52,800/- along with interest at the rate of 7.5% per annum.

In brief, the facts of the case are that on 16.7.2008 claimant, namely, Sourav Oberai along with his neighbour Rahul Sharma was driving his motor cycle bearing registration No. HR-02-L-8306 when

he met with an accident with a truck bearing registration No. HR-37-B-0699, which was being driven in a rash and negligent manner. An FIR was registered thereafter. The injured was taken to the Rajan Hospital, Yamuna Nagar, from where he was shifted to P.G.I. Chandigarh and then to Christian Medical College & Hospital, Ludhiana. After registration of the FIR, the driver of the offending vehicle was charge sheeted. The Tribunal held that the accident had occurred due to negligence of the driver of the truck.

COMPENSATION AWARDED BY THE TRIBUNAL

The compensation of the claimant was assessed by taking into account the bills Ex.PW.4/1 to PW.4/12, which were duly proved by PW.4 Narinder Pal Singh, Pharmacist of Christian Medical College & Hospital, Ludhiana. The admission of the claimant in the said hospital was duly proved as per medical record Ex.PW.5/1 to PW.5/15. The amount spent, as per the bills Ex.PW.5/16 & PW.5/17, was ₹ 22,560/- and ₹ 50,000/- was charged from the claimant for the limb fitted in his body vide bill Ex.PW.6/7. The total amount of ₹ 77,800/- was assessed towards medical treatment and for permanent disability, the amount was assessed at ₹ 1,60,000/-. Thus, compensation of ₹ 2,52,800/- was awarded.

Re-Assessed Compensation

The fact of accident is admitted and proved. A reference can be made to the judgment of Hon'ble the Supreme Court of India in the case of ***Syed Sadiq etc. vs. Divisional Manager, United India***

Ins. Co. 2014(1) RCR (Civil) 765, where the accident victim was aged 24 years and was vegetable vendor. It was held that a vegetable vendor is reasonably capable of earning Rs.6500/- per month with 50% increment in the future prospect of income. Multiplier of 18 was applied for calculating the amount of compensation

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of **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 1 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.”

The right limb of the appellant was amputated and he suffered permanent disability of 80% on account of amputation of lower limb above knee (PW1/A), which has been proved by Dr. Sandeep Gupta. The appellant was 23 years of age at the time of alleged accident. There is no evidence with regard to his income. So, his income can be taken to be that of daily skilled labour

HEAD	COMPENSATION AMOUNT
Salary	Rs.3000 per month
Annual Salary	Rs.36000/-
Future Prospect	36000 + 50% = Rs.54,000/-
Disability 80%	Rs.54000 X 80% =Rs.43200/-
Multiplier of 18	43200X18=7,77,600/-
Future treatment	Rs.2,00,000/-
Pain and sufferings	Rs.1,50,000/-
Loss of amenities	Rs.1,50,000/-
Medical treatment	Rs.77,800/-
TOTAL COMPENSATION AWARDED:-	Rs.13,55,400/-
ENHANCED AMOUNT OF COMPENSATION	13,55,400-2,52,800=Rs.11,02,600/-

In the circumstances, the present appeal is partly allowed and the impugned award is modified to the extent as mentioned above.

The rate of interest is also enhanced from 7.5% per annum to that of 9% per annum on the enhanced amount of compensation, 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.

August 17, 2015
"DK"/G Arora

(Ritu Bahri)
Judge

To be referred to the Reported: Yes