

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

FAO No.799 of 2010

Date of Decision: January 19, 2015

Paramjit

...Appellant

Versus

Rajiv Kumar @ Raju and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Parminder Singh, Advocate
for the appellant.

Mr. Ashwani Talwar, Advocate
for respondent No.3.

FATEH DEEP SINGH, J.

Learned Motor Accident Claims Tribunal, (Fast Track Court) Karnal through impugned award dated 31.7.2004 disposed off two consolidated claim petitions. The present appeal is in respect of MACT Case No. 138 of 2003 filed by the claimant Paramjit, who is aggrieved and dissatisfied over the meagreness of the compensation to the tune of ₹,2,57,500/- so awarded to him along with interest by the learned Tribunal.

Heard learned counsel for the parties. It was on 1.7.2001 around 9.30 p.m. the claimant along with Rajesh Kumar and Kamaljit were going in a tempo bearing registration No. HR-58-1806 to sell their produce and due to rash and negligent driving of Rajiv Kumar the driver of offending vehicle which has led to accident, resulting in injuries to both the occupants including the present claimant. The findings on issue No.1 have not been challenged which has held that it was due to rash and negligent

driving of the driver of the tempo vehicle which had led to this accident.

The sole point revolves around the very quantum of the compensation. The claimant Paramjit has testified as PW1 to show that he received injuries on his head, neck, leg, back as well as arms and was taken to Civil Hospital, Indri and then shifted to Mahajan Hospital, Yamuna Nagar and after four days was shifted to Cheema Hospital, Mohali where he was operated upon for his neck and arms and though claims that he has spent ₹3,00,000/- but as has been highlighted on behalf of the respondent is under legal obligation to establish these expenses as it is the well settled law that compensation is neither a booty nor a pittance but is a legal right that vests in claimants. The evidence comprises of testimony of PW4 Dr. R.K. Mahajan, Mahajan Hospital, Model Town Yamuna Nagar who has detailed that there was paralysis of all the four limbs and as a consequence of which, he was referred to Chandigarh and has proved the injury report as Ex.P3 and the bills Ex.P4 to Ex.P9. The other witness PW5 Dr. Ashok Rana, Rana Hospital, Yamuna Nagar has proved admission of the claimant on 17.12.2002 and discharge on 27.12.2002 and the fact that on 17.12.2002 the claimant was operated by Dr. Vimal Miglani for gastric perforation and has proved charges to the tune of ₹11050/- through bill Ex.P10. Further more, PW6 Deepak Tyagi of Rameshwara Hospital, Chandigarh who has sought to bring about inability of the claimant to make movements of four limbs on account of injury to the spinal area around C5 and C7 vertebral bones and has proved admission from 5.7.2001 to 15.7.2001 and charges by way of bills Ex.P16 to Ex.P22 and

medical records Ex.P11 to Ex.P14. PW7 Deepan Jain, Medical Officer, ESI Hospital, Jagadhri has proved disability of the claimant and has assessed it to be 70% due to brachial plexus injuries and proved disability certificate Ex.P23. The learned Tribunal while adjudicating for compensation as has been pointed out on behalf of the appellant has considered the medical expenses to the tune of ₹57,000/-, pain and suffering and mental agony ₹10,000, disability and loss of income ₹1,80,000/-, special diet and transportation ₹10,500/- and as has been argued on behalf of the appellant the Tribunal has failed to grant compensation in view of the law laid down in **R.D. Hattangadi vs. Pest Control (India) Private Limited 1995 (2) PLR 298 SC** which argument could not be controverted on behalf of the respondent-Insurer.

Appreciating these arguments the appellant-Paramjit as per the unrebutted evidence is aged around 20 years and in the light of his own deposition as PW1 though claims that he used to earn ₹1,00,000/ per year through cultivation of vegetables crops but has failed to substantiate the same by any documentary means. As per the settled law in such an eventuality it would be safe and appropriate to hold that claimant was a daily wage earner and in view of the notified wages at the time of accident the claimant in all likelihood must be earning around ₹4000/- per month and since there is disability of 70%, thus, by calculating the disability, using the multiplier method there is a loss of earnings to the tune of ₹2800/-per month and, therefore, ₹33,600/- per annum. Thus, in view of the age, total loss of

earnings due to this disability comes to ₹6,60,480/-. The medical evidence irrefutably shows that the claimant has become crippled and jobless and this fact certainly will jeopardise his matrimonial prospects and so his future life. The learned Tribunal has awarded compensation for medical expenses but has failed to consider the future expenses. Thus, applying the ratio laid down in ibid the claimant is certainly entitled to the following compensation:-

(a) Pecuniary compensation:-

(i) Expenses assessed on account of medical expenses past, present and future.	₹1,70,000/-
(ii) Expenses assessed for special diet, service of attendant and transportation.	₹50,000/-
(iii) Compensation assessed for loss of earnings due to permanent disability.	₹6,60,480/-

(b) Non Pecuniary compensation:-

(i) Compensation assessed on account of loss of beauty due to physical disability, loss of matrimonial prospects and longevity of life.	₹2,50,000/-
(ii) Compensation assessed for loss of pleasures of life and mental agony.	₹1,00,000/-

Total ₹12,30,480/-

(Twelve lacs thirty thousand four hundred eighty)

The claimant shall be entitled to interest @ 7.5% per annum from the date of filing of appeal till realisation. Interim compensation paid, if any, shall be adjusted. Thus, the learned Tribunal has failed to take into consideration these vital aspects and the award is not just and fair and, thus, needs to be enhanced.

Keeping in view the special circumstances that

have been highlighted before this Court that appellant is crippled and unable to earn his livelihood it would subserve the ends of justice if 50% of this amount is ordered to be deposited by way of FDR on the name of claimant and he will be entitled to periodic interest and remaining 50% of the amount shall be paid to him.

Rest of the stipulations laid down in the impugned award need not be disturbed.

Thus, the instant appeal stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

January 19, 2015
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