

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 2323 of 2013

Date of decision : November 19, 2015

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Rishi Pal

.....Appellant

Versus

Sudhir Singh and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Narender Pal Bhardwaj, Advocate for the appellant.

Mr. Rajnish Malhotra, Advocate for respondent no.2.

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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 Rishi Pal, appellant-claimant seeking enhancement of compensation amount awarded by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') vide award dated 15.10.2012 on account of injuries received by him in a vehicular accident which took place on 17.09.2010.

FACTS NOT IN DISPUTE

On 17.9.2010, Rishi Pal along with his cousin Rajpal son of Kailash Chand resident of Village Tilfera Illabad, Police Station

Nanota, District Saharanpur (UP) was going on foot from Mandi Mani Ram, Gharaunda towards Govt. Senior secondary School, Gharaunda. At that time a jeep make TATA bearing No. HR-67-6687 came from Panipat side being driven by its driver-respondent no.1 in a very rash negligent careless manner and hit the claimant, due to which he fell down on the footpath and sustained serious multiple and grievous injuries on vital parts of his body including multiple fractures on his right leg. After the accident, he was shifted to CHC, Gharaunda with the help of Rajpal and the driver of the offending jeep namely, Sudhir, where he was medico legally examined and first aid was provided and then he was referred to Govt. Hospital, Karnal. In this regard, FIR No.283 dated 14.11.1999 under Sections 279 and 304-A of Indian Penal Code was lodged at Police Station, Madlauda.

COMPENSATION ASSESSED BY THE MACT

On account of injuries suffered by him in the accident, appellant-claimant Rishi Pal filed claim petition under Sections 166 and 140 of the Motor Vehicles Act, 1988. The following issues were framed by the Tribunal:-

(i) Whether the accident took place due to sole rash and negligent driving of respondent no.1, as alleged? OPP

(ii) Whether the claim petition is not maintainable in the present form? OPR

(iii) Whether the claim petition is bad for misjoinder and non joinder of necessary

parties? OPR

(iv) Whether the claim petition has been filed in collusion with respondent no.1 as alleged? OPR

(v) Whether the claimant has got no cause of action and locus standi to file the claim petition? OPR

(vi) Whether respondent no.1 was not holding a valid and effective driving licence at the time of accident. If so, its effect? OPR2

(vii) Whether the vehicle in question was being driven in violation of terms and conditions of the insurance policy as alleged. If so, its effect? OPR2

(viii) Whether the claimant is entitled to compensation. If so how much and from whom? OPP

On issue no.1, the Tribunal returned a finding in favour of the claimant that the accident in question took place due to the rash and negligent driving of respondent no.1. Issues no. 2 to 5 were decided against the respondents and in favour of the claimant. As regards issues no. 6 & 7 the onus to prove these issues was on the respondents. Respondent no.1 simply tendered copy of his driving licence as Ex. R-1 valid up to 3.3.2012 valid for car jeep scooter and motorcycle, whereas respondent no.2 has simply tendered in

evidence copy of insurance policy Ex. R-2 valid from 5.3.2010 to 4.3.2011. No evidence was led by respondent no. 2 that respondent no.1 was not holding a valid and effective driving licence or the driving licence Ex. R-1 was not genuine or valid. Even respondent no.2 has not led any evidence to prove that the said vehicle was being driven in violation of terms and conditions of the insurance policy and provisions of Motor Vehicles Act. Hence these issues were decided against respondent no.2 and in favour of claimant and respondent no.1. Issue no. 8 as regards the entitlement of compensation to claimant was also decided in favour of the claimant.

While assessing the compensation payable to the claimant Tribunal assessed the income of the claimant to be Rs.4200/- per month. The annual income of the claimant was assessed as Rs.50,400/- Keeping in view the disability suffered by the claimant, the tribunal arrived at a conclusion that the claimant suffered a loss of 20% of the income which was thus calculated to Rs.10,080/- per annum. After applying the multiplier of 14 keeping in view the age of the claimant, the loss of earning capacity to the claimant came to **Rs.1,41,120/-**. Thus, on account of pain and suffering and loss of earning capacity, special diet and transportation etc., the claimant became entitled to **Rs.1,41,120/-**. As per the medical bills Ex. P-2 to Ex. P-70, Ex. P-72 to Ex. P-90 which had been placed on record and were duly proved by the doctors, the Tribunal awarded a sum of **Rs.3,01,320/-** as compensation to the claimant on account of expenditure incurred by him on purchase of

medicines and treatment etc. Further as per the deposition of PW-4 Dr. J.K Gulati claimant Rishi Pal suffered 89 % common permanent disability i.e 80% because of amputation of right leg, 4% due to right dominant limb and 5% due to diabetes mellelus vide disability certificate Ex. P-71. In cross examination, he admitted that if it is calculated qua whole body it would come down to fifty percent of the given disability which came to 44.5 %. On account of common permanent disability of 44.5% qua whole body and for the mental pain and suffering which the claimant would be suffering in future, the Tribunal awarded a sum of **Rs.89,000/-** as compensation to the claimant towards this disability. In this manner, Claimant Rishi Pal was held entitled to a total amount of compensation of **Rs.5,31,440/- (Rs.3,01,320/- + Rs.89,000 + Rs.1,41,120/-)**. Both the respondents were jointly and severally held liable to pay the compensation. The claimant was also held entitled to interest @ 7.5% per annum from the date of filing of the claim petition till realisation.

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. 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 also 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.36,000/- and loss or 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 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.

In the facts of the present case, the fact which is not in dispute that the right leg of the appellant was amputated resulting in 80% permanent disability.

In view of the above mentioned judgment, the compensation is reassessed as under:-

HEAD	COMPENSATION AMOUNT
Salary	Rs.4200/-
Annual Salary	Rs.4200/-x12=Rs.50,400/-
Future prospects	Rs.50,400/-+30%=Rs.65,520/-
Multiplier of 15	Rs.9,82,800/-
Future treatment	Rs.2,00,000/-
Pain and sufferings	Rs.1,50,000/-
Loss of amenities	Rs.1,50,000/-
Medical treatment	Rs.3,01,320/-
TOTA COMPENSATION AWARDED	Rs.17,84,120/-
ENHANCED AMOUNT OF COMPENSATION	(Rs.17,84,120/-)-(Rs.5,31,440/-) =Rs.12,52,680/-

The enhanced amount of compensation of Rs.12,52,680/- 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.

November 19, 2015
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(RITU BAHRI)
JUDGE