IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 2155 of 2014 (O&M)

Date of decision : December 15, 2015

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Sunil Kumar

...........Appellant

Versus

M/s Bhullar Oxygen Pvt. Ltd. and others

..........Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Neeraj Khanna, Advocate for the appellant.

Mr. R.K Bashamboo, 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?*

<u>RITU BAHRI, J</u>

The present appeal has been filed by Sunil Kumar, appellant-claimant seeking enhancement of compensation amount awarded by the Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as `the Tribunal') vide award dated 03.04.2013 on account of injuries received by him in an accident which took place on 12.6.2011.

FACTS NOT IN DISPUTE

Briefly stated the facts of the case are that the claimant-appellant Sunil Kumar son of Shri Sada Nand resident of Focal Point, Amritsar aged about 23/24 years had been working as a loader with M/s Bhullar Oxygen Pvt. Ltd., Amritsar getting Rs.4500/- plus Rs.500/- per month as food/daily allowance. On 12.6.2011, claimant-appellant went from M/s Bhullar Oxygen Pvt. Ltd. Focal Point, Amritsar along with driver Gurdev Singh in mini truck No. PB-02-H-9605 to Amrit Trading Company back side Mata Kaulan Hospital, Amritsar to deliver oxygen cylinders. Gurdev Singh, driver was unloading and handing over the cylinders to the claimant-appellant and due to his negligent and carelessness, one cylinder slipped out of his hands on the floor resulting in bursting causing multiple grievous injuries on head, right hand, lower limbs of claimant resulting in amputation of both his legs. The claimant-appellant was taken to Life Line Hospital, G.T Road, Amritsar, where he remained admitted from 12.6.2011 to 9.9.2011.

COMPENSATION ASSESSED BY THE MACT

On account of injuries suffered by him in the accident, claimant-appellant, Sunil Kumar filed claim petition under Section 166 of the Motor Vehicles Act,1988 (hereinafter referred to as `the

Act'). The following issues were framed by the Tribunal:-

(i) Whether Sunil Kumar son of Shri Sada Nand, claimant suffered injuries in a motor vehicular accident, which took place on 12.6.2012 at about 11:45 a.m in the area of Amrit Trading Company back side Mata Kaulan Hospital, Amritsar due to rash and negligent act arising out of use of mini truck No.PB-02-H-9605 belonging to respondent no.1 M/s Bhullar Oxygen Pvt. Ltd. with Gurdev Singh, respondent no.2 as its driver? OPP

(ii) Whether the petitioner/claimant is entitled to recover any compensation, if so, the amount and from whom? OPP

(iii) Whether respondent no.2 Gurdev Singh was not having a legal and valid driving license at the time of accident, if so, its effect? OPR-3

(iv) Whether the terms and conditions of insurance policy were violated by respondent no.1 insured, if so, its effect ? OPR-3

(v) Whether the petition is not maintainable? OPR-3

The Tribunal returned a finding on issue no.1 in favour of the claimant-appellant and against the respondents. This finding was rightly based on the deposition of the claimant-appellant who got his statement recorded as CW-1. He submitted his affidavit Ex. CW1/A in which he narrated the details of the incident in which he had suffered injuries. No evidence was led by the respondents in rebuttal. Head Constable Hardip Singh from Police Station `B' Division, Amritsar brought the daily diary register of their Police Station containing DDR No.44 of dated 14.6.2011 recorded on the statement of Sunil Kumar by SI Baj Singh copy thereof being Ex. RW-01/A. PW-2 Smt. Neena Sharma, Receptionist, Life Line Hospital G.T Road, Amritsar proved consolidated bill of 23.9.2011 for Rs.3,90,562/-. She stated that Sunil Kumar was admitted in their hospital on 12-06-2011 and was discharged on 23-09-2011. PW-3 Dr. Dharam Singh, Medical Officer, Civil Hospital, Amritsar stated that on 7.12.2012 he had medically examined Sunil Arora for assessing his disability of both lower limbs and after that he issued certificate Ex. PW-03/A. He stated that lower limbs of Sunil Arora were amputated and he assessed his disability to the extent of 100% permanent in nature. PW-4 Bhupinder Singh Proprietor Bhupinder Artificial Limbs Center, 54, Green Plaza Market, Court Road, Amritsar proved the estimated cost of Rs.65,000/- by his concern in favour of Sunil Kumar as per Ex. RW-04/A.

The quantum of compensation was assessed as under by the Tribunal:

HEAD	***COMPENSATION AMOUNT***
Expenses incurred towards medical treatment	Rs.4,70,000/-
Loss of income	Rs.60,000/-
Special diet	Rs.40,000/-
Attendant charges	Rs.20,000/-
Transportation	Rs.10,000/-

HEAD	*COMPENSATION AMOUNT*
Permanent disability (Disability was assessed at 100% and Rs.2000/- was awarded for every 1% disability)	Rs.2,00,000/-
Non pecuniary damages	Rs.20,000/-
Loss of amenities	Rs.20,000/-
Loss of expectation of life	Rs.10,000/-
TOTAL COMPENSATION AWARDED	Rs.8,50,000/-

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) inP. 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 a judgment by Hon'ble the Supreme Court of India in the case of ***Sanjay Kumar vs. Ashok Kumar and another 2014(1) RCR (Civil) 875***, wherein the claimant who was earning L 4500/- p.m suffered 70% permanent disability in motor accident, it was held that *'Loss of future prospects' should be added to this amount as it cannot be accepted that an embroiderer will not have a future increment. In that case keeping in mind the young age of victim he was held entitled to 50% of his income as future increase in income*.

In another judgment by Hon'ble the Supreme Court of India in the case of ***Rajan vs. Soly Sebastian and others, 2015(3) RCR (Civil) 962,*** wherein the victim was a professional driver, the Tribunal assessed his national income at L 2000/- p.m. *It was held that income was not correctly assessed. Income should have been assessed after taking into consideration the relevant Minimum Wages fixed by Government. Income be taken at L3500/- p.m to work out compensation. Victim though suffered 60% bodily disability, but suffered 100% permanent disability with regard to his earning* *capacity. After considering 50% enhancement for future prospects, the compensation for permanent disability was calculated at (L 3500/-+ L 1750/-)x12x17=L 10,71,000/-*

In the case of ***Kavita vs. Deepak and others, 2012 (4) RCR (Civil) 273***, Victim suffered 100% permanent disability. She lost her capacity for hearing, understanding, speaking and establishing interaction. The victim required an attendant at all times and continued physiotherapy. Victim was 30 years of age earning Rs.2000/- p.m. Multiplier of 17 was applied. She was also awarded Rs.2000 per month as attendant charges for 25 years. Victim was awarded compensation of Rs.34,38,747/-.

In the facts of the present case, the claimant-appellant, who was about 23-24 years of age at the time of accident was working as a daily wager and was getting Rs.4500+500 (food/daily allowance) per month. His income can be taken as a daily wager at Rs.5000/- per month. Keeping in view that he suffered 100% disability and he would never be able to do the work of labourer throughout his life, after considering 50% enhancement for future prospects, the compensation under the head ***`Loss of future earning on account of permanent disability'*** is hereby calculated after applying multiplier of 18 at Rs.5000+2500x12x18=Rs.16,20,000/-. Assuming the claimant's life expectancy to be 55 years, we deem it appropriate to award attendant charges at the rate of **Rs.3000/-** per month. The total compensation payable is hereby reassessed as under:-

HEAD	*COMPENSATION AMOUNT*
Expenses incurred towards medical treatment	Rs.4,70,000/-
Loss of future earning on account of permanent disability	Rs.16,20,000/-
Loss of income during treatment i.e for four years (Rs.5000x12x4)	Rs.2,40,000/-
Special diet	Rs. 40,000/-
Attendant charges(for 30 years)	Rs. 3000x12x30=Rs.10,80,000/-
Transportation	Rs. 20,000/-
Pain and suffering	Rs. 3,00,000/-
Loss of amenities and loss of expectation of life	Rs.3,00,000/-
TOTAL COMPENSATION AWARDED	Rs. 40,70,000/-
ENHANCED AMOUNT OF COMPENSATION	(Rs.40,70,000/-)-(Rs.8,50,000) =Rs.32,20,000/-

The enhanced amount of compensation of Rs.32,20,000/- 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.

December 15, 2015 (**RITU BAHRI**)
ritu **JUDGE**