

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

**FAO No. 5120 of 2013 (O&M)**

Date of decision : 18.08.2015

Partap Singh

.....Appellant

Versus

Jagjeet Singh @ Sonu and others

....Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Amit Singla, Advocate  
for the appellant.

Mr. R.S. Chahal, Advocate  
for respondent No. 2.

Mr. R.C. Kapoor, Advocate  
for respondent No. 3.

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**LISA GILL, J.**

Partap Singh son of Sardara Singh has preferred this appeal for enhancement of compensation awarded on account of injuries suffered by him vide award dated 01.05.2012 passed by the learned Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as the 'Tribunal').

Facts as revealed in the claim petition are that the claimant was travelling on his motor cycle bearing registration No. HR-59/1961 on 08.11.2008 at moderate speed on the left side of the road. When he was two kilometers away from village Ahrawan, a

private bus bearing registration No. HR-62/2440 driven by respondent No. 1 – Jagjeet Singh @ Sonu came from the opposite direction at a very high speed driven in a rash and negligent manner. While overtaking the tractor trolley ahead of the bus, respondent No. 1 brought his bus to the extreme opposite side of the road and struck against the claimant. Claimant suffered multiple injuries all over his body. He was removed to Community Health Centre, Ratia by one Baljeet Singh, who was behind him. He was shifted to Metro Hospital, Hisar. On discharge after two days he was shifted to GS Memorial Hospital, Rampura Phul where he was admitted for 10 days from 10.11.2008 to 21.11.2008. He was subsequently shifted to Arora Orthopedic Center Hisar where he remained under treatment from 22.11.2008 to 08.12.2008. He underwent four operations. As per disability certificate Ex. P48, claimant was having disability of 80% on account of brachial plexus injury on the right side with weakness of lower limb with united fracture right ulna. Disability in relation to the whole body and being permanent in nature is proved on record.

Appellant claimed to be 50 years of age at the time of accident, an agriculturist and a diary farmer by profession claiming his annual income to be ₹2,50,000/- from agriculture and ₹7,000/- from diary farming.

Said claim was contested by the respondents. Driver and owner of the offending bus denied the factum of the accident while additionally pleading that the driver was holding a valid and driving licence and the bus was insured with respondent – insurance company, thus, liability if any, would be of the insurance company.

Respondent – insurance company denied the factum of accident for want of knowledge. Claim petition under Section 166 of the Motor Vehicles Act claiming a sum of ₹10 lakhs was alleged to be filed in collusion with owner and driver of the offending vehicle. It was pleaded that there was no insurance policy in place, respondent-driver was not holding a valid and effective licence and there was violation of terms and conditions of the alleged insurance policy. Thus, insurance company denied any liability to pay compensation or indemnify the insured.

Learned Tribunal while considering the facts and circumstances as well as the evidence on record concluded that the accident in question had taken place due to rash and negligent driving of the offending bus by respondent No. 1. Total sum of ₹7,04,513/- was awarded alongwith the interest at the rate of 9% per annum from the date of filing of the claim petition till the date of realization. Various heads under which the compensation was awarded are as under:-

| Pecuniary damages                                                                   |                                                             |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------|
| Loss of income                                                                      | $4500 \times 12 = 54000 \times 9 \times 80\% = ₹3,88,800/-$ |
| Transport of hospital                                                               | Nil (no evidence)                                           |
| Attendant charges                                                                   | Nil (no evidence)                                           |
| Diet and nutrition                                                                  | Nil (no evidence)                                           |
| Medical expenses                                                                    | ₹1,85,713/-                                                 |
| Pain and suffering<br>Claimant had fracture and four surgeries were performed       | ₹ 50,000/-                                                  |
| Loss of amenities of life<br>Permanent disablement of 80% in relation to whole body | ₹ 80,000/-                                                  |

|                   |             |
|-------------------|-------------|
| Pecuniary damages |             |
| Total             | ₹7,04,513/- |

Insurance company was held liable to pay compensation and indemnify the insured while all the respondents were jointly and severally liable.

Aggrieved qua the quantum of compensation, present appeal has been filed by the injured claimant.

Learned counsel for the appellant submits that meagre compensation has been awarded. No amount has been awarded on account of transportation, attendant charges, special diet and nutrition. Much less amount has been awarded on account of pain and suffering and loss of amenities of life. It is submitted that on account of permanent disablement of 80% in relation to the whole body, a sum of ₹1,60,000/- should have been awarded on account of loss of amenities. He relies upon judgment of the Hon'ble Supreme Court in **S. Manickam versus Metropolitan Transport Corp. Ltd.** 2013 (12) SCC 603 to urge that the claimant is entitled to compensation under the head of loss of earning as well as on account of permanent disability. It is also submitted that the appellant requires an attendant all the time as he is unable to carry out his routine everyday affairs as he was an agriculturist and engaged in diary farming. He has admittedly undergone four operations at different hospitals, therefore, transport charges should also have been awarded. He prays for adequate enhancement on these counts.

Learned counsel for the respondents pre contra refute the

averments of the appellant and submit that adequate compensation has already been granted by the Tribunal and there is no scope for any further enhancement.

I have heard learned counsel for the parties and gone through the record.

It is a matter of record that the appellant was injured in the accident which took place on 08.11.2008 due to rash and negligent driving of the offending bus by respondent No. 1. Said findings of the Tribunal are not in question. Liability of the insurance company is also not denied. It is proved on record that appellant suffered major injuries in this accident. He was firstly taken to Community Health Centre, Ratia thereafter to Metro Hospital, Hisar on 08.11.2008 and discharged on 09.11.2008. He also received treatment at GS Memorial Hospital, Rampura and Arora Orthopedic Hospital, Hisar.

PW3 Dr. V.K. Jain, Senior Medical Officer at Community Health Centre, Ratia has been examined. He proved the copy of the medico legal report Ex. P34.

PW1 Dr. Ram Kumar, Neuro Surgeon, Metro Hospital, Hisar has deposed that the claimant aged about 55 years was admitted in the above said hospital with history of road side accident. Claimant had right upper limb weakness and was treated conservatively and kept in Intensive Care Unit. Medical expenses incurred by the claimant were proved by him.

PW4 Dr. Ujagar Singh. GS Memorial Hospital, Rampura Phul disclosed that the claimant was admitted as an emergency case

and diagnosed as an old case of road side accident with infected wound right leg and brachial plexus injuries left upper limb. He was operated twice in his hospital on 10.11.2008 and 19.11.2008 and referred to GMC Patiala for plastic surgery. Diagnosis and treatment summary Ex. P35 was proved by him.

PW2 Partap Singh, Assistant from Arora Orthopedic Hospital, Hisar revealed that claimant was admitted in the said hospital on 22.11.2008 with injuries, infected fracture, dislocation of right ankle with ulcer. Claimant was also having brachial plexus right shoulder. He was operated on 23.11.2008 for infected fracture dislocation right ankle wound. He was again operated on 24.12.2008 and discharged on 28.12.2008 with advise of follow up. At the time of discharge, claimant was advised not to put weight on the right leg for three months.

PW7 Dr. Munish Sheoran a member of Board of Doctors at Government Hospital, Fatehabad revealed that the claimant was examined on 22.01.2009 to assess his disability. As per disability certificate Ex. P48, claimant was proved to have disability of 80% qua whole body on account of brachial plexus injury on the right side with weakness of lower limb with united fracture right ulna. PW7 in his statement recorded subsequently on 10.09.2011 disclosed the disability to be permanent in nature.

Learned counsel for the appellant though raising the ground of the income of the deceased being wrongly assessed does not seriously contest the compensation assessed at ₹3,88,800/- on account of loss of income. Contention of learned counsel for

respondent No. 3 that multiplier of 9 has wrongly been applied keeping in view the age of the claimant being mentioned as 64 years in Ex. P48 is not tenable, keeping in view the other consistent evidence on record which reflects the claimant to be aged about 55-60 years of age. Furthermore, respondent No. 3 has not challenged this finding by way of an appeal or cross objections.

Keeping in view the documentary evidence on record to show that the claimant remained admitted at various hospitals due to the injuries and was operated upon a number of times, he is indeed entitled to transportation charges of ₹10,000/-. He is also held entitled to ₹10,000/- on account of special diet. Furthermore, nature of injuries entitle the claimant to attendant charges of ₹10,000/-. Keeping in view the nature of injuries and peculiar circumstances of the case, absence of documentary evidence on these counts is not fatal to the claimant's case. Denial of compensation as above would not be justified.

Learned counsel for respondent No. 3 has raised a serious objection to any enhancement on account of pain and suffering or on account of permanent disability in view of the compensation already awarded under the head of loss of income.

It is relevant to note that the Hon'ble Supreme Court in **S.Manickam's** case (supra) has categorically held that compensation can be awarded both for the loss of earning as well as disability suffered by the claimant. In the said case, the Hon'ble Supreme Court had found grant of ₹1,00,000/- awarded on account of 85% permanent disability (amputation of leg) as well as

₹4,00,000/- on account of loss of income to be justified in respect to an accident which took place in the year 1997. It was specifically observed that:

“It is true that determination of “just compensation” cannot be equated to a bonanza. On the other hand, the concept of “just compensation” suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the courts. We hold that the determination of quantum in motor accidents cases and compensation under the Workmen’s Compensation Act, 1923 must be liberal since the law values life and limb in free country in generous scales. The adjudicating authority, while determining the quantum of compensation, has to take note of the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. While computing compensation, the approach of the tribunal or a court has to be broad based and sometimes it would involve some guesswork as there cannot be any precise formula to determine the quantum of compensation.”

In the facts and circumstances of the case it is considered just and proper to enhance compensation awarded on account of pain and suffering to ₹1,00,000/- and on account of permanent disability also it is enhanced to ₹1,00,000/- instead of ₹80,000/-. He is, thus, entitled to enhanced compensation as under:-

|                   |                                 |
|-------------------|---------------------------------|
| Pecuniary damages |                                 |
| Loss of income    | 4500x12=54000x9x80%=₹3,88,800/- |

|                                                                                           |              |
|-------------------------------------------------------------------------------------------|--------------|
| Pecuniary damages                                                                         |              |
| Transport of hospital                                                                     | ₹ 10,000/-   |
| Attendant charges                                                                         | ₹ 10,000/-   |
| Diet and nutrition                                                                        | ₹ 10,000/-   |
| Medical expenses                                                                          | ₹1,85,713/-  |
| Pain and suffering<br>Claimant had fracture and<br>four surgeries were<br>performed       | ₹ 1,00,000/- |
| Loss of amenities of life<br>Permanent disablement of<br>80% in relation to whole<br>body | ₹ 1,00,000/- |
| Total                                                                                     | ₹ 8,04,513/- |

The amount of compensation already awarded to the appellants shall stand deducted from the amount calculated as above. Appellant shall be entitled to interest at the rate of 7.5% per cent per annum on the enhanced compensation from the date of filing of the petition till realization.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

August 18, 2015  
rts

(Lisa Gill)  
Judge