

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

**FAO No.884 of 2014 (O&M)
Date of decision: 17.11.2015**

Pardeep Jain

....Appellant

Versus

Durga Shankar and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Namit Sharma, Advocate
for the appellant.

Mr. Rajneesh Malhotra, Advocate
for respondent No.3.

RITU BAHRI J. (Oral)

The present appeal has been filed by the injured-appellant against the award dated 01.05.2013, passed by Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal') on account of the injuries suffered by him in a motor vehicular accident, which took place on 12.10.2009.

FACTS NOT IN DISPUTE

On 12.10.2009, he was coming on his motorcycle bearing No.HR-06-K-9263. One Ram Prasad son of Pokhar Mal resident of House No.99, Vewavers Colony, Panipat, was also coming on motorcycle from the side of Sabzi Mandi, Panipat.

When he reached near old Sabzi Mandi, a trolly bearing registration No.RJ-26-GA-0773, driven by respondent No.1 at a very high speed in a rash and negligent manner came from the side of village Sanoli. The trolly crossed the motorcycle driven Ram Prasad son of Pokhar Mal. At about 06:00 a.m., when the trolly reached near Sanjay Chowk, Panipat and took a turn towards Delhi at Sanjay Chowk, it hit the motorcycle bearing No.HR-06-K-9263 driven by the injured-appellant and his legs were run-over by the front tyre of the trolly. The injured-appellant received multiple grievous injuries on his legs. Ram Prasad got him admitted in Hyderbadi Hospital, Panipat from where he was taken to a hospital at Delhi.

In this regard, FIR No.720 dated 12.10.1999, under Sections 279, 337, 338 IPC, in respect of the accident in question was got registered at Police Station Chandni Bagh, Panipat at the instance of Ram Prasad.

Consequently, the claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

Before the Tribunal, the injured-claimant himself appeared as PW-2 tendered his affidavit Ex.PW-2/A to prove the accident in question. Ram Prasad (eye-witness) also appeared as PW-1 and corroborates the testimony of PW-2. Dr. Anita Virmani appeared as PW-3 and proved the disability certificate Ex.PW-3/A

and stated that the petitioner has suffered 80% permanent disability on account of amputation of his right leg above knee.

Ultimately on the basis of the evidence led by the parties, the Tribunal has come to the conclusion that the accident in question was occurred due to the rash and negligent driving by respondent No.1 and the Tribunal has returned the finding on Issue No.1 in favour of the claimant-appellant.

The claim petition was partly accepted by the Tribunal and a sum of Rs.8,00,000/- was awarded as compensation on account of the injuries sustained by the claimant-appellant along with future interest at the rate of 7.5% per annum from the date of filing of the petition till its realization.

The monthly income of the claimant-appellant has been taken as Rs.4,500/- per month, out of which 50% amount was deducted in respect of loss of future earning which came to Rs.2,250/- per month, which came to Rs.27,000/- per annum. Pardeep Jain (injured) was 29½ years of age at the time of the accident and the multiplier of 17 was applied. Thus, the claimant was found entitled to compensation of Rs.4,59,000/-. In addition to it, further compensation of Rs.30,000/- was awarded towards pain and sufferings, Rs.50,000/- was awarded towards loss of amenities including loss of marriage prospects and Rs.2,60,000/- was awarded in respect of the treatment and purchase of medicines. Hence, the claimant-injured was found entitled to total

compensation of Rs.7,99,000/-, rounded off to Rs.8,00,000/-.

Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

REASSESSED COMPENSATION

Learned counsel for the appellant contends that the compensation awarded by the Tribunal is on lower side and deserves to be enhanced. He has referred to the judgment “***Sanjay Kumar vs Ashok Kumar and another***”, 2014 (1) R.C.R. (Civil) 875 and submits that in the case before Hon'ble Supreme Court, the right leg of a young man had been amputated when he met with an accident and the compensation has been assessed by keeping in view the loss of income during treatment, loss of amenities, loss of marriage prospects, mental agony, pain and sufferings and cost of litigation. Paragraph 12 and 13 of Sanjay Kumar's case (supra) reads as under:-

12. Now, we will assess the compensation awarded under the other heads. With respect to medical expenses, attendant charges and conveyance charges, as well as possible future medical costs, we will award a total sum of ` 75,000/- as he has suffered permanent disability due to amputation of his right leg. The appellant will need assistance in order to travel and move around, and regular check-ups and will most likely use a crutch to walk, all of which will incur expenses. On the point of loss of marriage prospects, we feel that it is a major loss, keeping in mind the young age of the appellant and the High

*Court has gravely erred in not awarding adequate compensation separately under this head and instead clubbed it under 'loss of future enjoyment of life' and 'pain and suffering'. We thereby award ₹ 75,000/- towards loss of marriage prospects. Further, as per the case of **Govind Yadav v. New India Insurance Co. Ltd. 2011 (4) R.C.R. (Civil) 817**, wherein the appellant suffered amputation of the leg, this Court awarded a sum of ₹ 1,50,000/- towards 'pain and suffering' caused due to amputation of the leg. Therefore, towards 'mental agony and pain and suffering', we award a sum of ₹ 1,50,000/- as the appellant has suffered tremendously due to the accident in terms of the pain and suffering involved in the amputation. Loss of a limb causes a profusion of distress and the appellant has to deal with the same for the rest of his life. We feel it is justified to award the aforesaid amount under this head as he might have to deal with discrimination and stigma in society due to the fact that he is an amputee.*

*13. Further, it is necessary to award an amount under the head of 'loss of amenities' also as the appellant will definitely deal with loss of future amenities as he has lost a leg due to the accident. The injury has permanently disabled the appellant, thereby reducing his enjoyment of life and the full pursuit of all the activities he engaged in prior to the accident. We thereby award a sum of ₹ 1,00,000/- towards 'loss of amenities'. Along with the compensation under conventional heads, the appellant is also entitled to costs of litigation as per the legal principle laid down in the case of **Dr. Balram Prasad v. Dr. Kunal Saha***

& Ors., 2013 (4) R.C.R. (Civil) 946 : 2013 (6) Recent Apex Judgments (R.A.J.) 165 : (2013) 13 SCALE 1. Therefore, under this head, we find it just and proper to award ₹25,000/- towards costs of litigation.”

On the other hand, learned counsel for respondent No.3-Insurance Company, has vehemently opposed the present appeal.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the claimant has suffered injuries as a result of the accident.

In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is required to be reassessed in view of the judgment of ***Sanjay Kumar's case (supra)***. Accordingly, the compensation is re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.4,500 x 12)	Rs.54,000/-
(ii)	50% of (i) above to be added as future prospects (Age 29½ years)	(Rs.54,000/-) + (Rs.27,000/-) = Rs.81,000/-
(iii)	Loss of future earning @ 70%	(Rs.81,000/- x 70%) = Rs.56,700/-
(iv)	Compensation after multiplier of 17	(Rs.56,700/- x 17) =Rs.9,63,900/-
(v)	Medical expenses	Rs.2,60,000/-
(vi)	Loss of earnings during treatment (Rs.4,500 x 3 months)	Rs.13,500/-
(vii)	Attendant charges, conveyance costs	Rs.75,000/-
(viii)	Loss of marriage prospects and loss of amenities	Rs.1,50,000/-
(ix)	Mental agony, pain and sufferings	Rs.1,50,000/-

(x)	Cost of litigation	Rs.25,000/-
(viii)	TOTAL COMPENSATION AWARDED	Rs.16,37,400/-
(ix)	Enhanced amount of compensation	(Rs.16,37,400/-) – (Rs.8,00,000/-) =Rs.8,37,400/-

The enhanced amount of compensation of **Rs.8,37,400/-** 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 the 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.

(RITU BAHRI)
JUDGE

17.11.2015
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