

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

**FAO No.431 of 1993 (O&M)
Date of Decision: September 16, 2016.**

Parveen Kumar

.....APPELLANT(s).

VERSUS

Pritam Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. S.D. Bansal, Advocate
for the appellant (s).

Mr. D.R. Bansal, Advocate
for respondent No.2-insurance company.

Mr. Balsher Singh, Advocate for
Mr. J.S. Thind, Advocate
for respondents No.1 and 3.

SURINDER GUPTA, J.

This is appeal by claimant Parveen Kumar, who was aged 14 years on 27.03.1991 when he met with an accident with truck bearing registration No.HRN-8898 (later referred to as 'the offending vehicle'), for enhancement of compensation awarded by Motor Accident Claims Tribunal, Sirsa (later referred to as 'the Tribunal') vide award dated 15.12.1992.

Note: Record of the Tribunal and the appeal file got burnt in a fire incident in the concerned branch in January, 2011, as such, the appeal file was reconstructed and the counsel for the parties were requested to supply the copies of the pleadings and evidence available with them. This appeal is being decided on perusal of reconstructed appeal file and the copies of documents supplied by learned counsel for the parties.

2. The accident has been described in para 24 of the claim petition which reads as follows:-

“That on 27.03.1991 at about 6.30 P.M., the applicant along with his father Shri Ishwar Dass and his uncle Shri Shiv Kumar after closing the shop were coming to their residence. The applicant was sitting on the cycle which was being plied by his father and his uncle Shiv Kumar was going on another cycle. When they reached near main road Bus Stand (old) both the cycles were stopped for purchasing vegetables. The father of the applicant (sic claimant) gave his cycle to the applicant (sic claimant) and the applicant(claimant) just started on the cycle when ruck No.HRN-8898 came from the opposite side at a very fast speed, and without blowing any horn etc. struck against the applicant while coming to wrong side. The driver was rash and negligent while driving the truck and due to this the accident was caused as the driver of truck drover the truck on wrong side and struck the truck against the applicant and over run the right leg of the applicant. The truck stopped after covering a long distance. The driver of truck wanted to run away from the spot but was overpowered by the father, uncle and other persons present at the spot. The applicant was rushed to the hospital. The driver later on ran away from the spot. The applicant received serious injuries as a result of this accident.”

3. The claimant has stated that after the accident, he was firstly taken to Civil Hospital, Ellnabad and then to Kolmet Hospital, New Delhi. He regained consciousness on 31.03.1991 and remained admitted in Kolmet Hospital from 28.03.1991 to 26.04.1991. He had undergone four operations. After his release from Kolmet Hospital, he was shifted to Goyal

Hospital daily for dressing of his wounds. He was then taken to Jaipur for fixing of artificial limb. He stayed there for three days on his first visit and then for 20 days on his second visit. However, the artificial limb could not be fixed as the wounds had not yet healed. The doctor at Jaipur told father of the claimant that artificial limb would not be successful in this case as for this, his leg would have to be amputated above knee upto thigh. For amputation of leg upto thigh, the claimant had to spend ₹1 lac in hospital like Kolmet Hospital, where he got treatment.

4. The owner and driver of the offending vehicle i.e. respondents No.1 and 3 denied the accident.

5. National Insurance Company-respondent No.2, insurer of the offending vehicle in its reply pleaded that the claimant himself was rash and negligent in driving his cycle and did not take note of the coming truck and caused the accident.

6. On appraisal of evidence, the Tribunal concluded that the accident was caused due to rash and negligent driving of the offending vehicle by respondent No.3. The Tribunal allowed compensation of ₹3 lacs to the claimant which was computed as follows:-

1. Compensation for mental agony, pain and suffering, Physical disability, loss of future enjoyment of life, prospects of marriage and service, disfigurement etc.	: ₹160000
2. Special diet	: ₹8500
3. Boarding and lodging expenses at Goyal Cottage	: ₹18920
4. Expenses of attendant	: ₹6000
5. Future expenses on attendant	: ₹15000
6. Hospital expenses	: ₹74500
7. Expenses of medicines	: ₹17000
Total	: ₹299920

7. Learned counsel for the appellant-claimant has argued that claimant was a young boy of the age of 14 years at the time of accident. He has suffered 100% disability due to amputation of his leg which has affected his future and marriage prospects. He is not eligible to go to many services including Army, para-military and other disciplinary services. The Tribunal has not allowed any compensation to the claimant for disfiguration of his physique, loss of amenities of life, loss of studies, future medical expenses, artificial limb, transportation etc. Compensation awarded towards special diet and future expenses on attendant are also on lower side.

8. Learned counsel for respondent No.3 has argued that the Tribunal has allowed compensation taking into account all the conventional heads and the expenses suffered by father of the claimant towards his treatment. The compensation awarded by the Tribunal is just and reasonable, keeping in view the price index prevailing at that time.

9. The law with respect to the grant of compensation in injury cases is well-settled. The injured is entitled to pecuniary as well as non-pecuniary damages. Pecuniary damages also known as special damages are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money whereas non-pecuniary damages are incapable of being assessed by arithmetical calculations. The pecuniary or special damages, generally include the expenses incurred by the claimant on his treatment, special diet, conveyance, cost of nursing/attendant, loss of income, loss of earning capacity and other material loss, which may require any special treatment or aid to the insured for the rest of his life. The general damages or the non-pecuniary loss include the compensation for mental or

physical shock, pain, suffering, loss of amenities of life, disfiguration, loss of marriage prospects, loss of earnings, inconvenience, hardship, disappointment, frustration, mental stress, dejection and unhappiness in future life, etc. The above list is not exhaustive and there may be special or additional circumstances depending on the facts in each case.

10. The claimant was treated by PW3 Dr. J.S. Malkhani, Senior Consultant (Orthopaedic), Kolmet Hospital, New Delhi. He has stated that when the claimant was brought to his hospital, his general condition was poor because of severe haemorrhage and shock. He described the condition and treatment of the claimant as follows:-

“There was severe crush injury to the right lower limb starting from upper thigh, around the thigh with avulsion of skin with severe displaced fracture through the upper tibia. It had button hole through the skin at the knee level. There was no blood circulation in the leg. The artery which supplies blood was completely cut and disrupted with a gap of two inches at the cut end. Muscles of the thigh were exposed. The nerves and the cut artery was also exposed in the knee area. The wound extended up to the lower leg. The foot was cold. There was no pulse. An emergency operation to fix the bone and repair the artery was performed on the same day. An amputation was performed on 31.3.91 because of toxemia and septicemia. This was a life saving procedure. In subsequent days, operations were performed to clean and dirty wound. On 20.4.91 skin graft was performed, in which skin was taken from the other thigh. On 26.4.91 the patient was discharged for followup out-patient treatment.”

even after discharge of claimant and he had been attending the hospital for dressing of wound till it healed in two months. The dressings, operations, skin-grafting etc. all are painful procedures and pain continues until the wounds are healed. Regarding the future medical care and treatment required by the claimant, Dr. Malkhani stated as follows:-

“In the present case, since the claimant is a growing child, the cut bone become sadherent and causes pain and even break-down of the skin due to growth. It is likely that this child (Parveen-claimant) may need surgery for painful scar or break-down of the skin due to growth of cut bone. This disability due to loss of leg is a permanent disability and the claimant has to depend on external support of crutches or an artificial leg throughout his life. Since he is a growing child, problems of the stump breaking down and repeated change of artificial leg will be required. The functional loss is total i.e. 100% of the right lower limb. The permanent disability is, thus, 100% of the lower limb.”

12. In case of *Raj Kumar v. Ajay Kumar, 2011(2) R.C.R. (Civil) 101 : (2011) 1 SCC 343*, the Supreme Court considered a large number of precedents and laid down the following principles for computation of compensation in injury cases:-

"General principles relating to compensation in injury cases

4. The provision of the [Motor Vehicles Act, 1988](#) ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as

far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See *C. K. Subramonia Iyer v. T. Kunhikuttan Nair* - AIR 1970 SC 376, *R. D. Hattangadi v. Pest Control (India) Ltd.* - 1995 (1) SCC 551 and *Baker v. Willoughby* - 1970 AC 467).

5. The heads under which compensation is awarded in personal injury cases are the following:- Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) - depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) - involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability – item (ii)(a). We are concerned with that assessment in this case."

13. In this case, a young boy has suffered 100% disability. He has not only suffered loss of education, but has also lost future prospects like

avenues of service. No doubt, Government of India and State Governments have provided reservation for the physical handicapped persons but it is a really very tough task for a physically handicap to rise high in life and to face the daily problems as the handicap restrict his movement, capability and also his avenues. Though the Tribunal has tried to take all the pecuniary and non-pecuniary heads into consideration but it had ignored some of the conventional heads under which compensation could be allowed to the claimant which include loss of amenities of life, loss of status, future prospects, future medical expenses, expenses for providing artificial limb, loss of future income etc. The amount of ₹3 lacs awarded as compensation for the incident in the year 1991 is no doubt not a small amount but while taking into account the fact that the claimant had remained under treatment for a quite long time and had to spent a lot on his treatment, this amount call for revision. The claimant had remained admitted in Kolmet Hospital for about one month and then stayed in Goyal Cottage, Karol Bag, New Delhi from where he had been going to Kolmet Hospital, Delhi for dressing for about two months. While going to hospital, he had to spend on transportation, attendant etc.

14. I agree with learned counsel for the respondent that 100% disability of limb is not 100% physical disability. Right leg of the claimant was amputated. Even if claimant could not be provided artificial limb and a person whose leg has been amputated had to take the help of crutches to walk and this affects his movement while going upstairs and coming downstairs. He will requires help of an attendant throughout his life.

15. Keeping in view all the above facts and circumstances, the

compensation to which the claimant is entitled, is re-assessed as follows:-

Sr. No.	Heads	Amount
1.	Hospital Expenses as awarded by the Tribunal	₹74500
2.	Expenses on medicines as awarded by the Tribunal	₹17000
3.	Expenses for stay at Goyal Cottage, New Delhi	₹18920
4.	Pain and sufferings	₹50000
5.	Physical disability and loss of future income	₹200000
6.	Loss of amenities of life & disfiguration	₹100000
7.	Loss of prospects of marriage	₹100000
8.	Expenses on attendant (actual) as awarded by the Tribunal	₹6000
9.	Future expenses on attendant	₹25000
10.	Future medical expenses	₹50000
11.	Expenses for artificial limb	₹50000
12.	Transportation expenses	₹15000
13.	Special diet	₹10000
14.	Loss of studies	₹50000
	Total	₹7,66,420/-

16. This appeal has merits and is accordingly allowed. Compensation amount of the claimant is enhanced from ₹3,00,000/- to ₹7,66,420/-. The claimant shall also be entitled to interest @ 7.5% on the enhanced amount of compensation from the date of filing the claim petition till actual realization. The compensation amount shall be paid to the claimant by respondent No.2-insurance company by depositing the same in his bank account or pay the same through demand draft. The claimant shall also be entitled to costs of this appeal. The counsel fee is assessed ₹10,000/-.

September 16, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No