

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

**FAO No.1728 of 2000 (O&M)
Date of Decision: May 31, 2016.**

Ram Avtar Yadav

.....APPELLANT(s).

VERSUS

Rattan Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.K.Yadav, Advocate
for the appellant (s).

Mrs. Vandana Malhotra, Advocate
for respondent No.4-insurance company.

SURINDER GUPTA, J.

This is appeal by appellant-claimant Ram Avtar Yadav against the award dated 11.01.2000 passed by Motor Accident Claims Tribunal, Narnaul (later referred to as 'the Tribunal') seeking enhancement of the compensation awarded for the injuries suffered by claimant in the accident with jeep bearing registration No.DBG-6642 (later referred to as 'the offending vehicle').

2. The case of the appellant-claimant, in brief, is that on 11.11.1996, claimant as a pillion rider on scooter No.DDH-5067 was going to Narnaul with Dhirender and when they reached at the turning of village Nagtihari, their scooter was hit by the offending vehicle, as a result of which claimant suffered injuries and was taken to Civil Hospital, Narnaul and then

to PGIMS, Rohtak and Goel Nursing Home, Narnaul. He spent about ₹2 lacs on his treatment and also suffered 60% permanent disability and 22% temporary disability.

3. As the only issue involved in this appeal relates to seeking of enhancement of compensation as awarded by Tribunal, detailed facts of the case are being skipped for the sake of brevity.

4. The Tribunal awarded compensation of ₹2,50,000/- to the claimant, which was computed as follows:-

Sr. No.	Heads	Amount
1.	On account of injuries, disability, pain and sufferings, loss of partial earnings, mental shock etc. under the general damages	₹1,40,000/-
2.	Medical expenses, transportation, attendant charges and special diet	₹1,10,000/-
	Total	₹2,50,000/-

5. Learned counsel for the appellant-claimant has argued that the claimant remained admitted in hospital for 4 months 20 days and had undergone five operations. Prior to the accident, he was running a medical store under the name and style of “Mahavir Medical Store”. The disability certificate issued to him show that he had suffered 60% permanent disability and 22% temporary disability. The disability has resulted in loss of his earning capacity. The Tribunal has not allowed any compensation in this regard. A person who suffered fracture injuries and hospitalised for such a long time, also requires future medical care and physiotherapy besides compensation for loss of amenities of life, loss of income during the period of treatment and loss of future income. He has sought increase in the compensation awarded to the claimant by ₹2.5 lac in lump sum over and above the compensation awarded by the Tribunal.

6. Learned counsel for respondent no.4-insurance company has argued that permanent disability suffered by the claimant has not resulted in loss of earning capacity to that extent. As per the claimant, he was running a medical store. Though there is shortening of his right leg by 1 inch but this disability in no manner affects the earning capacity of a person who is running a medical store. The Tribunal has already taken into account all these facts and circumstances and awarded compensation of ₹2,50,000/-, which was just and fair, keeping in view the price index prevailing at the time of accident i.e. in the year 1996. The compensation awarded by the Tribunal call for no enhancement.

7. In order to prove his hospitalisation and the injuries, claimant has examined PW1 Shiv Kumar, Record-keeper PGIMS Rohtak, who deposed that claimant remained admitted in medical college and hospital, Rohtak from 10.11.1996 to 14.11.1996.

8. PW5 Vimal Kumar Joshi, Accountant, Jaipur Hospital, Jaipur, has stated that the claimant remained admitted in their hospital from 03.01.1997 to 13.01.1997.

9. Subhash Chand PW6 has stated that claimant was admitted in PGIMS, Rohtak on 09.04.1997 with fracture of both bones of leg and remained admitted there upto 27.04. 1997. He was again admitted in the hospital from 10.09.1997 to 24.09.1997.

10. PW7 Karan Sharma, Billing Incharge of Vidhya Sagar Institute of Medical Health and Neuroscience, Nehru Nagar Delhi has stated that claimant was admitted in Vidhya Sagar Institute of Medical Health and Neuroscience, Delhi on 22.12.1997 and discharged on 27.12.1997.

11. Dr. Vinay Chaudhary PW8 had medico-legally examined the claimant and found the injuries mentioned in the MLR (Ex.P33). On x-ray examination, it was observed that the claimant had fracture of shaft of right tibia and fibula.

12. Dr. S.P. Sharma, Orthopaedic Surgeon, General Hospital, Narnaul PW4 was the member of Medical Board, which examined the claimant and assessed his disability as 60% permanent and 22% temporary. He has stated that 22% temporary disability would go with the passage of time after getting treatment.

13. From the evidence on record as discussed above, I find that the claimant had remained under prolonged agony as he was admitted in one hospital and the other for his treatment. The Tribunal has allowed compensation for attendant charges of ₹10,000/-, transportation ₹15,000/- and special diet ₹3,204/-. However, it has missed to award any compensation for future medical expenses. A person, who has suffered fractures, requires constant medical care for quite long time and physiotherapy etc. before he is fully cured. The Tribunal has not allowed any compensation for loss of income during the period, the claimant remained under treatment. In the facts and circumstances of the case, the compensation of the claimant for loss of income can be assessed for a period of about six months. 60% permanent disability has not only resulted in loss of earning capacity of the claimant but also in loss of amenities of life. A person with disability to the extent of 60% has to face a lot of hardships while attending to his daily routine, his profession and the disability also affects his alertness and activities. Though the Tribunal has

assessed the compensation on certain counts but keeping in view the nature of injuries and disability suffered by the claimant, I am of the considered opinion that the compensation awarded to the claimant requires upward revision. I agree with learned counsel for the respondent-insurance company that the compensation is to be allowed keeping in view the price index prevailing in the year 1996. At this stage, after 20 years, it may not be possible to accurately assess the compensation on each conventional heads, future medical treatment, loss of amenities of life, as such, taking into account all the facts mentioned above, the compensation awarded to the claimant is enhanced ₹1,50,000/- over and above the compensation awarded by the Tribunal. The claimant shall also be entitled to interest @ 7.5% per annum on the enhanced by amount of compensation from the date of filing of the claim petition till actual realisation. Respondent No.4 being insurer shall be liable to pay enhanced amount of compensation to the claimant. The claimant shall also be entitled to costs of this appeal. Counsel fee is assessed at ₹5,000/-.

May 31, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE