

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

**FAO No.1939 of 1999 (O&M).
Date of Decision: 23.02.2016.**

Mohit Kumar

....Appellant.

VERSUS

Ram Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. R.S. Mamli, Advocate for the appellant.

None for respondent No.1.

Mr. Naveen Kaushik, Additional Advocate General, Haryana.

SNEH PRASHAR, J.

Appellant Mohit Kumar filed this appeal for enhancement of compensation awarded to him by Motor Accident Claims Tribunal, Jagadhri (for short, “the Tribunal”) vide the award dated 09.01.1999 passed in MACT Case No.59 of 1997.

The relevant facts are as under:-

On 19.03.1997, one Ram Kishan was carrying three school children (one of them being the appellant) in a rickshaw. Near Hanuman Mandir on bye pass road Yamuna Nagar, the rickshaw was hit by a bus bearing registration No.HNX-5989 being driven rashly and negligently by

Ram Singh (respondent No.1). Due to the accident, one child namely Aditya Sharma died at the spot whereas the claimant-appellant, the third child and Ram Kishan, Rickshaw puller sustained injuries.

A claim petition invoking the provisions of Section 166 of the Act of 1988 claiming compensation on account of injuries sustained was filed by the appellant alleging that the accident occurred entirely due to rash and negligent driving of the offending bus by respondent Ram Singh.

The claim petition was contested by the respondents. On the basis of the rival pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the learned Tribunal awarded compensation to the tune of Rs.2,10,000/- to the appellant with interest at the rate of 12% per annum from the date of filing the petition till realization.

Feeling unsatisfied with the award dated 09.01.1999, the claimant-appellant preferred the instant appeal.

The submissions made by Mr. R.S. Mamli, learned counsel for the appellant and Mr. Naveen Kaushik, learned Additional Advocate General, Haryana have been heard and record perused.

Raj Kumar, father of the appellant stepped into the witness box as PW5 and deposed that the left leg of his son Mohit was completely crushed. From the site of accident he was first taken to Gaba Hospital, Yamunanagar where he remained admitted for two hours and was given first aid etc. He was then referred to P.G.I. Chandigarh where he was

operated upon four times. During treatment period he remained admitted in the said hospital for different spells i.e. from 19.03.1997 to 29.04.1997, 07.04.1998 to 06.05.1998. PW2 Dr. R.K. Mahajan stated that on 31.05.1997 he conducted a minor operation on Mohit at Gaba Hospital and stated that the child has suffered 36% permanent disability. His statement was corroborated by PW3 Dr. Deepan Jain who issued the disability certificate Ex.P2.

Learned counsel for the appellant argued that learned Tribunal wrongly assessed the monthly income of the appellant as the minimum provided in the Second Schedule of the Act of 1988 i.e. Rs.1500/- per month whereas the appellant belongs to an educated and well placed family. The disability suffered by the appellant, though is 36% but he will have to live with the same throughout life and it will directly effect his earning capacity.

Learned counsel further contended that the multiplier of '16' was wrongly applied by the Tribunal and the amount of compensation awarded under the heads of pain and suffering; attendant; transportation special diet etc. is on lower side. Also the compensation awarded under the head of 'disability' i.e. Rs.50,000/- is very less.

From the medical documents produced by the appellant, it stands proved that he remained hospitalized for various durations during a span of more than one year. He was operated upon four times. The nature of injuries being serious and grievous and the period of hospitalization being long the amount of Rs.20,000/- allowed as compensation for pain and

suffering undergone by the appellant is enhanced to Rs.40,000/-.

As per the disability certificate Ex.P2 the permanent disability suffered by the appellant was assessed as 36%. In **Master Mallikarjun vs. Divisional Manager, The National Insurance Company Limited and another, 2013(4) R.C.R. (Civil) 295** Hon'ble Apex Court held that while considering the claim of a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act.

For a child the best part of his life is yet to come. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable a child to acquire something or to help a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. In Master Mallikarjun's case (supra) Hon'ble Apex Court held that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc. should be, if the disability is above 10% and upto 30% to the whole body Rs.3 lacs; upto 60% Rs.4 lacs; upto 90% Rs.5 lacs; and above 90% it should be Rs.6 lacs. For permanent disability upto 10% it should be Rs.1 lac unless there are exceptional circumstances to take different yardstick.

Accordingly, the amount of Rs.1,03,680/- awarded to the appellant for loss of future earning capacity by learned Tribunal is enhanced to Rs.3 lacs.

The amount of Rs.15,592/- allowed as compensation towards medical treatment, Rs.50,000/- awarded on account of loss of enjoyment of life and loss of one year study and Rs.20,000/- awarded under the heads of attendant, transportation and special diet is adequate and calls for no intervention. In the above premise, the appellant is held entitled to compensation of Rs.4,25,592/-, as indicated above.

The enhanced compensation in addition to the amount of Rs.2,10,000/- awarded by the Tribunal shall be paid within a period of 45 days from the date of receipt of certified copy of this judgment, failing which, the appellant shall be entitled to interest at the rate of 7.5% per annum from the date of filing of the appeal till its realization.

Accordingly, the award dated 09.01.1999 passed by the tribunal is modified and the appeal is partly allowed.

(SNEH PRASHAR)
JUDGE

23.02.2016.
jitender