

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

FAO No.2104 of 1999(O&M)

Date of decision:8.7.2016

Bijender Kumar Jain

....Appellant

VERSUS

Haryana Roadways and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. V.K. Gupta, Advocate for the appellant.

Mr. Gaurav Goel, AAG, Haryana.

Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate for respondent No.5.

REKHA MITTAL, J.

The injured-claimant is in appeal seeking enhancement of compensation in respect of the injuries sustained by him in a motor vehicular accident on 07.07.1994.

The Motor Accident Claims Tribunal, Karnal (for brevity 'Tribunal') awarded compensation to the tune of Rs.40,000/- under various heads.

The sole submission made by counsel for the appellant is that the Tribunal has not awarded any compensation towards disability to the extent of 40% suffered by the victim and consequent loss of amenities of life. It is further argued that even though disability has not been assessed by a medical board constituted with the intervention of the Government

machinery but statement of Dr. Mayank Jain (PW2) cannot be thrown overboard to deny compensation for disability.

Counsel for the respondents have supported the award with the submissions that in absence of disability being assessed by a Board duly constituted by the Government of Haryana, the appellant cannot claim any compensation qua disability or loss of amenities of life.

I have heard counsel for the parties, perused the paper-book particularly the award passed by the Tribunal.

Dr. Mayank Jain (PW2) of Vardhman Hospital, Muzaffar Nagar, appeared in the witness box and testified on oath that the claimant was admitted in their hospital on 10.07.1994 with central fracture dislocation of right hip besides other minor injuries. He as well as Dr. Mukesh Jain, Senior Orthopaedic Surgeon treated the claimant in the hospital. He was discharged on 19.08.1994. Due to injuries, the right lower limb of the claimant was shortened to the extent of one inch and he suffered permanent disability to the extent of about 40%. He further deposed that the claimant remained bed-ridden up to October, 1994.

Indisputably, the alleged disability suffered by the claimant was not subject to examination and opinion by a Medical Board constituted by the Government of Haryana. Nevertheless, the respondent did not adduce any evidence to rebut the statement of Dr. Mayank Jain. Counsel for the respondents is not in a position to point out any tangible and material fact elicited during cross-examination of Dr. Mayank Jain sufficient to doubt the correctness of his deposition that due to sustaining of injury, the right lower limb of the claimant was shortened.

Keeping in view the evidence on record, it is expedient in the interest of justice that the appellant is awarded some compensation towards

loss to his right lower limb. Taking a conservative view of the nature of loss suffered by the appellant, he is allowed another sum of Rs.20,000/- towards loss to his right lower limb plus Rs.5,000/- towards loss of amenities of life. In this manner, the enhanced amount of compensation is calculated to the tune of Rs.25,000/- payable with interest at the rate of 6% per annum from the date of filing of the claim petition till realisation.

In view of what has been discussed hereinabove, the appeal is partly allowed in the aforesaid terms. No order as to costs.

JULY 8, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE