

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

FAO No. 2527 of 1999

Date of Decision: 01.02.2016

Satya Narain

.....Appellant

Vs.

Shameem and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Ms. Amrita Nagpal, Advocate, for
Mr. Lokesh Sinhal, Advocate,
for the appellant.

Respondents No. 1, 2, 2(a), 2(b) already *ex parte*.

Mr. Vinod Gupta, Advocate,
for respondent No. 3.

Mr. Rohit Goswami, Advocate, for
Mr. Vinod Chaudhary, Advocate,
for respondent No. 6.

AMOL RATTAN SINGH, J. (ORAL)

This appeal has been filed by the claimant, who is stated to have been injured in an accident that took place with the vehicle driven by respondent No. 1 and owned by respondents No. 2, 2(a) and 2(b) on 10.01.1995. The issue of negligence was held against respondent No. 1 by the learned Tribunal. The vehicle owned by respondents No. 2, 2 (a) and 2 (b) was insured with respondent No. 3.

2. As per the evidence led before the Tribunal, the

appellant received the following injuries:-

- "1. A lacerated wound over the right eye brow of the size of 3.5 cm x .05 cm with oozing out fresh blood.*
- 2. An abrasion of the size of 3.3 cm over the chin.*
- 3. An abrasion over the left side of the face of size 6.4 c.m. Advised x-ray.*
- 4. 10.2 c.m. lacerated wound bone deep with fracture of underline wound. Advised x-ray.*
- 5. Diffused over the left thigh. Advised x-ray."*

It further came in evidence that he remained admitted initially at Jaipur Hospital, Jaipur, till 05.03.1995 and thereafter, he received treatment from the Santokba Durlabhji Memorial Hospital-cum-Medical Research Institute, from 16.09.1996 to 30.09.1996. As per medical bills produced before the Tribunal, he was awarded compensation to the tune of ₹52,000/-, on account of medical expenses incurred.

As per testimony of Dr. P.D. Saini (PW-2), the appellant had suffered a permanent disability of 15% in the left lower limb and of 10% in the right lower limb. He was awarded a compensation of ₹25,000/- under this head.

For pain and suffering, mental agony and for special diet, he was awarded ₹18,000/-, and ₹5,000/- for transportation charges. Accordingly, the total compensation awarded by the learned Tribunal, was ₹1,00,000/-.

3. Learned counsel for the appellant submits that nothing was awarded for loss of income even for the period that the appellant remained in hospital. Further, nothing was awarded for loss of the ability to earn to his full capacity, which would be

different from the compensation awarded for the disability itself, i.e. for loss of the normal use of his limbs for daily activities of life. Other than that, she submitted that the amount for pain and suffering, mental agony and other heads, including special diet, was highly inadequate.

4. Respondents No. 1, 2, 2 (a), 2(b) and 3 were held liable to pay the compensation jointly and severally, however, essentially it was respondent No. 3, the insurer of the vehicle, who would have the first liability to pay the compensation.

5. Learned counsel for respondent No. 3 submits that since no evidence was led by the appellant to show his income before the Tribunal, nothing is to be awarded to him on that account and further, the compensation awarded for disability and under the other heads is adequate, keeping in view the fact that the accident took place 21 years ago.

6. Having considered the arguments made on both sides, in the opinion of this Court, even if it is taken that no evidence was led to show the income of the appellant, who was stated to be 35 years old at the time of accident, it is to be presumed that he was earning something to keep body and soul together, and as such, minimum wages as were applicable during the period in question, should have been taken into account by the learned Tribunal, before considering the question of compensation for loss of income.

The income of a daily wage Labourer in the year 1995 is assessed to be approximately ₹40/- per day (amounting to

₹1,200/- per month). Consequently, the appellant first having remained in hospital from 10.01.1995 to 05.03.1995, i.e. for a period of about two months, he would have also taken some time to recover and therefore, could not have worked for the said period and as such ₹2,600/- is awarded to him for loss of income for the period that he remained in hospital initially. Thereafter, again he remained in hospital from 16.09.1996 to 30.09.1996, i.e. for a period of fifteen days; consequently, a sum of ₹1,000/- is awarded to him for the said period, considering that even before and after discharge from hospital, he would not have been able to work for a few days.

Thus, a total amount of ₹3,600/- (₹2,600/-+ ₹ 1,000/-) is awarded for loss of actual income.

Keeping in view the fact that disability of 25% that was assessed qua two limbs, therefore, in the opinion of this Court, disability to the extent of 12.5% qua the whole body would be reasonable, which would obviously also affect his earning capacity and accordingly, loss of income to the above extent would also need to be factored in, by way of loss of future prospects of earnings. 12.5% of ₹1,200/- (per month) would be ₹150/-; thus the annual loss of income works out to ₹1,800/-. To the above annual loss of future prospects of income, since he was 35 years of age, a multiplier of 16 is applied which is appropriate, as per the judgment of the hon'ble Supreme Court in **Smt. Sarla Verma and others** vs. **Delhi Transport Corporation and another** (2009) 6 SCC 121. Therefore, applying the aforesaid

multiplier, a total amount of ₹28,800/- (rounded off to ₹29,000/-), is awarded on account of loss of future prospects of earnings.

7. For pain and suffering and mental agony undergone by the appellant, obviously over a period of nine months, since he was first treated for the months of January 1995 to March 1995 and thereafter, in September 1995, in my opinion ₹18,000/- is highly inadequate compensation, as awarded by the learned Tribunal. Accordingly, ₹35,000/- is awarded for the same.

The compensation awarded under the other heads is kept intact.

8. Accordingly, the compensation now awarded to the appellant is as follows:-

(i)	For medical bills proved before the Tribunal	₹52,000/-
(ii)	For permanent disability	₹25,000/-
(iii)	For pain, suffering mental agony and under other heads, including special diet	₹35,000/-
(iv)	For transportation charges	₹5,000/-
(v)	For loss of actual income	
	(₹2,600/-+₹1000/-)	₹3,600 /-
(vi)	For loss of future prospects of income	
		₹29,000/-
	Total	-----
		₹1,49,600/-

Rounded off to ₹1,50,000/-

9. The compensation awarded by the Tribunal was ₹1,00,000/-, thus the enhanced amount comes to ₹50,000/-

10. The enhanced amount of ₹50,000/- shall carry an interest of 7.5% per annum, from the date of filing of the claim petition to the date of realization of the said amount.

The appeal is accordingly partly allowed, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

February 01, 2016
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