

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.261 of 2001

Date of Decision: 29.09.2016

Ashavjit

... Appellant

Vs.

Yashpal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present:- Mr. D.R.Bansal, Advocate,
for the appellants.

None for the respondents.

Amol Rattan Singh, J.

This is an appeal by the claimant before the Motor Accident Claims Tribunal, Jind, seeking enhancement of the compensation of Rs.2,75,000/- awarded to him by the Tribunal, on account of the injuries he suffered in an accident stated to have been caused due to the rash and negligent driving of respondent No.1 herein.

The facts, as taken from the impugned Award, are that on 03.03.1998, the appellant and one Rajbir Singh were going from Medical

College and Hospital at Rohtak, to hostel no.2 of the M.D. University. When their 'three-wheeler', bearing registration No.HR-12-2292, crossed gate No.8 at about 11:30 pm, a jeep bearing registration No.HR-12-F-0313, driven by respondent No.1 allegedly at a fast speed, came from the opposite side and on the wrong side of the road and hit the 'three-wheeler' in which the appellant and his friend were travelling. The 'three-wheeler' turned turtle, due to which the appellant suffered multiple injuries. An FIR was also lodged against the first respondent herein, at Police Station Civil Lines, Rohtak, on 04.03.1998, alleging the commission of offences punishable under sections 279 and 337 IPC.

The claim petition was, therefore, filed seeking a compensation of Rs.4,00,000/- from the respondents, i.e. the driver, owner and insurer of the aforesaid jeep.

2. Upon notice issued to them, the driver and owner of the vehicle filed a joint written statement alleging that the accident had taken place due to the negligence of the driver of the 'three-wheeler' and alternatively, pleaded that liability to pay the compensation amount, if any, was that of the insurance company.

The insurance company filed a separate written statement, taking a stand that respondent No.1 did not hold a valid driving licence at the time of the accident and that respondent No.2 had committed a breach of the terms and conditions of the policy.

3. Upon the aforesaid pleadings, the Tribunal framed the usual issues of responsibility for rash and negligent driving, entitlement to

compensation, the validity of the driving licence of respondent No.1 and on any non-joinder of necessary parties.

4. On the issue of negligence, the petitioner having testified in terms of his claim petition and with respondent No.1 not having stepped into the witness box, the issue of negligence was decided against the said respondent, against which no appeal is shown to have been filed.

In support of his claim for compensation, the petitioner stated that he had been removed to the Medical College and Hospital at Rohtak, where he remained admitted as an indoor patient from 03.03.1998 to 14.03.1998, during which period nails were fastened in his right leg, due to which he developed an infection and that none of the three fractured bones got united. He, therefore, got admitted to the Jain Hospital at Hisar for further treatment, where operations for bone grafting were conducted and plates were inserted in his right arm and leg, and a plaster of paris also applied.

He is stated to have remained admitted in that hospital for one and half months and then for another period of three weeks, in July 1998.

It was further contended that even after his discharge the appellant remained confined to bed and his movements were restricted because of the plaster and the operations. It was also contended that he had spent a sum of Rs.1,50,000/- on his treatment, in support of which he produced medical bills as Exs.P5 to P73.

5. In support of the aforesaid testimony, one Dr. R.P.Verma testified that he had medico-legally examined the appellant on 04.03.1998 at

12:45 am and noted two injuries, in the form of a swelling, deformity and pain in both the lower legs between the knee and ankle joint and further, a swelling, deformity and tenderness in the right arm.

He, therefore, recommended that the opinion of the Ortho-Surgeon be obtained.

6. Another Dr., PW3, Dr. Ramesh Jain, also testified to the effect that the appellant was admitted to the hospital at Hisar on 21.04.1998 as an old case of multiple injuries, for further treatment. He had fractures of both bones of the legs and of the right humerus bone .

The witness further testified that the appellant was operated upon thrice for his fractures, in the first of which, external fixation of the fracture of the left tibia was done, after which an operation for exploration of lateral popliteal nerve was done on the life side and in the last operation, plating and bone grafting were done on the fracture of the right humerus bone.

The patient was then discharged on 08.06.1998 and again admitted on 10.07.1998, when he was again operated due to non-union of the tibia and bone grafting.

He had been discharged on 30.07.1998 and had paid Rs.20,600/- as treatment charges on the first occasion and Rs.9050/- on the second admission. This witness further testified that these amounts did not include the cost of medicines.

7. One Dr. J.S.Bhatia testified as PW6, that on 12.05.1999 a Medical Board was constituted of which he was a member, to determine the

degree of disability suffered by the appellant, and it was found that he had suffered permanent disability to the extent of 20% in the right upper limb on account of a fracture of the right humerus, another 30% disability in the left lower limb on account of restriction of movements of the left knee, with shortening of his leg by one inch and another 20% disability was assessed for the right lower limb.

This witness proved the disability certificate, Ex.P74, issued by the Medical Board.

8. Upon the aforesaid evidence, the Tribunal came to the conclusion that as per the bills submitted, including Rs.20,600/- spent by him in his first stint in the hospital at Hisar, the total expenditure came to Rs.58,800/-. It also accepted that another Rs.9050/- had been spent on his second admission to the Hisar hospital. Thus, by way of actual expenditure, Rs.67,850/- was awarded as having been spent on medicines and treatment and another Rs.7150/- was awarded on miscellaneous expenditure on his treatment, thus totaling Rs.75,000/-.

For pain and suffering due to his admission in hospital on three occasions and on account of the disabilities suffered, a sum of Rs.1,00,000/- was awarded, which also included the “loss of enjoyment of life”.

Next, on account of loss of earnings, though the appellant had claimed that he was earning Rs.5000/- per month, he was assessed at having an earning of Rs.3000/- per month and as his treatment and recovery would have taken about six months, it was held that he had suffered a loss of Rs.18,000/- on that count. However, keeping in view the fact that his future

prospects of earning, would also be reduced, a total sum of Rs.1,00,000/- was awarded for loss of earnings, including the Rs.18,000/- assessed by way of loss of actual earnings during the period of treatment and recovery.

In all, Rs.2,75,000/- was awarded by the Tribunal, as already noticed, alongwith interest @ 12% per annum, running from the date of the filing of the claim petition, till the realisation of the awarded amount.

9. As regards the liability to pay the amount, the driving licence held by respondent No.1 was found to be valid for driving a 'three-wheeler', the licence actually being for driving a Maxi Cab but with no evidence having been led by the insurance company to show that any separate licence was required for driving a 'three-wheeler'. Hence, the respondents were held to be jointly and severally liable to pay the compensation awarded.

10. Before this Court, after mediation before the Lok Adalat had failed, Mr. D.R.Bansal, learned counsel for the appellant, submitted that the compensation awarded was highly inadequate, with the chances of marriage of the appellant also reduced due to the shortening of his leg and restrictions in his movements, as is obvious from the fact that the Medical Board has assessed him to be disabled to the extent of 20% to 30%, in three different limbs, and further, because of a special diet that he would have needed during his treatment and after. Also, with nothing awarded for transportation charges, as also charges for an attendant, the compensation needs to be enhanced.

Mr. Bansal further submitted that the Tribunal had not also factored in proper compensation for loss of business to the appellant.

11. Though, earlier, counsel for the insurance company had been appearing before the Lok Adalat, none appeared before this Court on the date that the matter was heard and judgment reserved.

12. Having considered the argument of learned counsel for the appellant and the Award of the learned Tribunal, as regards the compensation for a special diet, in my opinion, the learned Tribunal had taken care of that in the form of miscellaneous expenses of Rs.7150/- awarded over and above the charges for treatment and medicines, and no enhancement of compensation on that count is needed.

As regards the compensation for an attendant on the appellant, during the period of his treatment and possibly sometime thereafter, I agree with learned counsel that even if he was attended by a family member/relative, obviously such relative would have taken time off from his/her work (even household work), and that, in the opinion of this Court, needs to be compensated. Since the appellant was admitted first for a period of 10 days at the hospital at Rohtak, then for a period of 48 days from 21.04.1998 to 08.06.1998 at Hisar and then again for 20 days from 10.07.1998 to 30.07.1998, again at Hisar, the total period of his internment in the hospital works out to 78 days. Secondly, even on a lower estimate, the contribution of an attendant cannot be assessed to be less than Rs.2000/- for the said period, which is accordingly awarded to the appellant.

13. As regards the loss of earnings, and any lessened prospects of marriage, as also for disablement in terms of earning capacity as also for enjoying a normal life, the Tribunal has awarded a sum of Rs.2,00,000/- in

all, including for pain and suffering.

As regards the earning capacity, no specific evidence is seen to have been led with regard to the vocation of the appellant. The Tribunal, however, assessed his income to be Rs.3000/- as an able bodied person, meaning thereby that he was virtually assessed as a daily wager. However, actually, as per the notification of the Haryana Government which was prevalent at the time of the accident and during the period of treatment of the appellant, the monthly wage of an unskilled labourer was approximately Rs.1700/- on an average, i.e. vide notifications dated 01.01.1998 and 01.07.1998. The Tribunal having assessed his income to be Rs.1300/- per month in excess to that, at least as regards actual loss of earnings during the period of treatment, I see no reason to interfere with the compensation of Rs.18,000/- awarded in that regard.

Coming then to the loss of his future earning capacity, the extent of disability, as already seen, was 20% in the right upper limb, 30% in the left lower limb and another 20% in the right lower limb. Obviously, some conjecturing has to be done by this Court to assess the total disability qua the earning capacity, in terms of total percentage of disablement. A 1/3rd disablement in three limbs, would, in the opinion of this Court be approximately equivalent to a total loss of earning capacity of 30% qua the whole body. Therefore, taking into account the fact that the minimum wages of a daily wager were Rs.1700/- per month, the monthly loss of earning capacity would be about Rs.600/-, or Rs.7200/- annually.

14. The age of the appellant is not given anywhere in the impugned

Award and this being one of the cases the records of which were burnt in the fire incident of January 2011 in this Court, again some guess work has to be resorted to.

Since the appellant was still to be married at the time of the accident and was seen to be going with his friend (to the friends' hostel in the University), obviously he was either in his very late teens or earlier 20s. In either case, the multiplier to be applied would be 18, thereby coming to a total loss of Rs.1,29,600/- on loss of income assessed in the year 1998 (600x12x18).

However, since there obviously would have been an increase in his income, even as per inflation and increased amount of minimum wages notified every six months by the Government, 50% of the loss of future prospects of an income, in the opinion of this Court, needs to be added in this case. Thus, to the loss of income of Rs.7200/- annually, 50% of that amount needs to be factored in. 50% of Rs.7200/- works out to be Rs.3600/- per annum, to which again a multiplier of '18' is to be applied. Thus, the total loss of future prospects of an increased income would work out to be Rs.64,800/-.

Hence, the total loss of income works out to Rs.1,94,400/-.

15. The Tribunal having awarded a total sum of Rs.2,00,000/- to the appellant on account of disablement, loss of income, pain and suffering and loss of enjoyment of life, the said amount is held to be adjusted against only the total loss of income, plus Rs.2000/- awarded towards the services of an attendant, thereby leaving a balance of Rs.3600/-, out of Rs.2,00,000/-.

Consequently, what is to be awarded to the appellant now, is for pain and suffering and loss of amenities of life and enjoyment, with almost the entire amount awarded by the Tribunal (less the medical expenses) having been awarding by this Court towards loss of earnings alone.

A total sum of Rs.1,50,000/- is considered to be appropriate compensation, though still not fully adequate, towards pain and suffering (including hospitalization, bone grafting and other operations etc.), loss of amenities of life, lessened prospects of marriage and the ability to move about normally, in the normal course of day to day business.

16. Thus, the break-up of compensation now awarded by this Court, including what was awarded by the Tribunal is as follows:-

i)	Towards the loss of earnings (actual, during the period of treatment, loss of future earning including loss of prospects of enhanced future earning	:	Rs.1,94,400/-
ii)	Towards services of an attendant	:	Rs.2000/-
iii)	Towards medical expenses and miscellaneous expenses	:	Rs.75,000/-
iv)	Towards loss of amenities of life, including lessened prospects of marriage, pain and suffering	:	<u>Rs.1,50,000/-</u>
Total compensation awarded:			<u>Rs.4,21,400/-</u>

Consequently, the appellant would now be paid Rs.1,46,400/-, over and above the amount of Rs.2,75,000/- awarded by the Tribunal, there being no reason for enhancement of the amount of Rs.75,000/- awarded for medical treatment and miscellaneous expenses.

The aforesaid amount of Rs.1,46,400/- would carry an interest @ 6% per annum, running from the date of the filing of the claim petition till the date of realisation thereof.

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

September 29, 2016
dinesh/vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether the order is speaking/reasoned? *Yes*