

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

FAO No.3928 of 2002.

Date of Decision: 11.05.2016.

Sadhu Ram

....Appellant.

VERSUS

Pawan Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Ms. Kiran Bala, Advocate for the appellant.

Mr. R.K. Bashamboo, Advocate for respondent No.3.

SNEH PRASHAR, J.

By way of this appeal, appellant-claimant Sadhu Ram seeks enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Ambala (for short, “the Tribunal”) vide award dated 17.01.2002 passed in MACT Case No.8 of 2001, filed by him, on account of injuries sustained in a vehicular accident.

The submissions made by Ms. Kiran Bala, learned counsel for the appellant and Mr. R.K. Bashamboo, learned counsel for respondent No.3 have been heard and record perused.

Learned counsel for the appellant submitted that learned Tribunal ignored the factum of multiple injuries sustained by the appellant including dislocation of right hip joint which was a grievous injury and resulted in making the appellant disabled to the extent of 5% and awarded only a sum of Rs.20,000/- in lump sum as compensation. The disability certificate was proved by PW3 Dr. R.C. Jindal, Orthopedic Surgeon, Civil Hospital, Ambala City, being member of the medical board which examined the appellant. Appearing in the witness box as PW2, the appellant stated that from the site of accident he was taken to Civil Hospital, Yamunanagar for treatment where he remained hospitalized and after discharge continued to take follow up treatment. He also stated that he spent approximately Rs.60,000/- to Rs.70,000/- on his treatment and that because of the disability he can no longer work as an agriculturist. To support her argument that in a case of personal injury the facts that need to be considered are the age of the injured, nature of injuries, period of hospitalization, cost of medicines, hospitalization, attendant charges, amount spent on special diet, transportation, loss of income during the period of treatment etc., learned counsel relied upon ***Naresh Kumar vs. Kartar Singh and Ors, 2014(2) Law Herald 1568.***

In the case in hand, appellant Sadhu Ram (PW2) stated that he sustained several injuries on various parts of the body including on his face and back. The main injury about which he specifically stated was dislocation of right hip joint. He also stated that he remained admitted in the

hospital for a period of seven days. PW3 Dr. R.C. Jindal, Orthopedic Surgeon, Civil Hospital, Ambala City proved the disability certificate according to which on examination by Board of Doctors, the appellant was found to be disabled to the extent of 5% due to osteoarthritis of right hip joint. In his cross-examination, the doctor stated that osteoarthritis of any joint can result due to injury and otherwise also. The statement of appellant Sadhu Ram read with the statement of PW3 Dr. R.C. Jindal is sufficient to indicate that the appellant sustained disability due to the injury i.e. dislocation of right hip joint. Considering the aforesaid facts, in my considered opinion, it was not proper on part of learned Tribunal to have awarded only consolidated amount of Rs.20,000/-.

The appellant remained hospitalized for seven days. Dislocation of the joint was a grievous injury which must have led to continuous pain and agony for quite some time. While in the hospital, the appellant required a personal attendant. No doubt, as pointed out by learned counsel for the respondent, the appellant did not utter a word to state that he had spent on hiring a person as attendant, but the fact remains that even if his family members were attending on him, he must have spent on their transportation and boarding-lodging. Apart from that he also must have spent on special diet and must have suffered loss in income during the period of hospitalization and follow up treatment.

As regards expenditure on treatment, the appellant stated that he had taken treatment from Civil Hospital, Yamunanagar and it is a known

fact that treatment in Civil Hospital is free for the public. He tendered medical bills amounting to Rs.8800/-. Some amount must have been spent on special and nutritious diet. Although no substantive evidence was led by the appellant to prove his occupation and income but even if he is taken to be a casual labourer, he must be earning atleast Rs.3000/- per month and it is obvious that he may not have been able to do any work for atleast three months after the accident and suffered loss in income for the said period. For all the aforesaid factors, the appellant is awarded compensation as under:-

(i)	Pain and suffering	:	Rs.15,000/-
(ii)	Transportation and special diet	:	Rs.10,000/-
(iii)	Loss in income	:	Rs.9,000/-
(iv)	Medical expenses	:	Rs.8800/-
Total			: <u>Rs.42,800/-</u>

In addition to the above amount, since the appellant had suffered 5% disability due to dislocation of hip joint and he was a daily wager, the disability will cause loss to future earning capacity to that extent. His income having been assessed as Rs.3000/-, the future loss in earning capacity comes to Rs.300/- per month i.e. Rs.3600/- per annum. When the appellant appeared in the witness box, he stated his age 55-60 years. As such, applying the multiplier of '9' the amount comes to Rs.32,400/-.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 17.01.2002 passed by learned Tribunal

is modified. The enhanced compensation of Rs.55,200/- shall be paid to the appellant within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization.

(SNEH PRASHAR)
JUDGE

11.05.2016.
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