

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

FAO-511-2003 (O&M)
(MACT case No.46 of 21.7.98)
Date of decision: 10.3.2016

Samsuddin

...Appellant

Versus

Shahabuddin and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Naren Pratap Singh, Advocate for the appellant

Mr.Kuldeep Joshi, Advocate for respondent No.3.

Mr.Vipul Sharma, Advocate for respondent No.6.

SNEH PRASHAR, J.

By filing the present appeal, the injured-appellant had sought enhancement of the compensation awarded to him by learned Motor Accidents Claims Tribunal, Gurgaon (in short 'the Tribunal'), vide award dated 21.09.2002 on account of the injuries sustained by him in a motor vehicle accident.

The submissions made by Mr.Naren Pratap Singh, Advocate representing the appellant, Mr.Kuldeep Joshi, Advocate for respondent No.3 and Mr.Vipul Sharma, Advocate for respondent No.6 have been heard and record perused.

Learned counsel for the appellant referring to the statements of PW1 Dr. Akhlaq Ahmed, Medical Officer, Orthopaedic Surgeon, PW6 Dr.B.B.Aggarwal, Medical Officer, General Hospital, Gurgaon and argued that the appellant suffered 50% permanent disability because of severe restriction of movement at his right ankle of foot and shortening of right lower limb. Yet, learned Tribunal awarded a meager amount of Rs.50,000/- on account of permanent disability and future loss of enjoyment. The appellant suffered several serious and grievous injuries including compound comminuted fracture of both bones (tibia and fibula) of right leg with secondary infection. He remained hospitalized for a period of about three months and remained under followup treatment for over a year. He had to undergo operation. He was earning his livelihood by transporting goods in his camel cart but due to shortening of leg, he would not be now able to do that.

PW1 Dr.Akhlaq Ahmed, Medical Officer, Orthopedic Surgeon-cum-DTO, Gurgaon deposed that he alongwith Dr.RP Dahiya and Dr.Mrs.CK Aggarwal, Civil Surgeon, Gurgaon was member of the Medical Board, which examined the appellant and assessed his physical impairment as 50% because of severe restriction of movement at the right ankle of foot. He added that the patient (appellant) remained under his treatment from 29.4.1998 to 1.5.1998 and there was a compound comminuted fracture both bones lower 1/3 right leg with secondary infection. In his cross-examination, he deposed that the disability to the extent of 50% is only qua right limb and not for the whole body. The

permanent disability was assessed keeping in consideration the stiffness of the ankle joint and foot (right) and shortening as a result thereof. It was not a old fracture rather was fresh one.

PW9 Dr.Rajesh Jetli of Jetli Orthopedic Centre, Faridabad deposed that patient Shamsuddin was admitted in his Nursing Home on 2.8.1998 having compound fracture on right leg and was having one month old injuries received in an accident. The patient had visited in his clinic for follow up treatment for 15-20 times.

The disability suffered by the appellant is qua right lower limb. Following the law laid down in **Ram Karan Goyal vs. Sub Division Engineer, Mechanical and others 2008(2) RCR (Civil) 103**, since the appellant had suffered 50% permanent disability, a sum of Rs.One lac (Rs.2,000/- per percent) is allowed under the head of permanent disability.

Because of the gravity of injuries suffered by the appellant, the long period of his hospitalization and treatment, needless to say that he suffered a lot of trauma. As such, he is awarded Rs.20,000/- for pain and suffering undergone by him.

The expenses incurred on medical treatment i.e. Rs.33,700/- by the appellant have already been allowed. The amount awarded under the loss of income i.e. Rs.18,000/- for six months and Rs.10,000/- for special diet, attendant and transportation charges appears to be adequate.

Accordingly, the enhanced compensation of Rs.70,000/- shall be paid to the appellant within two months from the date of the

receipt of the certified copy of this judgment, failing which, it shall carry interest at the rate of 7.5% per annum from the date of the filing of the appeal till its realisation.

In the above premises, the present appeal is partly allowed and the impugned award is modified as noticed above.

10.3.2016
gsv

(SNEH PRASHAR)
JUDGE