IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.646 of 2005(O&M)
Date of Decision-20.09.2016

Kuldip Singh ... Appellant

Versus

Malook Singh and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Raminder Pratap Kaur, Advocate for
Ms. Gurpal Kaur Dulat, Advocate
for the appellant.

Mr. Bikram Singh, Advocate for
Mr. S.S. Majithia, Advocate
for respondent No.1.

Mr. Sandeep Suri, Advocate
for respondent No.3.

None for respondent No.4.

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<u>RAJ MOHAN SINGH, J.</u>

<u>CM No.2538-CII of 2005</u>

For the reasons mentioned in the application, delay of 120 days in re-filing the appeal is condoned.

Application stands disposed of.

<u>CM No.2539-CII of 2005</u>

For the reasons mentioned in the application, delay of 216 days in filing the appeal is condoned.

Application stands disposed of.

<u>FAO No.646 of 2005</u>

[1]. Claimant-appellant has filed this appeal against Award dated 12.03.2014 passed by Motor Accident Claims Tribunal,

Ropar (for short 'Tribunal') alleging that the amount of compensation awarded by the Tribunal was palpably on the lower side, therefore, appeal has been preferred for enhancement of the same.

[2]. Injured-appellant filed a claim petition under Section 166 of Motor Vehicles Act (for short 'the Act) for grant of compensation on account of injuries suffered by him in a vehicular accident.

[3]. The accident took place on 04.10.2000. The injured was driving the bus belonging to Punjab Roadways Depot, Nawanshahar with a normal speed. When the bus reached in the area of Mukerian, the offending truck came in a rash and negligent manner from the opposite side and struck against the bus. As a result of impact, the driver of the bus received multiple serious injuries. He was removed to Civil Hospital, Mukerian, later on referred to Civil Hospital, Ropar. Claimant remained under treatment for a considerable period. Left leg and knee of claimant were fractured. Claimant spent more than Rs.1 lac for his treatment. Wife and two children of the claimant were dependent upon his income. Claimant is unable to move and walk properly. His income was substantially reduced.

[4]. Claim petition was contested by the respondents.

[5]. Tribunal ultimately decided issue No.1 in favour of the claimant by holding that the accident took place due to rash and negligent driving of driver of the offending vehicle. Issue No.2 was

not contested by the respondents. Under issue No.3, it was found that the driver of the offending vehicle was having proper and valid driving licence on the date of accident. Under issue No.4, Tribunal assessed an amount of Rs.1,75,000/- as compensation payable by the respondents jointly and severely to the claimant-appellant. Ultimately, the said amount was awarded to the claimant-appellant along with interest @ 9% per annum from the date of filing of the claim petition till final realization of amount.

[6]. Learned counsel for the appellant submitted that claimant was 34 years of age at the time of accident. He was removed to Civil Hospital, Mukerian, from where he was further referred to Janta Hospital, Jalandhar and he was treated there for about 26/27 days. Thereafter, he was shifted to Civil Hospital, Ropar where he remained admitted for six months. He was operated upon for his right leg. Six operations were conducted. Iron rod was inserted in his right leg. Injured cannot sit, stand and walk properly. He became permanent disable. An amount of Rs.1 lac has already been spent towards his treatment at the time of the claim petition.

[7]. During the proceedings of the claim petition before the Tribunal, on the basis of evidence it was found that the injured was suffering from traumatic loss of tibia bone by 3 inches with shortening of leg by 2 and half inches with stiffness of ankle joint. His permanent disability was assessed to be 55% as per disability

certificate Ex.P2. The shortening of leg would remain for the whole life. The injured cannot sit on one foot. On the basis of cash memos and receipts etc., an amount of Rs.70,694/- was assessed towards medical expenditure. For permanent disability and shortening of leg, Tribunal assessed an amount of Rs.1,04,306/-. Tribunal assessed an amount of Rs.1,75,000/- as cumulative effect of permanent disability as well as other expenses.

[8]. I have considered the contentions of learned counsel for the parties.

[9]. In case of injury, the heads under which compensation is to be awarded are:-

(1) Expenses relating to treatment, hospitalization, medicines, transportation, special diet and miscellaneous expenses.

(2) Loss of earning and other gain which the injured would have got had he not been injured. This head includes:-loss of earnings during period of treatment and loss of future earnings on account of permanent disability.

(3) Future medical expenses.

(4) Non-pecuniary damages/general damages are also required to be assessed towards pain, suffering and trauma as consequent of the injuries.

(5) Loss of amenities in life including loss of marriage prospects.

(6) Loss of expectation of life i.e. shortening of longevity of life.

(10). In ***Govind Yadav Vs. New India Insurance Company Limited, 2011 (4) RCR (Civil) 817,*** the Hon'ble Apex Court after considering all pros and cons in detail assessed the compensation in case of permanent disability of the injured.

[11]. In ***K. Suresh Vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312***, the Hon'ble Apex Court held that in case of permanent disability, the injured is entitled to grant of compensation towards permanent disability as well as loss of earning capacity. The determination of compensation for loss of earning capacity on the basis of multiplier method was held to be proper. In determination of compensation, some guess work and hypothetical considerations based on sympathy can be worked out, but ultimate determination has to be viewed with some objective standards. There cannot be a flight in fancy. The award should correspondent to reasonableness and should be in consonance with conventional sum. The endeavour should be to award just compensation keeping in view the suffering of the injured person.

[12]. In ***S. Manickam s. Metropolitan Transport Corporation Ltd, 2013(3) RCR (Civil) 696***, it was ruled by the Hon'ble Apex Court that the determination of just compensation cannot be equated to a bonanza. It has to be based on application of fair and equitable principles. Reasonable approach should be adopted. Compensation towards permanent disability and loss of

earning capacity, both were endorsed to the effect that the victim is entitled to separate claims towards permanent disability as well as loss of earning capacity.

[13] In ***G. Ravindranath @ R. Chowdary Vs. E. Srinivas and another, 2013(3) RCR (Civil) 934***, the Hon'ble Apex in case of grievous injuries of the injured in pelvic region ruled that in case of nature of injury, rendering the injured to be impotent, adequate compensation has to be awarded towards all heads like expenses incurred in treatment including hospitalization, future medical expenses towards hospitalization, medicines, attendant charges etc, pain suffering and trauma, loss of amenities, prospects of marriage, loss of expectation of life and loss of future earning. In aforesaid case, the Hon'ble Apex Court awarded a sum of Rs.20.20 lacs.

[14]. In case of ***Rekha Jain Vs. National Insurance Company Ltd., 2013(3) RCR (Civil) 996***, the Hon'ble Apex Court in case of 30% disability of face of a film actress held that in the circumstances of the case, the disability should be treated to be 100% functional disability. Loss was assessed on multiplier method keeping in view the age of the victim. As against compensation of 2 lacs assessed by the Tribunal, the Apex Court assessed the compensation of Rs.42.50 lacs.

[15]. In case of ***Neerupam Mohan Mathur Vs. New India Assurance Company, 2013(4) Law Herald (SC) 3422***, it was held

by the Hon'ble Apex Court that in case of permanent disability on account of amputation of limb, compensation towards non pecuniary damages has to be awarded. In the said case, on account of amputation of one arm, the services of the claimant were terminated by the employer. There was loss of 100% earning capacity of the claimant. The order of High Court in assessing 70% loss of income was upheld by the Apex Court. An amount of Rs.1 lac towards pain, suffering and trauma was assessed. An amount of Rs.2 lacs was assessed towards loss of amenities and additional amount of Rs.1 lac was assessed towards loss of expectation of life i.e. shortening of the normal longevity.

[16]. In case of ***Yadava Kumar Vs The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155,*** the Hon'ble Apex Court highlighted that a distinction has to be drawn between the damages and compensation. Damages are given for injuries which the injured suffered, whereas compensation is to be paid for atonement of the injury caused and to put back the injured as far as possible in the same manner, as if injury has not taken place. Court should be liberal in determination of quantum of compensation to be paid to the victim towards future loss of income and other heads.

[17]. The Tribunal had awarded a sum of Rs.70,694/- towards medical expenses based on evidence produced on record. Claimant-appellant suffered 55% disability on his limb including

shortening of leg by 2 and half inches which was held to be disability of permanent nature. Claimant was suffering from traumatic loss of tibia bone by 3 inches with shortening of leg by 2 and half inches with stiffness of ankle joint. Loss of income on account of permanent disability has to be assessed keeping in view the nature of permanent disability suffered by the claimant. Compensation on account of permanent disability would come to 55 X 2000 (i.e. Rs.2000 for each percent of injury) =1,10,000/-. The income of the injured as per his statement was Rs.3400/- being half pay leave under period of treatment which comes out to be Rs.7400/- per month and Rs.88,800/- per annum (7400 X 12). 55% permanent disability would make loss of income to the tune of Rs.48,840 per annum (88,800 X 55%). The injured was 34 years of age at the time of accident, therefore, in view of ratio laid down in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77,*** multiplier of 16 has to be applied. In this way, loss of income on account of permanent disability would come out to be Rs.7,81,440/- (48,840 X 16). Claimant had to undergo prolong medical interventions like 6 operations and insertion of iron rod in his right leg. There was shortening of leg by 2 and half inches. Injured was suffering from traumatic loss of tibia bone by 3 inches. In this way, claimant had suffered, pain, suffering and traumatic loss, which in considered opinion of this Court can be equated by a sum of Rs.1 lac under this head.

[18]. Though the claimant was given light job after receipt of injury, but certainly there was a loss of regular income of the claimant as he was earlier a driver having daily over time. Drivers normally undertake overtime driving due to schedule kilometers of the routes. The overtime is based on certain amount to be paid to the driver on hourly basis beyond the schedule time of the duty. It all depending upon the overtime fixed for a particular route. Since the appellant was provided a light job, therefore, there was a certain loss to the appellant on account of loss of overtime per month. No exact amount can be quantified under this head, but still keeping in view the total length of service available to the claimant, a consolidated amount of Rs.1 lac would suffice to serve this head. While granting medical expenses to a sum of Rs.70,694/- certain unforeseen expenses cannot be ignored. It would be just and appropriate to make the amount of compensation towards medical expenses to the tune of Rs.1 lac in all fairness.

[19]. Apparently, the claimant remained confined to bed for 6 months, during this period he must has been attended by the attendant. Keeping in view the attendant charges for a period of six months, an amount of Rs.30,000/- would be just and appropriate. Since the appellant remained confined to bed and had undergone 6 operations including insertion of iron rod in the leg, in my considered opinion, he must have incurred an amount of Rs.20,000/- towards special diet. This amount would just and appropriate to meet the head of special diet. In view of repeated

operations in the hospitals on 6-7 occasions there are chances of problem being aggravated in future as well. For future medical expenses, an equitable amount has to be granted and the same can only be worked out on some guess work. There cannot be any straight jacket formula for assessing such an amount towards compensation under this head, but still keeping in view 6-7 operations conducted on the injured in past in different hospitals like Silver Oak and Saket, an additional amount of Rs.50,000/- would be just and appropriate to meet exigency of future medical expenses. The injured appellant must have incurred an amount of Rs.20,000/- towards transportation charges. Keeping in view the nature of injuries and shortening of leg with permanent disability of 55%, there is certainly loss of amenities in future life. Under this head, consolidated amount of Rs.2 lacs can be assessed to meet out loss of amenities in life including loss of future marital enjoyment and other losses likely to be faced by the claimant-appellant.

[20]. In view of above, the amount of compensation is worked out as under:-

Sr. No.	Heads	Assessed by the Tribunal	Assessed by the High Court	Difference
1.	Medical expenses	70,694/-	1,00,000/-	29,306/-
2.	Permanent disability	1,04,306/-	1,10,000/-	6694/-
3.	Loss of income on account of	Nil	7,81,440/-	7,81,440/-

	permanent disability			
4.	Pain and sufferings	Nil	1,00,000/-	1,00,000/-
5.	Future overtime work loss	Nil	1,00,000/-	1,00,000/-
5.	Attendant charges	Nil	30,000/-	30,000/-
6.	Special diet	Nil	20,000/-	20,000/-
7.	Future medical expenses	Nil	50,000/-	50,000/-
8.	Transportation expenses	Nil	20,000/-	20,000/-
9.	Loss of amenities	Nil	2,00,000/-	2,00,000/-
10.	Total compensation	1,75,000/-	15,11,440/-	13,36,440/-

[21]. The enhanced amount i.e. Rs.13,36,440/- would carry interest @ 7.5 % per annum from the date of filing of the claim petition till final realization of the amount.

[22]. With the aforesaid modification, the present appeal stands disposed of.

(RAJ MOHAN SINGH)
JUDGE

20.09.2016
Prince

Whether reasoned/speaking Yes/No

Whether Reportable Yes/No