IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-566-2006
Date of decision: 25.4.2016

Satbir Singh

...Appellant

Versus

Nirwayer Singh and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Surender Saini, Advocate for the appellant

Mr.DP Gupta, Advocate for respondent No.3- Insurance Co.

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SNEH PRASHAR, J.

By way of this appeal, appellant-Satbir Singh seeks enhancement of compensation awarded to him by Motor Accident Claims Tribunal, Sonipat (for short, “the Tribunal”) vide the award dated 14.10.2005 passed in MACT case No.33 of 2003 on account of the injuries suffered by him in a road side accident.

The submissions made by Mr.Surender Saini, Advocate representing the appellant and Mr.DP Gupta, Advocate for respondent No.3- Insurance Company have been heard and record perused.

Learned counsel for the appellant submitted that before the accident, the appellant was employed as Head Constable in ITBP. Due to the disability suffered by him as a result of injuries, he was given compulsory retirement and at that time 15¾ years of service was still to his credit. Learned Tribunal deducting the pension of Rs.4393/- from the gross salary assessed his income as Rs.4870/- per month, whereas the actual gross income should have been taken while assessing loss of income. The appellant was 39 years aged at the time of accident, therefore the multiplier of 15 should have been applied. The appellant remained admitted in Lok Nayak Hospital, New Delhi from 18.10.2002 to 6.1.2003 and due to seriousness of the injuries, he was repeatedly operated upon. However, learned Tribunal awarded only a sum of Rs.1,00,000/- under the head of future discomfort on account of permanent disability and Rs.15,000/- towards pain and suffering, which is on the lower side.

PW5 Dr. Siri Niwas, Senior Resident, L.N.J.P. Hospital, New Delhi deposed that the appellant was admitted in Trauma Center, New Delhi on 18.10.2002 with fracture of pelvic, fracture of femur with multiple fracture of L1 and L2, crush injury of left foot, fracture of right tibia, blunt injury abdomen and he was operated upon twice and his left leg was amputated below the knee. He was discharged on 6.1.2003. PW3 Dr. H.R.Singhal, who proved the disability certificate Ex.P3, deposed that permanent disability of the appellant was assessed at 90% on account of stiffness of right ankle and deformity of foot, complain of pain and right thigh and amputation of left leg.

The appellant was employed as a Head Constable in ITBP. He was examined by the Board of Doctors of ITBP, who opined as under:-

> “In view of above, he is recommended to be invalidated out of service, as he cannot work as an active solider in the

force, for which he was recruited, with multiple physical deformities caused due to blast injury and RTA (Road Traffic Accident). Hence, he is placed in Cat. (Category) SHAPE-5(EEE).”

On the basis of the said recommendation, the appellant was made to retire from service 15 years prior to his age of superannuation. Had he been serving in ITBP, he would have earned promotions and other benefits of the service. Due to amputation of left leg below knee joint and being 90% disabled, he will not be able to join any service and will have very limited source to earn a living for himself and his family. The amount of pension being paid to him would have been granted even when he would have retired on attaining the age of superannuation. Pension has been earned by him by serving the Government and cannot be deducted from the amount to be assessed as future loss of income.

On 19.5.2004, when the appellant was given retirement from service, his gross pay was Rs.9270/- per month. Therefore, considering all aspects of the matter, the income of the appellant is assessed as Rs.9270/- per month, which will also cover the future prospects. As per service record, his date of birth was 10.10.1963 and he was to retire from service on 19.5.2004, which means he was 40 years and 7 months aged. Therefore, the multiplier of 14 would be applicable. Accordingly, Rs.15,57,360/- (9270 x 12 x 14) is awarded under the head of future loss of income.

Learned Tribunal awarded a sum of Rs.1,00,000/- under the head of future discomfort and Rs.15,000/- for pain and suffering, which are just and adequate.

Accordingly, the enhanced amount of Rs.8,56,080/- shall be paid to the appellant by the Insurance Company within two months from the date of receipt of the certified copy of this judgment, failing which, it shall carry interest @ 7.5% per annum from the date of filing of the appeal, till its realization. The recovery rights given to the Insurance Company shall remain the same.

With the above modification in the impugned award, the present appeal is partly allowed.

25.4.2016 **(SNEH PRASHAR)**
gsv **JUDGE**

Note: Whether to be referred to the Reporter? Yes/ No