

204.

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

FAO No.2004 of 2008 (O&M)

Date of decision:12.01.2016

Rohit Bhanot

... Appellant

versus

Narender Kumar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Amar Vivek, Advocate, and Mr. Anshul Jain,
Advocate, Mr. R.S. Randhawa, Advocate,
for the appellants.

Ms. Puneeta Sethi, Advocate, for respondent No.3.

K.Kannan, J. (Oral)

1. The appeal is for enhancement of compensation for injuries suffered in a motor accident that took place on 27.05.2006. The claimant was 29 years of age and the injury confined him to bed for about 8 months and disabled him also from making his earning as a horticulturist. He was an income tax assessee whose income had been assessed at ₹12,000/- per month. The injuries had been fractures of the radius and ulna, fracture of the femur, fracture of tibia and fibula, fracture of 4th finger and 2 of his teeth having fallen. There had been disfigurement with injuries on his face and the fractures and the facial disfigurement were sought to be reduced through surgical interventions on three different occasions. The

doctor, who had treated him, had also given evidence that he had assessed the overall disability at 27% and also stated that he would require further treatment in future for surgery for proper management of the disabilities. The Tribunal assessed a compensation of ₹3,60,000/- under various heads.

2. There is no difficulty about the pecuniary heads which are fairly certain. There is fair latitude of discretion that is inevitable on a subjective assessment of non-pecuniary heads like loss of amenities due to the disability suffered, pain and suffering and for loss of earning capacity. Fractures in the lower limb and in the forearm that ought not to be taken as too serious an incident for a young person. The union of bones is invariably certain, but in this case, the union of fractured bones has resulted in shorting of the limb, as spoken to by the doctor. In an attempt to standardize the non-pecuniary heads, this court has suggested in **Madan Lal Papneja Versus State of Haryana and others-2012 ACJ 1999** that courts must provide for a certain sum of money for each fracture at not less than ₹7,500/- and for loss of each tooth, also an amount of ₹7,500/- is suggested. Considering the fact that there had been fractures at 6 sites and also loss of teeth, I will estimate the pain and suffering and also add a component of an additional amount of ₹10,000/- for each of the surgical interventions towards pain and suffering and aggregate the compensation for pain and suffering at

₹1 lakh. The loss of teeth and the facial fractures would have resulted in substantial loss of amenities of enjoyment of life and for the shortening of the limb that accompanies the fractures, I will raise the loss of amenities for the disability suffered from ₹55,000/- assessed already to ₹1 lakh. The court has also provided ₹2,30,000/- towards medical bills and the counsel informs that the medical bills already produced in court add up to ₹3,28,000/- and there was no justification for reduction of what had been brought through bills. There is also some tabulation given at the appellate court along with the application that future medical expenses would cost about ₹2 lakhs. I will scale it down to ₹1 lakh considering the fact that several surgeries that had been carried upon him has caused him including the surgery charges of ₹3,28,000/-. The additional medical expenses will therefore be ₹1 lakh.

3. As regards the loss of income, the contention that he has not been able to attend to his work of horticulture and the income must be taken to be equivalent to the percentage of disability. If the fractures have been reduced by surgical interventions, I will not take that there would be any serious threat to his earning abilities to require a multiplier method to be applied. If the disability was 27% it could hamper his flexibility and cause inconvenience for longer hours of standing. Since I have already provided for ₹1 lakh towards loss of amenity, I will make a further provision for

₹50,000/- for future earnings, taking the income at ₹12,000/- per month and considering that he had a long spell of treatment at the hospital, I will take the loss of income during the period of his treatment and convalescence at ₹1 lakh. I will retain the sums provided already towards transportation and make a relatively higher sum for special diet considering that he had facial injuries that would have required administration of liquid and higher level of nutrition. I tabulate all the various heads of claims as under:-

Date of accident: 27.05.2006			
Age: 29 years			
Period of hospitalization: 8 months			
Occupation & income : ₹ 12,000/- per month			
	Heads of Claim	Tribunal	High Court
Sr. No.		Amount ₹	Amount ₹
1.	Loss of income from to	25,000	1,00,000
2.	Medical expenses:		
i)	Medicines	2,30,000	3,28,000
ii)	Future hospital charges		1,00,000
iii)	Attendant charges	25,000	25,000
iv	Special diet	5,000	20,000
v	Transportation	5,000	5,000
3.	Pain & suffering	10,000	1,00,000
4.	Disability 27% -loss of amenities	55,000	1,00,000
5.	Loss of earning power in percentage		
i)	Income		
ii)	Multiplier		
iii)	loss of earning capacity		50,000
6.	Reduction in life expectancy		
7.	Loss of prospect of marriage		
	Total	3,60,000	8,28,000

There shall be a modification of the award and the compensation assessed already is enhanced to ₹8,28,000/-. The additional award

of compensation shall also attract interest at 9% per annum from the date of petition till date of payment. The liability shall be on the Insurance Company. The right of recovery as provided already by the Tribunal shall also be available for the insurer to proceed against the insured.

4. The award stands modified and the appeal is allowed to the above extent.

(K.KANNAN)
JUDGE

12.01.2016
sanjeev