

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2282 of 2009 (O&M)
Date of Decision : 29.08.2016

Jaswinder Kaur

....Appellant

Versus

Raghubir Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashwani Arora, Advocate
for the appellant.

Ms. Vandana Malhotra, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

On 30.09.2004, claimant-Jaswinder Kaur suffered injuries in a motor vehicle accident with truck bearing registration DL-1LB-3619 (later referred to as 'the offending vehicle'), which hit scooter bearing registration No. CH-01X-5827 being driven by claimant. As a result of accident, claimant suffered serious injuries including fracture of right lower half radius with degloving of right forearm, degloving injury of right lower leg.

2. The Tribunal allowed compensation of ₹2,24,550/- to claimant, which was computed as follows:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Actual medical expenses	₹17800
(ii)	Pain and suffering	₹15000
(iii)	Conveyance, special diet etc.	₹5000
(iv)	Loss of income	₹26750
(v)	Compensation for 80% permanent disability	₹160000
<i>Total</i>		₹224550

3. Learned counsel for the appellant has argued that claimant had undergone four operations and remained admitted in hospital i.e. PGI, Chandigarh from 30.09.2004 to 20.11.2004, 20.09.2005 to 21.09.2005 and again from 13.03.2006 to 27.03.2006. She had fracture injuries and remained under treatment for a long period, as such, suffered lot of pain and suffering. She had suffered 80% disability of limb and required services of attendant. The Tribunal has allowed very meagre amount towards pain and suffering, nutritious diet and transportation. No compensation was allowed by the Tribunal towards attendant charges, future medical expenses, loss of amenities of life and loss of future income.

4. Learned counsel for respondent no. 3-Insurance Company has argued that claimant is a Government employee. She had suffered no loss of income as she is getting her salary with regular increments. For the absence during the period she remained under treatment, the Tribunal has allowed her compensation towards loss of income.

5. Dr. S. Bhowmik while appearing as PW-2 has stated about injuries suffered by claimant, as follows:-

“She was diagnosed as a case of road side accident with degloving right lower limb with fracture radius right forearm with degloving with fracture second metacarpal right. She was operated upon on 05.10.2004 for both bones of right forearm to which external fixator was applied. Skin flap was also done by the plastic team. Skin grafting to the right lower limb was also done. Patient was discharged on 20.11.2004.”

6. He also proved disability certificate of claimant as P-6/A,

whereby medical board has declared his disability of impairment in relation to limbs as she was a case of “RSA with degloving injury (R) lower leg with gap fracture non union (R) radius with degloving (R) forearm.”

7. Claimant while appearing as PW-1 has stated that due to injuries she remained on bed for six months and was on leave from 30.09.2004 to 16.12.2004 and then from 13.03.2006 to 27.03.2006. In her examination-in-chief, she has stated in paras 5 and 6 of her affidavit as follows:-

“5. That the deponent still feels swear (sic severe) pain in her right arm. Her rest movement almost completely immovable. She cannot lift weight. She cannot do any work with her right arm. Her performance in her service has been badly affected due to this accident. Her family life has been completely ruined as she has got a husband and two children to support. She cannot do her household work and day-to-day activities. She has to be fully dependent on hired transport as she cannot go anywhere herself.

6. That the deponent had to employ one attendant namely Smt. Joginder Kaur wife of Gurdev Singh and till today she is working for the deponent and her family. She is being paid a sum of ₹2000/- per month.

8. The Tribunal allowed compensation for actual medical expenses as ₹17,800/- and for permanent disability ₹1,60,000/-. I find no reason to differ with amount of compensation awarded by the Tribunal on

these scores. However, keeping in view the fact that claimant remained under treatment for a quite long period of about two years and had to spend on conveyance, special diet and attendant, compensation awarded by the Tribunal for these heads call for upward revision. The mere fact that attendant has stated that she was getting ₹3000/- per month and claimant is saying that she was paying ₹2000/- per month, is no reason to disallow compensation on this score. Even family members or relatives or friends when attend to injured in hospital and provide assistance to her, they spend their time and energy and compensation is to be awarded on this score. Due to injuries and pain claimant has suffered loss of amenities of life and compensation on this score is awarded as ₹1 lac. For pain and suffering, compensation awarded to her is revised to ₹25,000/-, for nutritious diet to ₹10,000/- and for transportation to ₹10,000/-. For attendant charges claimant is awarded compensation of ₹15,000/-. Such a patient requires continuous medical care, attention and physiotherapy etc. Claimant is also awarded compensation for future medical expenses amounting to ₹10,000/-.

9. In view of my above discussion, compensation to which claimant is entitled is reassessed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Compensation for permanent disability as assessed by the Tribunal	₹160000
(ii)	Medical/actual expenses (as already awarded by the Tribunal)	₹17800
(iii)	Pain and suffering	₹25000
(iv)	Special/nutritious diet	₹10000
(v)	Expenses of attendant	₹15000
(vi)	Transportation charges	₹10000

(vii)	Loss of amenities of life	₹100000
(viii)	Compensation for future medical expenses	₹10000
(ix)	Loss of income as assessed by the Tribunal	₹26750
Total		₹374550

10. As a sequel of my discussion above, the instant appeal has merit and the same is accepted. Award of the Tribunal is modified and compensation allowed to claimant for the injuries suffered by her is enhanced from ₹2,24,550/- to ₹3,74,550/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. Respondent no. 3-Insurance Company being insurer of the offending vehicle will deposit the compensation amount in bank account of claimant or pay the same to her through demand draft.

August 29, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No