208.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4418 of 2009 (O&M)
Date of decision:12.02.2016

Yash Pal alias Rinku Raghav ... Appellant

versus

Shri Resham Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Amrita Nagpal, Advocate,
for Mr. Lokesh Sinhal, Advocate,
for the appellant.

Mr. R.C. Gupta, Advocate,
for respondent No.3.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. *(Oral)*

1. The appeal is for enhancement of compensation for injuries suffered in a motor accident. The head injuries left the petitioner in a vegetative state with right sided hemiperaisis with left facial nerve palsy as well as moderate intellectual handicap. His IQ was assessed at 42. Dr. Prithvi Singh had stated that his IQ cannot be improved with the passage of time or by usual practices which were given to the patient. There was evidence through Dr. Udey

Yadav, a Physiotherapist, that the patient would require a life long physiotherapy for improving his motor skills. The court felt itself handicapped by not being able to rely on the prescription given by Dr. Sirhoa that the petitioner required physiotherapist, since he was not examined. The total compensation of ₹6,75,105/- included as a major component of medical expenses and hospital charges aggregating to ₹4,10,105/-.

2. There was evidence that he was having an auto shop and his wife gave evidence that he was earning ₹10,000/- per month. There was no proof of his educational attainments and the nature of auto shop which he had. I will, however, take it that he was an able body person who had married and felled to bed and incompetence by a serious head injury too early in his life. I would reckon that a person who has hemiperasis would require to be attended to for even his basic needs and I will give the benefit of nursing care for the rest of his life and modestly take ₹1,000/- as the expenses that he may have to incur in that regard. Considering the fact that such an expenditure would have to be incurred for the rest of his life, I will factor a component of 18 as the multiplier and take that amount as necessary for the rest of his life. Similarly I will take the assessment made for past and future income as ₹15,000/- to be grossly inadequate. I would reckon that his average income over a period of time would be not less than ₹3,500/- and take the loss of earning

capacity as 100% and not merely 85% that left him with a serious intellectual handicap and nerve palsy and hemiperasis. There is no definite evidence about the nature of medical treatment that might be necessary and the future medical expenses, but I venture a small guess and make a provision for an additional amount of ₹50,000/- towards future treatment.

3. In all matters relating to injuries, it is appropriate that the parties bring the best evidence at the stage of trial so that there is no scope for needless guesswork and approximations. If I have allowed myself such indiscretion in this case, I am being driven by a judicial conscience that I will not leave a deserving case poorly attended at the time of trial to be turned out of court without proper compensation. It is pity that we do not hone our skills for good trial work but we only expect large compensation to be given by courts.

4. The various heads of claims are tabulated as under:-

Date of accident: 11.07.2006			
Age:21			
Period of hospitalization:			
Occupation & income : Auto shop ₹10,000/-			
	Heads of Claim	Tribunal	High Court
Sr. No.		Amount ₹	Amount₹
1.	Loss of income from to		5,000
2.	Medical expenses:		
i)	Medicines	4,10,105	4,10,105
ii)	Future treatment		50,000
iii)	Attendant charges	(1000x12x18)	2,16,000
iv	Special diet		
v	Transportation	25,000	25,000
3.	Pain & suffering	25,000	1,00,000

4.	Disability (82%) & Compensation	1,65,000	1,65,000
5.	Income as assessed by the Tribunal (a)		3,500 x 12
6.	% loss of earning capacity (b)		100%
7.	Multiplier (c)		18
8.	Loss of earning capacity (axbxc)	50,000	7,56,000
9.	Reduction in life expectancy		
10.	Loss of prospect of marriage		
8.	Loss of prospect of marriage		
	Total	6,75,105	16,77,100

This will make provision for an additional amount of ₹ 10 lakhs which is in the range of ₹16,77,100/-. The additional compensation will also attract interest at 6% from the date of appeal, since most of the amounts are to be incurred in future and a lumpsum arriving now will itself make good for all the future expenses.

5. The award stands modified and the appeal is allowed making the insurer liable for the additional claims made.

6. The cheque shall be made ready and delivered at the Legal Services Authority, Gurgaon. The Member Secretary shall make personal visit or depute a responsible officer to assess the present condition and help the parties open a bank account and deposit the same with the payments to be released on a monthly/quarterly basis or purchase annuities with LIC which can deliver a periodical return to take care of all the expenses or of the expenses in future. This additional caution becomes necessary only because the parties seem illiterate and the amount assessed as necessary for lifetime care ought not to be mis-spent and wasted immediately by anyone else than the claimant himself. The manner

of how the periodical amounts will be distributed shall be a matter of regulation of the Motor Accident Claims Tribunal itself. The direction for deposit with the bank will be for an amount in excess of ₹2 lakhs and ₹2 lakhs will be permitted to be withdrawn immediately by the claimant if he is in a position to manage his own affairs or through his wife in her capacity as a guardian for the claimant.

(K.KANNAN)
JUDGE

12.02.2016
sanjeev