

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4620 of 2009
Date of Decision : 05.05.2016

Naresh Kumar

.....Appellant

Versus

Atma Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Mamli, Advocate
for the appellant.

Mr. G.D. Gupta, Advocate
for respondent no. 2-Insurance Company.

Surinder Gupta, J.

This is appeal filed by claimant-Naresh Kumar seeking enhancement of compensation of ₹3,35,051/- awarded by the Motor Accident Claims Tribunal, Yamuna Nagar (later referred to as 'the Tribunal') for the injuries suffered by him in a motor vehicle accident with truck bearing registration No. HR-37-6240 (later referred to as 'the offending vehicle').

2. As the only issue involved in this appeal is enhancement of compensation sought by appellant, detailed facts of the case are being skipped for the sake of brevity.

3. As per case of claimant, the accident took place on 08.12.2005, when he was going to Railway Station Mustafabad on his motorcycle and reached about 1½ kms. from village Kheri Lakha Singh towards Mustafabad, he was hit by the offending vehicle as a result of which he sustained multiple grievous injuries.

4. The awarded compensation was computed by the

Tribunal as follows:-

Sr. No.	Compensation Allowed under Heads	Amount
(i)	Compensation for permanent disability (43%)	₹86000
(ii)	Compensation for pain and suffering	₹30000
(iii)	Expenses of attendant	₹4000
(iv)	Transportation expenses	₹4000
(v)	Special diet	₹6000
(vi)	Loss of salary	₹57266
(vii)	Medical expenses (though not specifically mentioned but on deducting the compensation allowed under above heads from ₹3,35,051/- it comes to ₹1,47,785)	₹1,47,485
Total		₹3,35,051

5. Respondent no. 1 driver-cum-owner of the offending vehicle and insurer of the offending vehicle in their separate written statements denied the accident.

6. To prove injuries suffered by claimant in accident, Dr. B.S. Gaba of Gaba Hospital, Yamuna Nagar (PW-2) has stated that claimant was admitted in his hospital with roadside accident injuries on 08.12.2005 and was discharged on 09.01.2006. He was operated by Dr. K.D. Gupta, Ortho Surgeon. He has described the multiple fractures suffered by claimant as follows:-

- (i) Fracture of supra condyler and inter condyler
- (ii) Fracture of side femur with tibia condyle right side, communicated.
- (iii) Fracture of radius right side.
- (iv) Fracture of pelvis.
- (v) Fracture of medial femur condyler with fracture patella.

7. During his admission in the hospital, claimant was operated on 12.12.2005, 14.12.2005 and 21.12.2005. Again he was admitted on 09.06.2006 and was discharged on 11.06.2006 after removal of implants.

8. Claimant has also examined Dr. K.B. Gupta of Radix Hospital, Chhappar as PW-7, who has stated that claimant was admitted in his hospital on 05.03.2006 and was discharged on 07.03.2006 (wrongly mentioned as 07.03.2005). He had earlier operated claimant at Gaba Hospital, Yamuna Nagar and removed implants during his admission in Radix Hospital.

9. Dr. Sandeep Gupta, Medical Officer, MLGH, Yamuna Nagar while appearing as PW-11 has stated that a medical board examined claimant and found him suffering from permanent disability to the extent of 43% on account of fracture femur bilateral lower ends, fracture acetabulum right, fracture radius lower end leading to restricted movements of right hip, right knee, right wrist and left knee. Disability certificate (Ex. P-136) was proved by him, which bears his signatures as one of the members of the medical board.

10. Learned counsel for the appellant has argued that claimant had suffered serious fracture injuries. He has proved on record that upto May, 2006 he was under medical treatment and even thereafter he required constant medical attention and physiotherapy etc. He was working as Instructor in I.T.I. Ambala. While appearing as PW-10, claimant has categorically stated that due to injuries he cannot bend his right leg and right hand which have restricted movements. He cannot walk without stick. He

had remained confined to bed for about five months. Janak Raj, Assistant, I.T.I., Ambala has stated that claimant had taken leave from 08.12.2005 to 19.06.2006 because of his accident. A sum of ₹57,266/- was recovered from him for the excess leave taken by him. The Tribunal has not taken into account these factors while computing amount of compensation. The compensation allowed for permanent disability, pain and suffering, attendant charges, transportation expenses and special diet by the Tribunal is on lower side and is highly inadequate. No compensation was allowed towards future medical expenses, loss of amenities of life and loss of avenues for future promotions. The restricted movements of leg, hand and hip have made the life of claimant very difficult and learned counsel for appellant seeks enhancement of compensation by about ₹2 lacs.

12. Learned counsel for respondent no. 2-Insurance Company has argued that the Tribunal while awarding the compensation has taken into account the medical bills, loss of salary, permanent disability and all other conventional heads and has rightly allowed compensation of ₹3,35,051/-. The accident took place in the year 2005 and keeping in view the price index of that time amount of compensation awarded by the Tribunal is quite adequate.

13. Claimant had suffered a number of fracture injuries in the accident for which he had remained in the hospital for about 01 month and 08 days. His treatment continued for a period of more than six months. While appearing as PW-10 on

27.02.2007, claimant has stated that his injuries had not cured by that time and he had been getting physiotherapy from Mulana Medical College and Hospital for two months regularly.

14. It is a matter of common knowledge that a person who has suffered fracture injury, required constant medical attention and physiotherapy after union of bones and thus had to spend for the same including transportation expenses for going to doctor and physiotherapy centre. Though, claimant is in Government job but the injuries and restricted movements of various organs have resulted in loss of amenities of life and have also impacted his future prospects. Though, the disability of 43% suffered by claimant is not functional disability but the compensation of ₹86,000/- allowed by the Tribunal on this count is on lower side. Keeping in view the period of treatment of claimant, his injuries and time taken for recovery from injuries, amount of compensation allowed for the transportation, attendant charges and special diet are also on lower side and call for enhancement.

15. Learned counsel for the appellant has sought enhancement of compensation by ₹2 lacs and in the facts and circumstances of the case submissions of learned counsel for the appellant appears to be very genuine. Instead of awarding compensation under the heads of future medical expenses, future transport expenses, loss of amenities of life, loss of future prospects and enhancing compensation for permanent disability, attendant charges and special diet etc. as allowed by the Tribunal, I find it appropriate to accept submissions of learned

counsel for appellant to enhance compensation awarded by the Tribunal by ₹2 lacs in lump sum.

16. In view of my above discussion, this appeal has merit and is accepted. Claimant is allowed enhanced compensation of ₹2 lacs over and above the compensation awarded by the Tribunal with interest @ 7.5% per annum from the date of filing of claim petition till the date of actual payment. Respondent No. 2 being insurer of the offending vehicle will deposit the amount of compensation in the bank account of claimant or pay the same through demand draft.

May 05, 2016
jk

(SURINDER GUPTA)
JUDGE