IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6252-2011 (O&M)
Date of decision: 18.3.2016

Vandana Bhandari

...Appellant

Versus

Harjit Singh and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.SS Chatrath, Advocate for the appellant

Mr.RC Kapoor, Advocate for respondent No.6.

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SNEH PRASHAR, J.

By filing the present appeal, the appellant is seeking enhancement of the compensation awarded to her by learned Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal') vide award dated 15.3.2010 on account of the injuries sustained by her in a motor vehicular accident that took place on 07.01.2005.

The submissions made by learned counsel for the parties have been heard and record perused.

It is submitted on behalf of the appellant that on account of the injuries suffered by her, she has become disabled to the extent of 35% qua the whole body and also there is permanent disfigurement of the face. She was 24 years aged at the time of accident. She remained admitted in Guru Ram Dass Hospital from 7.1.2005 to 27.1.2005 and thereafter, remained hospitalised for three days in PGI, Chandigarh.

Submitting that the compensation awarded to the appellant is inadequate, learned counsel prayed for enhancement of the same.

On the other hand, learned counsel representing respondent No.6-Insurance company submitted that the disability suffered by the appellant is not such that it will have adverse effect on her earning capacity and therefore, the present appeal deserves to be dismissed.

Perusal of the record reflects that the appellant suffered multiple injuries during the accident. She remained hospitalised w.e.f. 7.1.2005 to 27.1.2005 in Guru Ram Dass Hospital, Amritsar. She suffered fracture of left and right maxella, fracture of mandibles, fracture of right zygoma, fracture of right orbit (the right eye socket was completely damaged), fracture of nose ethomoidal complex, fracture of c-palatal spilt and the spinal cord vertibra No.C-1 and C-2 were twisted. She was operated upon many times. As per Ex.C14, she suffered 35% disability on account of impairment in relation to vision.

The Hon'ble Apex Court in **Raj Kumar vs. Ajay Kumar and another 2011(2) RCR (Civil) 101** has laid down the method of ascertaining the effect of permanent disability on the actual earning capacity of the victim as under:-

> "*Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of*

amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of `loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand.

In the case in hand the appellant stated that she was working with Fastrack Marketing Service Pvt. Ltd in the capacity of Tally sales executive, but no substantive and reliable evidence was led to prove her employment and income. Needless to say that impairment in relation to vision would cause hindrance in the smooth functioning of her daily work. She was a young lady aged 24 years at the time of accident. Learned Tribunal assessed her monthly income as Rs.4500/- per month, which in the light of evidence available appears appropriate. Following the law laid down in **Raj Kumar's case (supra),** and considering the nature of disability, the loss in earning capacity is assessed as 20%. Accordingly, Rs.1,94,400/- (20% of 4500 x 12 x 18) is allowed as compensation on account of the disability resulting in loss of earning capacity.

In addition to the above, considering the fact that the appellant suffered disfigurement of face due to the injuries, a sum of Rs.50,000/- is allowed to her. She is also awarded a sum of Rs.30,000/- for loss of enjoyment of amenities of life. The appellant sustained multiple grievous injuries i.e. nine fractures therefore, the amount of Rs.40,000/- awarded on account of pain and suffering is enhanced to Rs.90,000/-.

Amount spent on treatment and purchase of medicines i.e. Rs.77210/- has already been allowed to the appellant. Apart from it, learned Tribunal awarded Rs.15000/- on account of loss of income and Rs.37,000/- on account of special diet, transportation charges and attendants charges, which are just and adequate.

Accordingly, the enhanced compensation of Rs.1,74,400/- shall be paid to the appellant within two months from the date of the receipt of the certified copy of this judgment, failing which, the same shall carry interest @ 7.5 % per annum from the date of filing of the appeal till its realisation.

In view of the above, the present appeal is partly allowed and the award is modified to the above extent.

18.3.2016 **(SNEH PRASHAR)**
gsv **JUDGE**