

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

FAO-4990-2012 (O&M)

Date of decision: 29.02.2016

Rajkishore

...Appellant

Versus

Rakesh Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: S.K. Yadav, Advocate for the appellant.

Mr. Sanjeev Goyal, Advocate,
for respondent No.3-Insurance Company.

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JITENDRA CHAUHAN, J.

CM-22156-CII-2012

Heard.

For the reasons mentioned in the application, the same is allowed and the delay of 14 days in filing the appeal is condoned.

Main appeal

The present appeal has been filed against the impugned award dated 21.03.2012, passed by the learned Motor Accident Claims Tribunal, Narnaul, ('the Tribunal', for brevity).

It is averred that the appellant suffered permanent disability to the extent of 16% on account of range of motion of left ankle reduced by 20% with deep complication (Mal union with osteomyelitis tibia). Thus, in view of the injuries suffered, the compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced.

On the other hand, learned counsel for the Insurance Company contends that just and reasonable compensation has been awarded to the appellants.

I have heard the learned counsel for the parties and perused the record.

It is an admitted fact that the claim petition was preferred by the claimant-appellants under Section 163-A of the Motor Vehicles Act, and therefore, the compensation was to be assessed as per 2nd Schedule thereof.

In ***Puttamma and others Vs. K.L. Narayana Reddy and another, 2014(1) R.C.R. (Civil) 443***, Hon'ble the Apex Court has held as under:-

“52. Keeping in view the cost of living, the Central government is required to amend the Second Schedule. The Second Schedule was enacted by Act 54 of 1994 w.e.f. 14th November, 1994. Now more than 19 years have passed but no amendment has been made.

Cost of living has gone up many fold.

53. In view of finding recorded above, we hold that Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable, due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy.

54. XXX

55. XXX

56. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule tab;e keeping in view the present cost living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of

Section 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of ₹ 1,00,000/- (rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of ₹ 1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163A of the Act, 1988.”

In the instant case, the learned Tribunal has awarded an amount of Rs.1,17,707/-, as compensation, i.e. Rs.53,707/- towards medical expenses; Rs.5,000/- for pain and suffering; Rs.2,000/- on account of special diet; Rs.1,000/- for transportation; Rs.54,000/- towards loss of amenities and Rs.2,000/- for loss of income. However, keeping in view the injuries sustained by the appellant and the extent of disability suffered as well as the observations made by Hon'ble the Apex Court in Puttamma's case (supra), this Court feels that the ends of justice would be adequately met, in case, another amount of Rs.50,000/- is awarded to the appellant under the head 'loss of amenities' over and above the amount already granted under this head. It is ordered accordingly.

In view of the above, the claimant-appellant is held entitled to enhanced compensation of Rs.50,000/-, as indicated above, over and above the amount already awarded by the learned Tribunal, which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, he shall also be entitled to interest as indicated in the award i.e. 7.5% per annum, from the date of filing the present appeal, till its realization.

With the aforesaid modification in the impugned award, the present appeal is partly allowed.

29.02.2016

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**(JITENDRA CHAUHAN)
JUDGE**