

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.6585 of 2012
Decided on: 15.09.2016

Hawa Singh
.....Appellant

Versus

Jai Kumar and others
.....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Maharaj Kumar, Advocate
for the appellant.

Mr. Sandeep Singh, Advocate
for respondents No.1 and 2.

Mr. V. Ramswaroop, Advocate
for respondent No.3.

REKHA MITTAL, J.

The injured/victim is in appeal seeking enhancement of compensation in regard to injuries sustained by him in a motor vehicular accident that occurred on 28.01.2011 due to rash and negligent driving of tractor bearing registration No.UP-85-H-8276.

The learned Tribunal assessed compensation to the tune of Rs.5,29,657/- (rounded off to Rs.5,29,700/-) under the following heads:-

SR. NO.	HEADS	AMOUNT
1	Treatment including medicines	Rs.2,71,257/-
2	Disability	Rs.2,18,400/-
3	Loss of work/income	Rs.20,000/-
4	Pain and sufferings	Rs.10,000/-
5	Special diet, transportation and future expenses	Rs.10,000/-
TOTAL		Rs.5,29,657/- (rounded off to Rs.5,29,700/-

Counsel for the appellant has submitted that as the victim has suffered disability to the extent of 28% of his right hand, he is virtually rendered disable to the extent of 100% as he cannot write and carry on profession as a Lawyer. It is further submitted that the Tribunal has not given benefit of increase in income for future prospects while assessing loss of income to the tune of Rs.2,18,400/-. Compensation for non-pecuniary damage is also liable to be enhanced.

Counsel for the insurance company has supported the award passed by the learned Tribunal.

Counsel for the private respondents has submitted that the Tribunal has awarded just and reasonable compensation, on a detailed consideration of various aspects involved in the case.

I have heard counsel for the parties, perused the paperbook and the records.

Dr. Vinod Kumar, Medical Officer, General Hospital, Karnal – PW5 was examined to prove disability certificate Ex.P-3. He has deposed that on 14.03.2012, he along with other members of the Board examined Hawa Singh son of Bhola Ram for assessment of disability. It was a case of mal united fracture right radius lower end and 3rd metacarpal right hand with operated case of lateral condyle, right patella, right femur with right hand muscular wasting. The disability was assessed at 28%. In his cross-examination, it is stated that disability is *qua* particular limb. If disability is calculated *qua* the whole body, it will come down approximately 50% i.e. approximately 14%. He has denied that disability will reduce with passage of time and physiotherapy. There is no medical evidence to support contention of

the appellant that it is a case of total loss of income or the appellant cannot write with his right hand. Even otherwise, assuming that the appellant has some difficulty in writing with right hand, it is difficult to accept the contention that he cannot do practice as an Advocate or injury on one hand should be taken as a case of total loss. Under these circumstances, I do not find any reason to interfere in the assessment made by the Tribunal by taking loss of earning capacity to the extent of 14%. However, the Tribunal has not given benefit of increase in income for future prospects. As the victim was 49 years of age, benefit of increase in income to the extent of 15% is to be allowed. In this manner, loss of income comes to **Rs.2,51,160/-** (Rs.1400/- x 12 x 13 = Rs.2,18,400/- + Rs.32,760/- (15% for future prospects)).

The injured remained in hospital for a period of more than one month. He suffered fracture right radius lower end and 3rd metacarpal right hand and undergone operation of lateral condyle, right patella, right femur and suffered disability to the extent of 28% qua the particular limb. Keeping in view nature of injuries sustained coupled with period of treatment as an indoor patient, interest of justice would be served if compensation *qua* pain and suffering is increased to **Rs.20,000/-**.

As the appellant has suffered disability to the extent of 28% i.e. approximately 14% *qua* the whole body, the appellant is awarded an amount of **Rs.40,000/-** for loss of amenities of life. Another amount of **Rs.5,000/-** is awarded *qua* attendant charges. The amount of **Rs.2,71,257/-** in respect of treatment including medicines, **Rs.20,000/-** for loss of work/income, **Rs.10,000/-** *qua* special diet, transportation

and future expenses awarded by the Tribunal shall remain intact. The total compensation payable to the appellant comes to **Rs.6,17,417/-**. The enhanced compensation is Rs.87,717/- (rounded off to **Rs.87,800/-** (Rs.6,17,417/- – Rs.5,29,700/-) payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

15.09.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No