

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

FAO No.2271 of 2013 (O&M)

Date of decision:31.08.2016

Dinesh Kumar @ Bhima

....Appellant

VERSUS

Daljeet Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. J.S. Mehndiratta, Advocate for the appellant.

None for respondent No.3.

REKHA MITTAL, J.

Dinesh Kumar, the injured victim is in appeal seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Yamuna Nagar (in short 'the Tribunal') in regard to injuries sustained by him in a motor vehicular accident that took place on 05.09.2010.

The Tribunal awarded compensation of Rs.1,25,958/- under the following heads:-

For 30% disability	-	Rs.60,000/-
Medicine bills	-	Rs.52,958/-
Pain & suffering	-	Rs.5,000/-
Special diet	-	Rs.5,000/-
Attendant Charges	-	Rs.3,000/-

Counsel for the appellant has submitted that as the victim suffered disability to the extent of 30% in regard to loss of vision of right eye and as a result thereof, he lost his business and income from the tea shop earlier being run by him, the claimant is entitled to future loss of

income to the extent of 100% by adopting an appropriate multiplier. Another submission made by counsel is that compensation awarded for pain and suffering, special diet and attendant charges is liable to be enhanced. In addition, the claimant is entitled to compensation for loss of amenities of life.

Counsel for the insurance company, on the contrary, has supported the award with the submissions that the Tribunal has taken a very reasonable and sympathetic view of the matter by awarding an amount of Rs.60,000/- qua disability to the extent of 30%.

I have heard counsel for the parties, perused the paper-book and the records.

The plea of the claimant is that prior to the accident, he was running a shop of tea vendor at Sales Tax Office, Jagadhari. Due to accident, he is incapacitated to run that shop and the same is lying closed resulting in total loss of income of Rs.15,000/- per month. To substantiate his plea, the claimant appeared in the witness box and examined Vinod Kumar PW-5. Vinod Kumar tendered into evidence his affidavit Ex.PW5/A and a relevant extract therefrom, qua loss of income, reads as follows:-

“2. That Dinesh Kumar is distantly related to the deponent and prior to the accident Dinesh Kumar was running a shop of tea-vendor at Sale Tax Office Jagadhari. After the accident Dinesh Kumar lost his right side eye vision and his right arm has not been working properly, so his shop is lying closed...”

The claimant also tendered into evidence his affidavit again marked as Ex.PW5/A wherein he has deposed that he was running a tea shop at Sales Tax Office Jagadhari from which he was earning Rs.15,000/-

per month. He has become totally unfit to do any job or work on account of accident and the injuries suffered and as such his future has been ruined.

Dr. Sheba Hayat, Medical Officer, M. L. General Hospital Yamuna Nagar was examined to prove disability suffered by the victim. He tendered into evidence his affidavit Ex.PW6/A and the disability certificate Ex.P161. As per statement of the doctor and the disability certificate, the victim had loss of vision in his right eye and visual disability in the said eye to the extent of 30%. There is no medical evidence that the injured suffered any disability qua his right arm. Though, the claimant has not produced any satisfactory much less tangible evidence on record that he was running a shop of tea vendor at Sales Tax Office Jagadhari or earning Rs.15,000/- per month from the said shop, there is not even an iota of evidence that due to loss of vision to the extent of 30% in the right eye, the victim is incapacitated to run that business. A person with complete vision in one eye is neither medically unfit to join any service except, may be, Armed Forces nor loss of vision to the extent of 30% in one eye can render a person running a shop of tea vendor incapacitated to carry on that business. In this view of the matter, the claimant is unable to substantiate his plea to get more compensation for loss of income qua disability as he has already been allowed Rs.60,000/- in this regard by the Tribunal.

Dr. Yogesh Jindal from Jindal Hospital, Jagadhari was examined and tendered into evidence Ex.PW3/B. As per his statement, the victim was admitted in his hospital on 05.09.2010 at 7.30 PM and at that time, he had lacerated wound on right forehead approximately 5 cm with underlying bone visible through the wound; bilateral ear bleed and abrasions on right shoulder and wrist. He has further deposed that a CT-

scan of head was conducted which showed right frontal linear fracture with underlying front temporal haemorrhagic contusions. The patient was discharged from the hospital on 22.09.2010. There is nothing on record suggestive of the fact that subsequent thereto, he got any follow up treatment. As the victim got treatment as an indoor patient for a period of 17 days and he must not be in a position to resume his work for another one month, the claimant is held entitled to loss of income for a period of two months. As has been noticed hereinbefore, there is no convincing evidence on record with regard to avocation of the claimant much less his income therefrom. Taking into consideration the minimum wage of an unskilled worker fixed by the State of Haryana in September, 2010, the claimant is awarded an amount of Rs.10,000/- for loss of income. He is awarded an amount of Rs.15,000/- for loss of amenities of life qua disability to his right eye.

In view of the above, compensation for pain and suffering, special diet and attendant charges awarded by the Tribunal to the tune of Rs.13,000/- is enhanced to Rs.20,000/-. In this manner, additional compensation payable to the claimant comes to Rs.32,000/- along with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

AUGUST 31, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no