IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3272 of 2013
Date of Decision-20.09.2016

Mukesh Kumar ... Appellant
Versus
Chhote Lal Yadav and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Shakti Singh, Advocate for the appellant.

Mr. Rajbir Singh, Advocate with
Mr. Sanjeev Goyal, Advocate
for ICICI Lombard General Insurance Company Ltd.

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RAJ MOHAN SINGH, J.

[1]. Claimant-appellant has filed this appeal for enhancement of award dated 06.02.2013.

[2]. In a claim petition under Section 166 of Motor Vehicles Act (for short 'the Act) the claimant alleged that the accident in question took place on 10.02.2010 at about 7:30 P.M. in which he received injuries. The accident occurred on account of rash and negligent driving of driver of Alto Car bearing registration No.HR-47BT-0750.

[3]. Claimant along with his friend Vikram Singh was going towards village Gulabpura from village Dahina on a motorcycle bearing registration No.HR-36F-0933. When they reached near village Buroli, the offending vehicle came from Rewari side in a very rash and negligent manner and struck against the motorcycle. Claimant sustained grievous injuries on vital parts of his body. He was removed to Trauma Centre, Rewari and was medically

examined vide MLR Ex.PC. Due to serious condition, claimant was referred to AIIMS, Delhi, but family member got him admitted in Health Way Research Hospital Private Limited, Leo Chowk, Rewari, where he remained admitted for many days. FIR was recorded by co-occupant of the motorcycle i.e. Vikram Singh.

[4]. Claimant claimed that he was 38 years of age at the time of accident and was doing agriculture work besides dairy farming business. The total income of the injured was Rs.10,000/- per month. He suffered a loss of income due to this accident.

[5]. Claim petition was resisted by the respondents. Respondents No.1 and 2 though appeared initially, but thereafter did not appear and were proceeded against ex parte on 20.01.2011.

[6]. Respondent No.3 contested the claim on the ground of validity of driving licence and the offending vehicle was being driven in violation of terms and conditions of the Insurance Policy. Insurance Company pleaded protection under Sections 147, 149 and 170 of the Act. Accident was denied. Particulars of the injured were also denied. Respondent No.3 asserted that the FIR in question was delayed by 5 days and was the result of deliberations.

[7]. Both the parties after completion of pleadings, led evidence under different issues. Tribunal on assessment of evidence held that the accident in question took place due to rash and negligent driving of driver of the Alto Car. In terms of details of injuries brought on record vide MLR No.DV/71/10/TCR, Tribunal

noticed that injured was kept in ICU on ventilation for a week and he lost his mental capacity. Claimant asserted that his wife had spent an amount of Rs.10,00,000/- on his treatment and medicines. Wife of the claimant namely Smt. Naveen also appeared as PW 3 and testified that she had spent the amount for the treatment, medicines, transportation and diet of the injured.

[8]. Dr. Deepak Verma-PW5 proved MLR Ex.PC and stated that owing to the serious condition of the injured he was referred to AIIMS, Delhi. Injured was admitted in Health Way Research Hospital Private Limited, Rewari. Accountant of Health Way Research and Diagnostics Private Limited, Rewari namely Bhupender Kathuria appeared as PW4 and proved receipts Ex.PB/1 to Ex.PB/11 and final bill Ex.PB/12 issued by the Hospital in a sum of Rs.1,87,525/-. Cash memos Ex.PB/13 to Ex.PB/47 were also proved. These were in the sum of Rs.50,585/- and the same were included in the final bill Ex.PB/12.

[9]. Evidently, injured-claimant remained admitted in the Hospital from 10.02.2010 to 23.02.2010. An amount of Rs.21,102/- was shown as per bills Mark A to Z and Mark A1 to A3. Dr. Ashok Saini appeared as PW7 and proved the disability on account of head injury with right upper limb weakness and boarder line intellectual functioning. Total bills towards treatment were to the extent of 2,08,627/- and the same rounded off to Rs.2,08,700/-. Tribunal has assessed an amount of Rs.2,08,627/- (rounded off to

Rs.2,08,700/-) towards amount spent on treatment. An amount of Rs.40,000/- was assessed towards pain and suffering. Since the injured had head injury with upper right limb weakness and boarder line intellectual functioning, therefore, due to his hospitalization for a period of 13 days and thereafter, his confinement to bed for about 3 months, an amount of Rs.6000/- was assessed towards attendant charges. An amount of Rs.6000/- was granted towards special diet. An amount of Rs. 15,000/- was assessed towards loss of income and an amount of Rs.1,29,000/- was assessed towards disability to the extent of 43% due to head injury with right upper limb weakness with boarder line intellectual functioning. Additional amount of Rs.5000/- was assessed towards transportation charges and in this way, total amount of Rs.4,09,700/- was assessed towards compensation. The amount was held to be payable by the Insurance Company as the vehicle was found to be fully insured.

[10]. I have considered the contentions of learned counsel for the parties.

[11]. In case of injury, the heads under which compensation is to be awarded are:-

(1) Expenses relating to treatment, hospitalization, medicines, transportation, special diet and miscellaneous expenses.

(2) Loss of earning and other gain which the injured would have got had he not been injured. This head includes:-loss of earnings

during period of treatment and loss of future earnings on account of permanent disability.

(3) Future medical expenses.

(4) Non-pecuniary damages/general damages are also required to be assessed towards pain, suffering and trauma as consequent of the injuries.

(5) Loss of amenities in life including loss of marriage prospects.

(6) Loss of expectation of life i.e. shortening of longevity of life.

(12). In ***Govind Yadav Vs. New India Insurance Company Limited, 2011 (4) RCR (Civil) 817,*** the Hon'ble Apex Court after considering all pros and cons in detail assessed the compensation in case of permanent disability of the injured.

[13]. In ***K. Suresh Vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312***, the Hon'ble Apex Court held that in case of permanent disability, the injured is entitled to grant of compensation towards permanent disability as well as loss of earning capacity. The determination of compensation for loss of earning capacity on the basis of multiplier method was held to be proper. In determination of compensation, some guess work and hypothetical considerations based on sympathy can be worked out, but ultimate determination has to be viewed with some objective standards. There cannot be a flight in fancy. The award should correspondent to reasonableness and should be in consonance with

conventional sum. The endeavour should be to award just compensation keeping in view the suffering of the injured person.

[14]. In ***S. Manickam s. Metropolitan Transport Corporation Ltd, 2013(3) RCR (Civil) 696***, it was ruled by the Hon'ble Apex Court that the determination of just compensation cannot be equated to a bonanza. It has to be based on application of fair and equitable principles. Reasonable approach should be adopted. Compensation towards permanent disability and loss of earning capacity, both were endorsed to the effect that the victim is entitled to separate claims towards permanent disability as well as loss of earning capacity.

[15] In ***G. Ravindranath @ R. Chowdary Vs. E. Srinivas and another, 2013(3) RCR (Civil) 934***, the Hon'ble Apex in case of grievous injuries of the injured in pelvic region ruled that in case of nature of injury, rendering the injured to be impotent, adequate compensation has to be awarded towards all heads like expenses incurred in treatment including hospitalization, future medical expenses towards hospitalization, medicines, attendant charges etc, pain suffering and trauma, loss of amenities, prospects of marriage, loss of expectation of life and loss of future earning. In aforesaid case, the Hon'ble Apex Court awarded a sum of Rs.20.20 lacs.

[16]. In case of ***Rekha Jain Vs. National Insurance Company Ltd., 2013(3) RCR (Civil) 996***, the Hon'ble Apex Court in case of 30% disability of face of a film actress held that in the

circumstances of the case, the disability should be treated to be 100% functional disability. Loss was assessed on multiplier method keeping in view the age of the victim. As against compensation of 2 lacs assessed by the Tribunal, the Apex Court assessed the compensation of Rs.42,50 lacs.

[17]. In case of ***Neerupam Mohan Mathur Vs. New India Assurance Company, 2013(4) Law Herald (SC) 3422***, it was held by the Hon'ble Apex Court that in case of permanent disability on account of amputation of limb, compensation towards non pecuniary damages has to be awarded. In the said case, on account of amputation of one arm, the services of the claimant were terminated by the employer. There was loss of 100% earning capacity of the claimant. The order of High Court in assessing 70% loss of income was upheld by the Apex Court. An amount of Rs.1 lac towards pain, suffering and trauma was assessed. An amount of Rs.2 lacs was assessed towards loss of amenities and additional amount of Rs.1 lac was assessed towards loss of expectation of life i.e. shortening of the normal longevity.

[18]. In case of ***Yadava Kumar Vs The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155,*** the Hon'ble Apex Court highlighted that a distinction has to be drawn between the damages and compensation. Damages are given for injuries which the injured suffered, whereas compensation is to be paid for atonement of the injury caused and

to put back the injured as far as possible in the same manner, as if injury has not taken place. Court should be liberal in determination of quantum of compensation to be paid to the victim towards future loss of income and other heads.

[19]. In the instant case, the claimant has suffered 43% of permanent disability on account of head injury with right upper limb weakness and boarder line intellectual functioning. The boarder line intellectual functioning would give rise to a serious mental health problem which may amount to 100% loss of memory in a given situation.

[20]. Since the injured was 38 years of age and his earning was assessed to be Rs.5000/- per month, therefore, compensation towards permanent disability and loss of earning capacity are to be accessed independently as held in ***K Suresh's case (supra) and S. Manickam's case(supra).*** Compensation for 43% permanent disability would come to 43 X 2000 (i.e. Rs.2000/- for each percent of permanent disability) =86,000/-. By applying, the multiplier method, loss on account of permanent disability comes out to be Rs.60,000/- per annum (5000 X 12). Permanent disability of 43% if applied to the total income, the income per annum would come out to be Rs.25,800/- (60,000 X 43%). Injured was 38 years of age at the time of accident, therefore, in view of ratio laid down in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR(Civil) 77***, multiplier of 15 has to be applied.

After applying multiplier of 15, the compensation under this head comes out to be Rs.3,87,000/- (25,800 X 15). The medical expenses as per evidence led by the claimant were found to be 2,08,700/-. Since the aforesaid calculations were based on actual evidence produced on record, therefore, no increase can be given under this head. Tribunal has awarded an amount of Rs.40,000/- towards pain and suffering which in considered opinion of this Court is on the lower side. In case of permanent disability on account of head injury with right upper limb weakness and boarder line intellectual functioning, the compensation under this head should meet the requirement of just compensation. In my considered view, an amount of Rs.1 lac towards pain, suffering and trauma should be just and appropriate under this head. Tribunal has awarded only a sum of Rs.6000/- towards attendant charges which needs to be enhanced keeping in view the nature of disability suffered by the claimant. Claimants needs regular attendant towards his domestic activities and for his personal activities. In my considered view, an amount of Rs.1,00,000/- would be just and proper towards attendant charges. Tribunal has awarded only a sum of Rs.6000/- towards special diet which in considered opinion of this Court needs to be enhanced to Rs.30,000/-. Loss of income for the period of hospitalization was assessed to be Rs.15,000/- which is held to be proper amount for the period of hospitalization. Transportation charges were assessed to be Rs.5000/- which are held to be just and appropriate amount towards transportation charges.

[21]. In view of above, the amount of compensation is worked out as under:-

Sr. No.	Heads	Assessed by the Tribunal	Assessed by the High Court	Difference
1	Medical expenses	2,08,700/-	2,08,700/-	Nil
2.	Pain and suffering	40,000/-	1,00,000/-	60,000/-
3.	Attendants charges	6000/-	1,00,000/-	94,000/-
4.	Special diet	6000/-	30,000/-	24,000/-
5.	Loss of income	15000/-	15000/-	Nil
6.	Transportation charges	5000/-	5000/-	Nil
7.	Permanent disability and loss of income on account of permanent disability in future	1,29,000/-	86,000 + 3,87,000 = 4,73,000/-	3,44,000/-
8.	Total	4,09,700/-	9,31,700/-	5,22,000/-

[22]. The enhanced amount i.e. Rs.5,22,000/- would carry interest @ 7.5 % per annum from the date of filing of the claim petition till final realization of the amount. The amount shall be paid by respondent No.3 being an insurer of the offending vehicle.

[23]. With the aforesaid modification, the present appeal stands disposed of.

20.09.2016 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether reasoned/speaking **Yes/No**

Whether Reportable **Yes/No**