IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3474 of 2013
Date of Decision-21.10.2016

Narinder Singh Chitkara ... Appellant

Versus

Kuldeep and others ... Respondents

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

Present: Mr. Arvind Bansal, Advocate for the appellant.

Mr. Arjun Singh Yadav, AAG, Haryana.

Mr. M.B. Jain, Advocate for respondent No.4.

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RAJ MOHAN SINGH, J.

[1]. This is an appeal filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Chandigarh (for short 'The Tribunal').

[2]. The claimant alleged that on 15.10.2007 at about 2:45 p.m when he was going from Chandigarh to Delhi in Haryana Roadways Bus, the bus stopped at Palla road, red light, Lavanaya Motel Resort, Alipur, Delhi. Claimant was to get down from the bus from its front door and asked the driver to stop the bus, but the driver ignored his request and moved the bus in a rash and negligent manner. The claimant fell down from the bus near the rear tyres of the bus and his both legs came under the tyres. The accident took place due to rash and negligent driving of driver of the bus. FIR was got registered at Police Station, Alipur, North West Delhi. The claimant was 55 years of age and was serving as a Joint Director in I.B, Chandigarh. The salary of the claimant was

Rs.32,000/- per month (Approximately). The claimant suffered multiple fractures in left thigh, major fracture of the right pelvic and other multiple fractures. Due to injuries suffered by the claimant, he remained admitted in the hospital for many days and was discharged from the hospital only on 29.10.2007. Claimant became permanent disabled and incurred huge expenses towards his medical treatment. Claim was made to the tune of Rs.15,00,000/- along with interest.

[3]. Tribunal held that the accident took place due to rash and negligent driving of driver of the bus. While deciding issue No.2, it was noticed that the disability of the claimant was found to be 48 % in relation to his body as per disability certificate Ex.P2. PW 3-Dr. Rajinder Kumar Kanojia, Department of Orthopaedic, PGI, Chandigarh testified the same being member of the Board constituted for assessing the disability of the claimant. Claimant was a Government employee. Tribunal awarded an amount of Rs.96,000/- on account of permanent disability to the tune of 48%. Claimant submitted bills of Rs.57,652/-. The Department reimbursed a sum of Rs.56,766/- to the claimant, therefore, balance of Rs.1000/- was also awarded to the claimant. Claimant was given medical commuted leave and 38 days earned leave, but no evidence was led.

[4]. The claimant remained admitted in the hospital w.e.f 16.10.2007 to 29.10.2007 and also underwent operation. He

incurred expenses towards special diet and transportation during the period of admission in the hospital. Tribunal also held that the claimant must have appointed attendant and must have undergone mental pain and suffering. Therefore, claimant was held entitled to an amount of Rs.50,000/- towards special diet, transportation, attendant charges, pain and suffering, mental agony on guess work. In this way, a total amount of Rs.1,47,000/- was calculated which was payable to the claimant. The Liability was held to be joint and several of respondents No.1 to 4. The amount of compensation was ordered to be paid along with interest @ 7% per annum from the date of filing of claim petition till final realization of the amount.

[5]. I have heard learned counsel for the parties.

[6]. 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.

[7]. 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.

[8]. 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.

[9]. 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.

[10]. 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.

[11]. 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.

[12]. 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.

[13]. 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.

[14]. In case of permanent disability, future loss on account of permanent disability has to be awarded on the basis of multiplier method. Evidently, the claimant was serving as a Joint Director, I.B, Chandigarh and his salary was Rs.32,000/- per month. 48 % of the salary would come out to be Rs.15,360/- (32,000 X 48%) per month and Rs.1,84,320/- per annum. In view of the age of the deceased i.e. 56 years and as per ratio laid down in ***Smt. Sarla Verma Vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77,*** multiplier of 9 would be just and appropriate keeping in view the age of retirement as well as future loss likely to be suffered by the claimant even after retirement. In this way, the amount would come out to be Rs.16,58,880/-. Since the claimant had to serve till the age of superannuation, therefore, loss for 4 years cannot be presumed. Amount of Rs.7,37,280/- (1,84,320 X 4) has to be deducted from total tally of Rs.16,58,880/- under this head. Therefore, amount assessed is Rs.9,21,600/- (16,58,880-7,37,280). Tribunal awarded a consolidated amount of Rs.50,000/- towards special diet, transportation, pain and suffering, attendant charges and mental agony. In my considered view each of the head was required to be dealt with separately. An amount of

Rs.20,000/- towards special diet, an amount of Rs.10,000/- towards transportation, an amount of Rs.20,000/- towards attendant charges, an amount of Rs.1,00,000/- towards mental agony and an amount of Rs.1,00,000/- towards pain and suffering would be just and appropriate. In this way, total amount would come out to be Rs.2,50,000/- under these aforesaid heads. It is also settled proposition that the claimant on account of nature of injuries suffered by him would also be entitled to loss of future amenities in life including matrimonial life. For computing loss under this head, a realistic approach should have been adopted keeping in view the age of the claimant and now his status that of retired employee, an amount of Rs.1,00,000/- would be just and appropriate to meet out the contingency under this head.

[15]. It has been argued that learned counsel for the appellant that even after the award the claimant has been operated. It would be just and appropriate to award Rs.20,000/- towards future medical expenses. In view of aforesaid, total amount of compensation would come out to be Rs.12,91,600/-.

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

Sr. No.	Heads	Amount awarded by the Tribunal	Amount assessed in appeal	Difference
1	Medical expenses	1000/-	20,000/-	19,000/-
2	Permanent disability	96,000/-	9,21,600/-	8,25,600/-

3	Special diet, Transportation, Pain and suffering, Attendant charges and Mental agony	50,000/-	2,50,000/- (20,000 + 10,000 + 1,00,000 + 20,000 + 1,00,000 = 2,50,000)	2,00,000/-
4	Loss of future amenities	Nil	1,00,000/-	1,00,000/-
5	Total compensation	1,47,000/-	12,91,600/-	11,44,600/-

[17]. The enhanced amount i.e. Rs.11,44,600/- shall carry interest @ 7 % per annum from the date of filing of claim petition till final realization of the amount. The aforesaid amount would be payable by the respondents jointly and severely.

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

(RAJ MOHAN SINGH)
JUDGE

21.10.2016
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Whether reasoned/speaking Yes/No

Whether reportable Yes/No