

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.3766 of 2013
Decided on: 25.07.2016

Surjit Singh
.....Appellant
Versus
Jugal Kishor and another
.....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Amit Singla, Advocate
for the appellant.

Mr. Anil K. Gahlawat, Advocate
for the respondents.

REKHA MITTAL, J.

The injured/victim is in appeal seeking enhancement of compensation in respect of injuries sustained by him in a motor vehicular accident on 26.01.2010.

The learned Tribunal has awarded compensation under the following heads:-

Sr. No.	Heads	Amount
1.	Pain and suffering	Rs.10,000/-
2.	Treatment and medicines charges	Rs.2,32,078/-
3.	Transportation charges	Rs.15,000/-
4.	Disability	Rs.80,000/-
5.	Another amount	Rs.50,000/-
TOTAL		Rs.3,87,078/-

In all, the claimant was awarded an amount of Rs.3,87,078/- payable with interest @ 9% per annum from the date of petition till realization.

Counsel for the appellant would contend that

compensation awarded by the Tribunal under various heads needs re-look and enhancement. Compensation is liable to be awarded for loss of amenities of life, services of an attendant and loss of expectation of life. It is further argued that the learned Tribunal has awarded compensation of Rs.80,000/- in respect of disability to the extent of 40% but in view of nature of the disability, compensation for loss of income/disability is liable to be assessed by adopting multiplier method.

Counsel for the respondents has supported the award passed by the learned Tribunal with the submissions that there is no medical evidence that disability to the extent of 40% is functional disability.

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

The learned Tribunal has awarded compensation to the tune of **Rs.2,32,078/-** on the basis of documents (Ex.P-4 to Ex.P-35). The amount awarded for medical expenses does not require intervention and the same is accordingly affirmed.

The Tribunal has allowed a sum of Rs.80,000/- for disability to the extent of 40%. The victim was working as a driver on a truck and he sustained injuries while driving truck No.HR-38-K-2670. The claimant himself appeared in the witness-box and examined Dr. Pawan Kumar, Medical Officer, General Hospital, Sirsa to prove disability certificate Ex.P-45. The doctor deposed that the patient appeared again on 20.04.2011 with fresh X-ray and at that time, he had stiffness of right hip, knee with mal-union of right both bones leg, decreased range of motion of left wrist and right hip, knee and ankle.

The disability assessed on this account was 40%. In the concluding line of his examination-in-chief, he stated that the patient cannot do heavy work throughout his life. Neither the statement of Dr. Pawan Kumar nor the disability certificate Ex.P-45 indicates that disability suffered by the victim is permanent or whether it is likely to improve or otherwise with passage of time. From the statement of Dr. Pawan Kumar, it is difficult to conclude that disability assessed by the board is a functional disability or to say differently that the said disability is *qua* the whole body. In view of nature of disability suffered by the victim and in absence of any positive evidence that the disability is permanent in nature much less the same being functional, statement by the doctor that the injured would not be able to do heavy work throughout his life, in the circumstances, is not sufficient to award him compensation by adopting a multiplier when examined in the light of detailed guidelines laid down by Hon'ble the Apex Court in ***“Raj Kumar vs Ajay Kumar and others”***, 2011(2) RCR (Civil) 101.

The learned Tribunal has awarded compensation to the extent of Rs.80,000/- @ Rs.2,000/- per percentage. A Division Bench of this Court in ***“Ram Kiran Goyal vs Sub-Divisional Engineer Mechanical and others”***, 2008(2) RCR (Civil) 103, has held that compensation in case of disability is to be assessed @ Rs.2,000/- per percentage. In this view of the matter, I find myself unable to accept the submissions made by counsel that compensation *qua* disability is either liable to be enhanced much less to be awarded by adopting multiplier method.

This brings the Court to compensation awarded under

various other heads. The Tribunal has awarded compensation of Rs.10,000/- for pain and suffering, special diet. The victim remained admitted in the hospital w.e.f. 26.01.2010 to 07.02.2010. He has deposed that he suffered fracture of left femur, right neck femur, typia compounded, etc. detailed in the medico legal report and X-ray report. There is no challenge to his testimony with regard to his having suffered fractures at aforesaid situs. As per the disability certificate issued by the medical board, he had stiffness of right hip, knee with mal-union of both right leg bones, decreased range of motion of left wrist and right hip, knee and ankle. In view of nature of injuries sustained resulting in stiffness and decreased range of motion, the appellant is awarded an amount of **Rs.50,000/-** for pain and suffering and special diet. The expenses for transportation is increased to **Rs.20,000/-** in place of Rs.15,000/-. The Tribunal has awarded another amount of **Rs.50,000/-** but without making it clear as to under what head(s) the said compensation has been awarded. The victim was working as a truck driver at the time of occurrence. Taking into consideration the period of confinement in the hospital and his inability to resume his work, the appellant is awarded an amount of **Rs.25,000/-** for loss of income. He is awarded another amount of **Rs.50,000/-** for loss of amenities of life and **Rs.10,000/-** *qua* services of an attendant. In this manner, total compensation payable to the appellant comes to **Rs.4,70,000/-** (Rs.2,32,078/- rounded off to Rs.2,35,000/- + Rs.80,000/- + Rs.20,000/- + Rs.50,000/- + Rs.25,000/- + Rs.50,000/- + Rs.10,000/-). The enhanced compensation is calculated at Rs.82,922/- **rounded off to Rs.83,000/-** (Rs.4,70,000/- – Rs.3,87,078/-). The

enhanced compensation shall carry interest @ 7.5% per annum from the date of filing of the petition till realization and shall be deposited in the shape of FDR in a nationalized bank for a period of two years.

Disposed of accordingly.

25.07.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No