In the High Court of Punjab and Haryana at Chandigarh

FAO-2318 of 2014(O&M)
Date of Decision: 24.10.2016

Prachit Chopra

---Appellant

vs.

Om Parkash and others

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Akshay Jindal, Advocate
for the appellant

Mr. G.S.Brar, Advocate
for respondent No. 2

Mr. D.K.Prajapati, Advocate
for respondent No. 2

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Rekha Mittal, J.

The injured victim, Prachit Chopra through his father Sanjiv Chopra has filed the instant appeal seeking enhancement of compensation in regard to injuries sustained by him in a motor vehicular accident that took place on 12.6.2010.

The Motor Accidents Claims Tribunal, Kurukshetra (in short "the Tribunal") on a detailed consideration of the materials on record and judgments of Hon'ble the Supreme Court of India ***R.D.Hattangadi vs. M/s Pest Control (India) Private Limited 1995(2) PLR 298*** and ***Raj Kumar vs. Ajay Kumar 2011 Accident Claims Journal 1 (SC)*** has awarded Rs. 26,67,100/- payable with interest @ 7.5% per annum from the date of petition till realization, extracted hereunder for ready reference:-

1. Pain and suffering	-	Rs. 2,00,000/-
2. Loss of amenities	-	Rs. 2,00,000/-
3. Loss of expectation of life	-	Rs. 2,00,000/-
4. Disfigurement	-	Rs. 1,00,000/-
5. Loss of prospects of marriage	-	Rs. 50,000/-
6. Loss of earnings	-	Rs. 7,08,912/-
7. Compensation for injuries	-	Rs. 1,00,000/-
8. Medical and hospital expenses	-	Rs. 6,08,129/-
9. Physiotherapy, attendant & nursing charges	-	Rs. 4,00,000/-
10. Special diet and feeding expenses	-	Rs.50,000/-
11.Transportation to Hospital	-	Rs. 50,000/-

Counsel for the appellant has submitted that due to head injury sustained by the victim, he has been rendered disable to the extent of 87.5%, as per medical evidence. The Tribunal has noticed that the victim has become dependent upon others for all intents and purposes and he requires services of an attendant all the 24 hours. It is argued that compensation qua loss of earnings is required to be increased so that compensation deposited in a fixed deposit should fetch so much of interest sufficient to provide for services of an attendant round the clock. It is further argued that the Tribunal has assessed income of the victim at Rs. 45,010/- per annum on the basis of income tax return Ex. P-2A/3 for the assessment year 2010-2011. Prior to the accident, appellant was a student of Bachelor of Commerce and was working as an agent of Max New York Life Insurance Company Limited. According to counsel, had the victim not sustained injuries making his life vegetative, his income would have been much more than assessed by the Tribunal.

Counsel for the insurance company, on the contrary, has submitted that the Tribunal has taken a very lenient and sympathetic view while awarding compensation qua non-pecuniary damages i.e. pain and suffering, loss of amenities of life, loss of expectation of life, disfigurement and loss of prospects of marriage. An amount of Rs. 4 lakhs has been awarded under the head physiotherapy, nursing and attendant charges though it is proved that the claimant incurred expenses of Rs. 2,55,000/-

only as discussed in para 39 of the award, therefore, he has been awarded additional amount of approximately Rs. 1.5 lakhs for physiotherapy, nursing and attendant charges in future. The last submission made by counsel is that the claimant has proved his income to be Rs. 45,010/- per annum, he cannot seek enhancement on the basis of assumptions and presumptions.

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

Before dealing with the submissions made by counsel for the parties, it is pertinent to note that the Tribunal awarded more than Rs. 26 lakhs payable with interest @ 7.5% per annum from the date of petition till realization in the petition filed in June 2011 and decided in December 2013. There is no stipulation in the award as to how the amount of compensation alongwith interest would be dealt with. It appears that in absence of any such condition by the Tribunal that the amount be deposited in a fixed deposit receipt, the entire amount must have been received by father of the victim. Out of total amount of Rs. 26.67 lakhs, an amount of Rs. 15 lakhs represents those heads wherein family of the victim has not incurred expenditure meaning thereby that an amount of more than Rs. 15 lakhs would be available with father of the victim for meeting future requirements qua medical treatment, physiotherapy, attendant charges etc. qua the victim.

The only issue that invites consideration is as to whether compensation in regard to loss of earning needs enhancement. Indisputably, the injured was a student of Bachelor of Commerce and was also working as an agent of Max New York Life Insurance Company Limited. The Tribunal has assessed income at Rs. 45,010/- per annum on the basis of income tax return Ex. P-2A/3. In the year 2010, daily wage of an unskilled worker fixed by the State of Haryana available in June 2010 was Rs. 4214.23/-. As the victim was a student of Bachelor of Commerce, his income would be considered more than that of an unskilled worker. Taking a clue from the minimum wage of an unskilled worker coupled with the educational qualification of the victim and the fact that he was already earning Rs. 45010/- per annum as an agent of Max New York Life Insurance Company Limited, annual income of the victim is assessed at Rs. 56,000/-. As the victim has been rendered totally incapacitated to work and earn, benefit of income for future prospects to the extent of 50% is granted.

The Tribunal has allowed loss of future earnings by taking into consideration the disability to the extent of 87.5%. The Tribunal has lost sight of the fact that as the victim has been rendered dependent upon others for all intents and purposes, loss of income even qua disability to the extent of 87.5% is to be taken as 100%. That being so, loss of future income owing to disability would be Rs. 84,000/-per annum x 18 = Rs. 15,12,000/-. The additional amount of Rs. 8,03,088/- shall be payable with interest @ 7.5% per annum from the date of petition till realization to be deposited in a FDR in a nationalized Bank and interest accruing thereon shall be payable to father of the victim for meeting expenses on future needs of the victim. The amount of interest on the additional amount would be sufficient to meet such requirements in the light of fact that father already has approximately Rs. 15 lakhs of compensation in his hand.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

24.10.2016
paramjit

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