

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

FAO No. 4370 of 2014 (O&M)

Date of decision: 18.02.2016

Rajinder Singh

... Appellant

versus

Sant Ram and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ajay Shekhawat, Advocate for the appellant.

Mr. R.C. Gupta, Advocate, for the respondents.

K.Kannan, J. (ORAL)

CM-12461-CII-2014

For the reasons mentioned in the application, duly supported by an affidavit, delay of 84 days in refiling the appeal is condoned.

CM is disposed of.

FAO No. 4370 of 2013

The appeal is for enhancement of compensation for injury suffered by the claimant in a motor accident that took place on 28.08.2010. The claimant had a fracture of the tibia and the patella requiring his admission for treatment and reducing the fractures. He had two spells of hospitalization from 28.08.2010 to 4.09.2010 and from 08.12.2011 to 12.12.2011. The Tribunal however took the period

of hospitalization to just one day and discarded all the medical evidence regarding the expenses and provided only Rs. 10,000/-. The Doctor who had been examined stated that he had 12% permanent disability and that he was also temporarily disabled to an extent of about 15% during the period of treatment. The Tribunal had awarded Rs. 55,000/-.

The argument is that the Court ought to have provided for loss of income which he had suffered for his inability to work for literally a year and the Court must have also provided for all the medical expenses by reckoning the long period of his treatment. The component of pain and suffering was also not properly assessed.

The fracture at the knee joint could have truly hampered his leg movement which was essential for a tailor, but, counsel for the respondents pointed out that there is no proof that he was a tailor and there was not even a pleading to this effect.

I should make reference to the fact that the petitioner had two spells of treatment commencing from 28.08.2010 to 12.12.2011. There was surely evidence that he was nursing his injury for fairly long time and there must have been, therefore, an impairment for his earning during the said period. Even if there was no proof that he was earning Rs. 10,000/- per month, an able bodied person upto 23 years who was nursing an injury for a long time must be compensated for the loss of earning during the said period which I shall estimate at Rs. 25,000/-. I will provide for the entire medical bills brought before the Court that aggregate to Rs. 88,000/-. The component of the pain and suffering for

a person who had suffered a fracture of the knee joint ought to be more acute than fracture in any other region of the lower limbs. I will, therefore, increase it to Rs. 25,000/-. I may not be able to prospect for any loss of earning capacity for a person for a fracture, for, in the very nature of things fractures unite. In this case, there was a proof that there had been a shortening of the limb by 3.75 cms which would mean that there was loss of amenity, I therefore, increase the loss of amenity from Rs. 39,000/- to Rs. 50,000/-. The various heads of claims are tabulated as under:

SR. No.	Injury Case		
1.	Date of accident	28.08.2010	
2.	Age	23	
3.	Period of hospitalization	28.08.2010 to 04.09.2010, 08.12.2011 to 12.012.2011	
4.	Occupation/ Income as claimed in the petition.	Tailor/10,000/-	
5.	Heads of claim	Tribunal Amount (Rs.)	High Court Amount (Rs.)
6.	Loss of Income from: to:		25,000/-
7.	Medical Expenses:	10,000/-	88,000/-
8.	(i) Medicines		
9.	(ii)Hospital charges		
10	(iii)Attendant charges		10,000/-
11.	(iv)Special diet	2,000/-	5,000/-

12.	(v)Transportation		5,000/-
13.	Pain and sufferings	2,000/-	25,000/-
14.	Disability (12 %) & compensation +15%	39,000/-	50,000/-
15.	Income as assessed by Tribunal (a)		
16.	60% Loss of earning capacity (b)		
17.	Multiplier (c)		
18.	loss of earning capacity (a x b x c)		
19.	Reduction in life expectancy		
20.	Loss of prospect of marriage		
21.	Future needs		
22.	Total	53,000/-	2,18,000/-

The total compensation shall be Rs. 2,18,000/-. The compensation in addition to what has been already assessed shall attract interest @ 9% from the date of the petition till the date of payment.

As regards the liability, the insured vehicle was a motor cycle. The driver was shown to have a light motor vehicle licence and the transport vehicle endorsement. The driving skills for two wheeler are different from four wheeler, but, the Tribunal had however provided for full indemnity to the owner and the driver. The Insurance Company is not in appeal and it will be unfair to create the liability for the owner and the driver with provision for recovery in the absence of any appeal and in the absence of the owner before the Court. I make no

modification as regards liability.

The appeal for enhancement is allowed on the above terms.

(K.KANNAN)
JUDGE

18.02.2016

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