

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**FAO No.5365 of 2013(O&M)
Date of Order: 30.09.2016**

Rakesh Bhalla

..Appellant

Versus

Balwinder Singh and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

**Present: Mr. D.K.Singal, Advocate,
for the appellant.**

**Mr. Chander Shekhar, Advocate, for
Mr. Himanshu Sharma, Advocate,
for respondent no.2.**

**Mr. Neeraj Khanna, Advocate, for
Mr. Ravinder Arora, Advocate,
for respondent no.3.**

REKHA MITTAL, J. (Oral)

The injured victim is, in appeal, seeking enhancement of compensation in respect of injuries sustained by him in a motor vehicle accident that took place on 14.12.2008.

The learned Tribunal awarded an amount of Rs.1,65,000/- under the various heads. Counsel for the appellant has pressed claim for enhancement of compensation primarily on two counts. The first submission made by counsel is that the appellant suffered disability to the extent of 15% as per disability certificate, Ex.P1, as range of motion of left elbow was 90 degree flexion as against 150 degree normal and 135 degree extension as against 180 degree normal, therefore, he is entitled to compensation for loss of amenities of life because compensation for loss of income qua disability and loss of enjoyment of

life do not overlap. In this context, reliance has been placed upon judgment of Hon'ble the Supreme Court of India **Kavita v. Deepak and others, 2013 (1) CCC, 137.**

The Second submission made by counsel is that the injured victim tendered into evidence his affidavit by way of examination-in-chief and has categorically deposed that he spent an amount of Rs.2,36,752/- on medical expenses, but an amount of Rs.1,85,604/- was reimbursed to him by the United India Health Insurance Company and Star Health and Allied Insurance Company Limited but the Tribunal has awarded an amount of Rs.20,000/- by taking the difference of Rs.2,05,271/- and Rs.1,85,604/- in place of difference of total medical expenses of Rs.2,36,752/- and the amount reimbursed and the same would be Rs.50000/- approximately.

Counsel for the Insurance Company, on the contrary, has supported the award with the submission that the Tribunal has awarded compensation under various heads, on a detailed and meticulous consideration of the materials on record, more particularly in the light of judgment of Hon'ble the Supreme Court of India **Raj Kumar v. Ajay Kumar and another, (2011) Supreme Court Cases, 343.**

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

Dr. Pavneesh Aggarwal, PW2, a member of the Medical Board, was examined to prove disability and the disability certificate, Ex.P1. As per the disability certificate, Ex.P1, disability caused to the claimant was assessed at 15%. In cross-examination, the doctor has stated that disability may improve with the passage of time as well as physiotherapy and some surgical procedures. However, there is

nothing on record suggesting that the claimant has undergone physiotherapy much less some surgical procedure, incurring future expenses in regard thereto. However, the occurrence in question took place in December, 2008 and the injured was examined by the Medical Board in November, 2011 and despite expiry of a period of three years, there was disability to the extent of 15% qua range of motion, flexion and extension, as pointed out by counsel for the claimant.

Undoubtedly, the claimant has not suffered any loss of earning capacity due to disability but disability must have caused loss of amenities of life. Hon'ble the Supreme Court of India in **Kavita's case (supra)** has held that it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount for enjoyment of life and the amount awarded for medical expenses. In view of the nature and extent of disability suffered by the victim, opined to improve with passage of time, interest of justice would be served if an amount of Rs.15,000/- is awarded for loss of amenities of life.

So far as the plea with regard to compensation qua medical expenses, it is an undisputed position of the case that the claimant produced on record medical bills of the value of Rs.2,05,271/-. On a careful reading of the statement of the claimant, it is difficult to infer

much less hold conclusively that the bills which were reimbursed by Star Health and Allied Insurance Company Limited were in addition to the bills produced on record. In absence of any such evidence, I do not find any reason to interfere with the findings of the Tribunal, that it is just and reasonable to award balance amount claimed by the claimant towards expenses incurred on medical treatment.

In view of what has been discussed hereinabove, the appeal is partly allowed. An additional amount of Rs.15,000/-, for loss of amenities of life, is awarded. The additional amount shall be payable with interest @ 7.5% per annum from the date of petition till realization. No order as to costs.

September 30, 2016
nt

(Rekha Mittal)
Judge

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