

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

**FAO No. 5183 of 2014 (O&M)
Date of Decision: 05.01.2016**

Jai Dev @ Jai Bhagwan

.....Appellant

Vs.

Labh Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. R.S. Mamli, Advocate,
for the applicant-appellant.

None for respondents No. 1 and 2.

Mr. S.K. Yadav, Advocate,
for respondent No. 3.

AMOL RATTAN SINGH, J.

CM No. 14716-CII-2014

Heard.

For the reasons, mentioned in the application, the
delay of 78 days in filing the appeal is condoned.

CM stands disposed of accordingly.

FAO No. 5183 of 2014

By this appeal, the appellant who was injured in a
motor accident on 06.08.2011, seeks enhancement of the
compensation of ₹1,40,000/- awarded to him by the learned
Motor Accidents Claims Tribunal, Yamuna Nagar, vide its award
dated 08.10.2013.

2. Though respondent No. 1, i.e. the driver of the 'offending vehicle', has not been served of the notice in this appeal, respondents No. 2 and 3 stand duly served. In view of the fact that the contesting respondent is actually the Insurance Company (respondent No. 3), it is not considered necessary to serve respondent No. 1, as submitted by learned counsel for the appellant.

3. The facts leading up to the filing of the claim petition before the Tribunal, are that the appellant was riding on motor cycle No. HR-02-P-5427, on 06.08.2011, near Vishawkarma Chowk, Yamuna Nagar. When, at about 11:00 p.m., he took a turn towards the Radaur Road, a truck bearing registration No. HR-58-A-2234 (hereinafter referred to as 'offending vehicle'), stated to be driven at a high speed, in a rash and negligent manner, came from behind and struck against the motor cycle. The appellant is stated to have fallen down and sustained multiple injuries on various part of his body and his motor cycle was also extensively damaged.

Respondent No. 1 is stated to have fled away from the spot, leaving the 'offending vehicle' there. An FIR No. 254, was also registered against respondent No. 1, on 07.08.2011.

Subsequently, the claim petition was filed before the Tribunal, seeking compensation to the tune of ₹3,00,000/-, on account of the injuries sustained by the appellant, which eventually led to his being hospitalized and even led to the amputation of his toe. He also sought compensation for the

damage to his motor cycle.

4. The respondents having filed a written statement and both the parties having led their evidence, the learned Tribunal awarded compensation as follows:-

(i)	For Medical expenses incurred:-	₹58,576/-
(ii)	Loss of earnings during period of treatment, transportation, Special diet and attendant etc.:-	₹5,000/-
(iii)	Loss of future income:-	₹60,480/-
(iv)	For pain and sufferings:-	₹15,000/-

	Total	1,39,056/-

	Rounded off to ₹1,40,000/-	

5. The respondents not being in appeal against the impugned award, the only issue to be considered by this Court, is as to whether the compensation awarded to the appellant was adequate or not.

6. Mr. R.S. Mamli, Advocate, learned counsel for the appellant, submits that the appellant remained admitted in the hospital for fourteen days, suffering a permanent loss of his toe, could not work on account of the accident for three months, besides having to utilize the service of an attendant to look after him for the said period. He also spent money on transportation from the place of accident to the hospital and thereafter, for periodic checkups at the hospital, in addition to the fact that he

was readmitted to hospital on 13.09.2011, after having been initially discharged on 17.08.2011. He also spent an amount of ₹5,000/- on special diet, to help him recuperate. Hence, considering all the above, as also the pain and suffering gone through by him, the compensation of ₹1,40,000/- is highly inadequate.

7. Learned counsel for the respondent-Insurance company, on the other hand, has submitted that the learned Tribunal had systematically analyzed all the expenses incurred by the appellant, as also the pain suffered by him, as also the loss of future income and had thereby come to a just compensation of ₹1,40,000/-, which does not require any further enhancement.

He prays for dismissal of the appeal.

8. Having considered the arguments on both sides and the evidence as discussed in the award of the learned Tribunal, in my opinion, the amount awarded for pain and suffering, i.e. ₹15,000/-, as also ₹5,000/- cumulatively awarded for loss of earnings, the amount spent on transportation, special diet and an attendant, are highly insufficient.

The amount spent on medical expenses incurred was as per the bills produced and therefore, requires no further enhancement.

As regards the loss of earnings for the period that the appellant would have remained unable to work, it is to be noticed that, admittedly, the big toe of the left foot of the appellant was amputated, as proved by the testimony of Dr. Anuj Mangla,

Medical Officer, who appeared as PW-6 before the learned Tribunal. As per Dr. Amit Goel (PW-2), who referred to the X-ray report, there was a fracture in the great toe and proximal phalanx of the 2nd toe also. Thus, though the appellant first remained admitted in hospital from 06.08.2011 to 17.08.2011 and thereafter from 13.09.2011 to 15.09.2011, for a total period of fourteen days, it is obvious that he would have remained out of work, especially in view of the amputation, for at least a period of two-three months considering that he was admitted to the hospital a second time on 13.09.2011.

The learned Tribunal assessed his income, in the absence of any substantive proof, to be ₹4,500/- per month as a Labourer, which I find no reason to interfere with. However, considering that the appellant would have remained out of work for a period of three months even as a daily wage Labourer, the amount of compensation to be awarded for loss of actual income should not have been less than ₹13,500/-, which is now awarded.

As regards loss of future income, the Tribunal accepted the age of the appellant to be 43 years and applied a multiplier of 14, which is appropriate as per the judgment of the hon'ble Supreme Court in Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. (2009) 6 SCC 121. The extent of permanent disability, as per PW-6, was assessed to be 10%, which the Tribunal reduced to 8%. However, a perusal of entry No. 35 of Part II of Schedule-I of the Employees Compensation Act, 1923 shows that the amputation of the great toe of either

foot would result into 14% disablement to a workman.

In **Raj Kumar** vs. **Ajay Kumar and another** (2011)

1 SCC 343, it was held by the Supreme Court that permanent disability has to be assessed in reference is not just to the body or any specific limb of the body, but with reference to the loss of earning capacity of an injured person. In the present case, the appellant being a daily wage Labourer, who naturally uses his limbs to earn, the permanent disability on account of a loss of a great toe, in my opinion cannot be less than 12% and, as such, it is held accordingly.

Therefore, the loss of future earning, would workout to be as follows:-

(a)	Annual income before the Accident	₹54,000/-
(b)	Annual loss of future Earnings	₹6480/-
		(12% of ₹54,000/-)
(c)	Multiplier applicable with	
	reference to age	= 14
(d)	Total loss of future earning capacity	-----
		₹90,720/-

9. The pain and suffering undergone by the appellant on account of the permanent loss of a toe, the fracture suffered, the hospitalization and the trauma of the accident, needs to be enhanced to ₹50,000/- in place of ₹15,000/- awarded by the Tribunal and is, accordingly, awarded. As regards the amount spent by him on transportation, special diet and an attendant, since the transportation was only local, within Yamuna Nagar, a

sum of ₹2,000/- is awarded to the appellant. Another sum of ₹3,000/- is awarded on account of special diet and a sum of ₹2,000/- for the need of a special attendant. No doubt, some member of his family must have accompanied him and no specific payment would have been made by the appellant for a special attendant. However, such member of the family would also have left his/her work/household chores/studies etc. to accompany the appellant to hospital and to look after him. Hence, ₹2,000/- is the absolute minimum that needs to be awarded under that head, in the opinion of this Court.

10. Accordingly, the compensation now awarded to the appellant is as follows:-

(a) Loss of actual income:-	₹13,500/-
(b) Loss of future earnings:-	₹90,720/-
(c) Medical expenses incurred:-	₹58,576/-
(d) Pain and suffering for the permanent loss of a toe, the fracture suffered, the hospitalization and the trauma of the accident:-	₹50,000/-
(e) For local transportation:-	₹2,000/-
(f) For Special diet:-	₹3,000/-
(g) For attendant:-	₹2,000/-

Total	₹2,19,796/-

Rounded off to ₹2,20,000/-

11. The compensation awarded by the Tribunal was ₹1,40,000/-. Thus, the enhancement comes to ₹80,000/-.

12. The enhanced amount of ₹80,000/- shall carry an interest of 6% per annum, from the date of filing of the claim petition to the date of realization of the said amount.

The appeal is accordingly partly allowed, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

January 05, 2016
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