

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

FAO-5956-2013

Date of decision: 21.4.2016

Ram Chander

...Appellant

Versus

Gurpreet and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Suryakant Gautam, Advocate for the appellant

Mr.Subhash Goyal, Advocate
for respondent No.3- Insurance Company

SNEH PRASHAR, J.

This appeal was filed by appellant-claimant Ram Chander seeking enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Panipat (for short, “the Tribunal”) vide the award dated 14.08.2013 passed in MACT Petition No.23 of 2012, filed by him on account of injuries sustained in a vehicular accident on 07.04.2011.

The submissions made by Mr. Suryakant Gautam, learned counsel for the appellant and Mr.Subhash Goyal, Advocate for respondent No.3-insurance company have been heard and record perused.

Attributing the cause of accident during which a truck bearing No.PB-13Q-8040 (hereinafter referred to as the “the offending truck”) driven in a rash and negligent manner by its driver -respondent

No.1 hit the claimant appellant and his son, who were standing on the kacha berm abutting the road, the appellant had filed a petition invoking the provisions of Section 166 of the Motor Vehicle Act, 1988 (for short, “the Act of 1988”) claiming compensation due to the injuries sustained by him during the accident.

Learned counsel for the appellant argued that due to the multiple serious and grievous injuries sustained by the appellant, he became permanently disabled. PW7 Dr.Ashwani Kumar Garg, Deputy Civil Surgeon, Panipat proved the disability certificate Ex.P109 wherein the appellant was shown to be permanently disabled to the extent of 100% on account of amputation of both legs above knee. However, learned Tribunal while assessing compensation under the head of permanent disability took his disability only to the extent of 80% and awarded a sum of Rs.2,16,000/-.

Learned counsel further pointed out that as proved by PW1 Dr. VK Sahni, Sr. Consultant Orthopedic Surgeon, who treated the appellant at Maharaja Agarsain Hospital, Punjabi Bagh, New Delhi, the appellant underwent multiple surgeries due to crushed injuries of both lower limbs and he remained hospitalized at the first instance w.e.f. 7.4.2011 to 24.5.2011. He was again admitted in Maharaja Agarsain Hospital, New Delhi for the second time w.e.f. 30.11.2012 to 6.12.2012. Thereafter, for atleast six months he remained on follow up treatment and suffered loss of income for the entire period. As such, the amount awarded under the head of pain and suffering, special diet, attendant charges was inadequate, whereas nothing was awarded on account of

loss of amenities of life.

On the other hand, learned counsel for respondent No.3- insurance company submitted that the compensation awarded by learned Tribunal covers all pecuniary and non pecuniary counts on which the appellant had suffered loss due to the injuries sustained by him.

PW1 Dr.VK Sahni has stated that the appellant was admitted in his hospital on 7.4.2011 due to the injuries sustained by him. He had crushed injuries on both lower limbs for which he underwent multiple surgeries. Limb could not be saved and bilateral above knee amputation was done on 29.4.2011. He was discharged from the hospital on 24.5.2011.

PW7 Dr.Ashwani Kumar Garg, Deputy Civil Surgeon, Office of Civil Surgeon, Panipat proved the disability certificate Ex.P109, according to which, the appellant had suffered 100% disability. However, while calculating the compensation under the head of disability, learned Tribunal assessed the disability of the appellant to the extent of 80%, and taking his income as Rs.4500/- per month awarded a sum of Rs.2,16,000/-, which is unjustified because both legs of the appellant have been amputated and therefore, needless to say that he has been incapacitated for doing any manual work. Due to amputation of both legs, he has become dependent on others for his day to day necessities. His age being 68 years, the multiplier of 5 chosen by learned Tribunal was right. Thus, keeping in view the nature of disability, the loss in future earning capacity is taken as 100% and the compensation on account of permanent disability is assessed as

Rs.2,70,000 (Rs.4500 x 12 x 5).

In **Ramesh Chandra v. Randhir Singh and others, 1990(3) SCC 723** the Hon'ble Supreme Court categorically held that compensation can be payable both for loss of earning as well as disability suffered by the claimant. The kind of disability suffered by the appellant is bound to make him face loss of pleasure in the normal activities of daily life.

A person not only suffers injuries on account of the accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. Compensation for loss of expectation of life aims to compensate the victim for his inability to pursue his talents, recreational interests, hobbies or avocations. Therefore, for loss of amenities of life an amount of Rs.50,000/- is awarded to the appellant.

Following the law laid down in **R.D. Hattangadi v. Pest Control (India) Pvt. Ltd., 1995 A.C.J. 366** and considering the nature of injuries and period of hospitalization of the appellant, the amount awarded under the head of pain and suffering is increased to Rs.50,000/-.

The amount incurred on medical treatment i.e. Rs.4,64,594 /-; for loss of income for 54 days i.e. Rs.8100/-; for special diet Rs.10,000/- and for and transportation expenses Rs.48,000/- were allowed, which are just and adequate.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 14.8.2013 passed by the Tribunal is

modified. The appellant-claimant is held entitled to enhanced compensation of Rs.1,34,000/- in addition to the amount of Rs.7,67,494/- already awarded by learned Tribunal. The enhanced amount of compensation shall be paid within two months from the date of receipt of certified copy of this judgment, failing which, it shall carry interest at the rate of 7.5% per annum from the date of filing the appeal till its realization.

21.4.2016
gsv

(SNEH PRASHAR)
JUDGE