

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 6410 of 2013 (O&M)
Date of Decision : 04.05.2016

Jay Narayan

.....Appellant

Versus

The New India Assurance Co. Ltd. and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Saurabh Arora, Advocate
for the appellant.

Mr. Vipul Sharma, Advocate
for Mr. Paul S. Saini, Advocate
for respondent no. 1-Insurance Company.

Mr. Jainainder Saini, Advocate
for respondents no. 2 and 3.

Surinder Gupta, J.

This is appeal by Jay Narayan claimant-appellant against the award passed by Motor Accident Claims Tribunal, Gurgaon (later referred to as 'the Tribunal') allowing him compensation of ₹4,72,600/- for the injuries suffered by him in a motor accident with vehicle bearing registration No. HE-21-E-0058 (Vento Diesel Highline) (later referred to as 'the offending vehicle').

2. As the only issue involved in this appeal is enhancement of compensation sought by appellant, detailed facts of the case are being skipped for the sake of brevity.

3. As per case of claimant, the accident took place on 05.05.2012 at about 03.30 p.m. near Raghu Nanadan Petrol Pump, Sohna Gurgaon Road, Sohna, District Gurgaon, when offending vehicle hit the motorcycle of claimant on which Saral

Parshad was pillion rider resulting in injuries to claimant and Saral Parshad. Amount of ₹4,72,600/- allowed as compensation to claimant by the Tribunal was calculated as follows:-

Sr. No.	Heads	Calculation
(i)	Medical and transport expenses	₹381600
(ii)	Compensation for 24% disability	₹48000
(iii)	Compensation for pain and suffering	₹25000
(iv)	Loss of income @ ₹6000/- for three months	₹18000
<i>Total</i>		₹472600

4. Learned counsel for the appellant has argued that claimant remained under treatment for a long period and was admitted in the hospital from time to time. Amount of compensation allowed by the Tribunal towards disability, pain and suffering is on lower side. The disability has also resulted in loss of future earning to claimant. No compensation was allowed for attendant charges, loss of amenities of life, future medical expenses and transport expenses. The compensation of ₹4,72,600/- do not commensurate with the nature of injuries suffered by claimant, pain and suffering claimant has undergone and his future agony.

5. Learned counsel for respondents have submitted that the Tribunal has allowed compensation by taking into account all the bills of medical expenses and has also awarded just and reasonable compensation for the disability suffered by claimant. On account of pain and suffering and loss of income, yardsticks adopted by the Tribunal were appropriate and call for no interference in this appeal.

6. Quantum of just and reasonable compensation to a victim in a motor vehicle accident has always been a debatable question. There is no yardstick or strict principles laid down or available while calculating amount of compensation. The Tribunal and the higher courts have usually followed some settled norms and guess work while calculating amount of compensation keeping in view facts of each case.

7. In this case, the Tribunal has reimbursed medical expenses of ₹3,81,600/- and has also allowed compensation on account of pain and suffering, loss of income for three months and disability suffered by claimant. Claimant had suffered serious injuries in the accident and was taken to General Hospital, Sohna from where he was got admitted in Sai Hospital, Badshahpur, Gurgaon, where he remained admitted upto 11.05.2012 i.e. for seven days. In paras 3 and 4 of the affidavit submitted by PW-8 Dr. Rakesh Singh, Orthopedic Surgeon, Sai Hospital, type of injuries received by claimant were described, as follows:-

- “3. That the patient had large right compound pilon fracture, tibia fibula with neurovascular damage with multiple tendon damage with segmental fracture and bone loss with a large open wound with severe bleeding.*
- 4. That he was operated upon by me for neurovascular repair with external fixator application with tendon repair.”*

8. After his discharge from hospital on 11.05.2012, claimant was advised follow up once in every three days for dressing and consultation. PW-8 Dr. Rakesh Singh has stated

that claimant remained under his medical care for more than three months from the date of operation. Claimant also remained admitted as indoor patient in Park Hospital, Gurgaon from 13.06.2012 to 17.06.2012 and then in Apollo Hospital, New Delhi from 14.09.2012 to 17.09.2012 and was operated upon.

9. From the medical record on file, it is evident that claimant was under treatment of one hospital or the other as indoor patient for a period of about 4 and half months. The nature of fracture injuries he had received as stated by PW-8 Dr. Rakesh Singh takes a long time to heal.

10. PW-4 Dr. Arvind Jindal, Medical Officer, General Hospital, Gurgaon was a member of medical board that examined claimant and assessed his disability as 24%, which was due to deformity of right ankle and shortening of right lower limb. He has, however, stated that deformity can be lessened by further treatment and physiotherapy.

11. The Tribunal has though taken notice of the injuries suffered by claimant and the evidence produced on record regarding medical bills but has not allowed any compensation for future medical expenses. It is a well known fact that even after joining of fracture, it requires proper medical care and physiotherapy for a long time to keep a person in proper state of health. The Tribunal has also not allowed any compensation for attendant charges, nutritious diet and loss of amenities of life. The disability suffered by claimant has not only affected his daily life but has also affected his future earning capacity and compensation allowed by the Tribunal on this count as

₹48,000/- is on lower side.

12. Keeping in view all the above facts and circumstances, compensation to which claimant is entitled is tabulated as follows:-

Sr. No.	Heads	Calculation
(i)	Medical expenses including charges for transport (as assessed by the Tribunal)	₹381600
(ii)	Compensation for pain and suffering	₹50000
(iii)	Future medical expenses and transport charges	₹35000
(iv)	Compensation for attendant charges	₹15000
(v)	Compensation for nutritious diet	₹20000
(vi)	Compensation for loss of amenities of life	₹100000
(vii)	Compensation for disability	₹100000
(viii)	Loss of income @ ₹6000/- per month for three months as assessed by the Tribunal	₹18000
Total		₹719600

12. As a sequel of my above discussion, the appeal is accepted. Award of the Tribunal is modified and compensation allowed to claimants is enhanced from ₹4,72,600/- to ₹7,19,600/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realization. Respondent No. 1 being insurer of the offending vehicle will deposit the amount of compensation in the bank account of claimant or pay the same through demand draft.

May 04, 2016
jk

(SURINDER GUPTA)
JUDGE