

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 865 of 2013 (O&M)
Date of Decision : 26.07.2016

Hemant KumarAppellant

Versus

Subhash Chander and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. D.K. Narula, Advocate
for the appellant.

Mr. Hoshiar Singh, Advocate
for Mr. Jatin Goyal, Advocate
for respondent no. 2.

Mr. Amrinder Singh Sidhu, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal by claimant-Hemant Kumar, seeking enhancement of compensation awarded to him by Motor Accident Claims Tribunal, Sirsa vide award dated 25.10.2012 for the injuries suffered by him in a motor vehicle accident with bus bearing registration no. RJ-31/PA-1022 (later referred to as ‘the offending vehicle’). Claimant was allowed compensation of ₹59,300/-, which was computed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	10% permanent disability	₹20000
(ii)	Medical expenses	₹26277
(iii)	Mental sufferings and physical agony	₹2000
(iv)	Special diet	₹2000
(v)	Loss of earning during treatment	₹5000
(vi)	Expenses of attendant	₹2000
(vii)	Transportation charges	₹2000
<i>Total</i>		₹59277 (rounded off to ₹59300)

2. Learned counsel for the appellant has argued that accident took place on 04.09.2009 near village Satyun Ranpura, District Churu, Rajasthan. Claimant was first shifted to Government Hospital, Churu. Due to serious injuries, he was brought to Dr. Y.K. Chaudhary & General Hospital opposite Hathi Park, Sirsa, where he remained admitted upto 13.09.2009. Dr. Y.K. Chaudhary conducted operation of his right thigh and steel rod was inserted. Claimant also remained under treatment of Dr. Azad, the renowned surgeon of the area but his chest problem and fracture of ribs did not heal. He was then taken to S.M.S. Hospital, Jaipur on 20.09.2009, where he remained admitted upto 06.10.2009. There he had to undergo various tests by the department of Cardiothoracic and Vascular Surgery. Injuries suffered by claimant did not fully cure and he suffered 10% permanent disability. The Tribunal has allowed a very meagre amount of ₹20,000/- for the disability suffered by him and the amount of compensation awarded under the conventional heads like pain and suffering, nutritious diet, attendant charges, transportation charges etc. is quite meagre and is on lower side. Claimant had to spend a lot on transportation, attendant charges and nutritious diet as he was taken from one hospital to other and had remained in acute pain and suffering for a period of about one month, he remained admitted in the hospital. He had also suffered loss of amenities of life for which the Tribunal has not allowed any compensation. A person, who has suffered fracture injury and permanent disability, requires continuous medical care, physiotherapy etc. but no compensation was allowed towards future medical expenses.

3. Learned counsel for respondent no. 3 has argued that the Tribunal has awarded compensation taking into account all the conventional heads. 10% permanent disability suffered by claimant is not functional disability,

earning capacity, as such, ₹20,000/- awarded on this score and compensation under the other heads is just and reasonable and calls for no further enhancement.

4. On giving a careful thought to submissions of learned counsel for parties, I find that compensation awarded to appellant calls for reassessment.

5. Firstly, it is proved on record that after the accident claimant was taken to Government Hospital, Churu, then to a hospital at Sirsa and again to S.M.S. Hospital, Jaipur for his treatment. Claimant has not only suffered pain and suffering but had to spend considerable amount on transportation and attendant charges while staying at Jaipur in S.M.S. Hospital. Amount of ₹2000/- awarded towards transportation charges and ₹2000/- towards expenses of attendant awarded by the Tribunal is quite meagre and call for enhancement to ₹10,000/- on both counts.

6. Awarding of compensation of ₹2000/- for pain and suffering to a person, who remained admitted in hospital for about one month, is also quite meagre and is enhanced to ₹10000/-. The compensation awarded for nutritious/special diet is also enhanced from ₹2000/- to ₹10000/-. Even if claimant has suffered 10% permanent disability, which has resulted in restriction of movement of right knee and loss of amenities of life but the Tribunal has not allowed any compensation on this score. A person, who has suffered fracture injury and then permanent disability, requires continuous medical attention, physiotherapy etc. but the Tribunal has not allowed any compensation towards future medical expenses. Amount of ₹20,000/- awarded towards 10% permanent disability is also on lower side and the same is enhanced to ₹40,000/- and compensation of ₹5000/- is allowed towards future medical expenses and ₹40000/- towards loss of amenities of life.

which claimant is entitled, is reassessed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	10% permanent disability	₹40000
(ii)	Medical expenses (as already awarded by the Tribunal)	₹26277
(iii)	Pain and suffering	₹10000
(iv)	Special/nutritious diet	₹10000
(v)	Loss of earning during treatment (as already awarded by the Tribunal)	₹5000
(vi)	Expenses of attendant	₹10000
(vii)	Transportation charges	₹10000
(viii)	Loss of amenities of life	₹40000
(iv)	Future Medical expenses	₹5000
<i>Total</i>		₹156277 (rounded off to ₹156300)

8. As a sequel of my discussion above, the appeal is accepted. Award of the Tribunal is modified and compensation allowed to claimant is enhanced from ₹59,300/- to ₹1,56,300/-. 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. 3 being insurer of the offending vehicle shall pay the compensation amount at the first instance by depositing the enhanced amount of compensation in the bank account of claimant or pay the same through demand drafts and may recover the same from insured for breach of terms and conditions of insurance policy as held by the Tribunal.

July 26, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No