

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

FAO No. 8937 of 2014 (O&M)

Date of decision: 11.05.2016

Varinder Kumar

... Appellant

versus

Master Rustam and another

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. S.K. Bawa, Advocate for the appellant.

Mr. Ashwani Arora, Advocate for respondent No.1.

K.Kannan, J. (ORAL)

The appeal is a challenge to the assessment of compensation for injuries suffered by a 13 year old boy. He was said to have suffered a fracture of shaft femur and a fracture of the patela. The fractures were reduced by surgical interventions and there was evidence to the fact that the patient had osteomyelitis. The father was a government servant and seeing that he could obtain only a portion of the claim satisfied through his employer by way of medical reimbursement, he did not pursue for the additional expenses incurred through his employer and filed all the bills before the Tribunal. The Tribunal found the aggregate of the expenses to be Rs. 1,18,282/- and provided them in full. Considering the fact that he had a hospitalization for a period of 2 months, the Tribunal provided for attendant charges at Rs. 5,000/-, special diet at Rs. 10,000/-, transportation at Rs. 5,000/-, Rs. 10,000/- for pain and suffering, Rs. 10,000/- for the loss due to the disability assessed at Rs. 25% and provide the loss of earning capacity at Rs. 4,32,000/-. The appellant is the uninsured owner. I will find no

error in the assessment relating to the medical expenses and the attendant charges, special diet and transportation. Learned counsel says that there was no proof of the bills. I have examined the original records and I find that the bills have been issued with the seal of the chemist and the hospital which is ISO certified and in summary proceedings before the Tribunal it will be wrong to insist on the examination of the chemist or the pharmaceutical company. The patient had two months of hospitalization and six months for convalescence. There was evidence of the father to say that the first treatment between 23.06.2011 to 11.8.2011 did not yield adequate results which required further hospitalization and treatment by operation on 22.09.2011. The implant which was made through such a surgical procedure was removed nearly 2 years later by readmitting him on 07.05.2013 and discharged on 10.05.2013. For a prolonged treatment and two surgical interventions that were required to be made for two fractures for the weight bearing leg, he ought to have been appropriately compensated and I will make the component of pain and suffering for each fracture to be Rs. 7,500/- and pain for surgical procedure for another Rs. 5,000/- each and for carrying the pain for upto nearly two years till the time of implant removal, I will increase the assessment of pain and suffering from Rs. 10,000/- to Rs. 50,000/-. He has suffered 25% reduction of his leg due to the fracture of the knee and any assessment made at Rs. 10,000/- for the disability is in my view too modest and I increase it to the Rs. 50,000/-. The mode of assessment of loss of earning capacity is on the basis that he could be projected to earn Rs. 7,000/- and the multiplier has been applied. I would find this approach to be wholly unscientific. A fracture that causes the reduction in flexion of his leg, it ought not to be immediately understood as causing the loss of his earning capacity as well. If he was not himself an earning member and unless the disability was such that it could keep him outside the job

market in future, there is no means by which the application of multiplier in the manner done would be appropriate. I will reject the whole approach of the Tribunal in its application of multiplier, for assessment of loss of earning capacity at Rs. 4,32,000/- and set it aside. I would on the other hand, think that there has been surely a reduction of his quality of life by the stiffness which he could bear throughout his life and assess it at Rs. 50,000/- and although there is no definite evidence that any future medical expenses would require to be incurred, I will assume that the amount equivalent to the amount which was already assessed as medical expenses would require to be provided and, therefore, I provide for future medical expenses and for treatment to the amount equivalent to Rs. 1,00, 000/-.

Counsel for the respondents also argues that there is reduction of his prospect of marriage. It is too early for a 13 year old boy to suffer a prospect of marriage for a fracture of leg and it not a tenable plea. I reject this argument. He has also lost two years of studies and two witnesses from the school gave evidence about the absence of the student. I will make possible as loss due to the stoppage of studies for nearly two years at Rs. 50,000/-. I will tabulate the various heads of compensation as under:

<u>SR. No.</u>	<u>Injury Case</u>		
1.	Date of accident	26.03.2011	
2.	Age	13	
3.	Period of hospitalization	11.08.2011 to 26.09.2011	
4.	Occupation/ Income as claimed in the petition.	Student	
5.	Heads of claim	Tribunal Amount (Rs.)	High Court Amount (Rs.)
6.	Loss of Income from: to:		
7.	Medical Expenses:		

8.	(i) Medicines	1, 18,282/-	1, 18,282/-
9.	(ii)Hospital charges		
10	(iii)Attendant charges	5,000/-	5,000/-
11.	(iv)Special diet	10,000/-	10,000/-
12.	(v)Transportation	5,000/-	5,000/-
13.	Pain and sufferings	10,000/-	50,000/-
14.	Disability (25 %) & compensation	10,000/-	50,000/-
15.	Income as assessed by Tribunal (a)		
16.	60% Loss of earning capacity (b)		
17.	Multiplier (c)		
18.	loss of earning capacity (a x b x c)	4,32, 000/-	
19.	Reduction in life expectancy		
20.	Loss of studies		50,000/-
21.	Future medical expenses		1,00,000/-
22.	Total		3,88, 282/-

The aggregate of compensation shall be Rs. 3,88, 282/- and this amount shall also attract interest at 8% from the date of the petition till the date of payment.

The compensation assessed shall stand modified and the appeal is allowed to the above extent.

(K.KANNAN)
JUDGE

11.05.2016
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