

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 31.10.2017****FAO No.4975 of 2002**

Sewa Singh

...Appellant

Vs.

Satpal Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the appellant.

Mrs. Shamsher Kaur, Advocate, for respondent No.3.

RAJIV NARAIN RAINA, J. (ORAL)

1. The instant appeal is amongst the five listed old cases on the regular board of Court Room No.25. The paper-book of this case had been partially burnt in the fire incident some years ago in the Registry of this court. The salvage of the file has been placed in photocopy. There is sufficient indication of reasons which can be read despite the margins of the paper-book burnt.

2. No one is present on behalf of the appellant despite notice in cause list. However, respondent No.3 – Insurance Company is represented by Mrs. Shamsher Kaur, Advocate. Earlier, the matter was sent to the Lok Adalat twice, but the Insurance Company was not in a position to settle the issue and that is how this appeal is listed before this Court for final disposal on merits.

3. In a road accident that happened on 23.05.1999, the appellant sustained multiple injuries including crushed injury of right leg below knee and fracture of shaft femur for which he was treated, but he could not recover fully. He was left with 80% permanent disability with amputation below the knee. The appellant claimed that he was earning ₹6000/- per month while working as Mason, but his income has been assessed by the Motor Accident Claims Tribunal, Ambala in the award dated 28.02.2002 at ₹2400/- per month. The loss of income for three months during hospitalization was assessed at ₹7200/-. Apart from the loss of income, the claimant has been awarded ₹10,000/- towards medical expenses; ₹20,000/- towards pain & suffering; ₹1,60,000/- towards permanent disability; ₹3000/- towards attendant charges; ₹2400/- for expenses towards nutritious diet and ₹1500/- for transportation during medical treatment. Thus, the total amount of compensation awarded comes to ₹2,04,100/-, which was ordered to be payable by all the respondents jointly and severally.

4. The liability to pay compensation falls on the Insurance Company since the vehicle was insured by policy and the driver held a valid driving license.

5. A perusal of the award shows that no vehicle was involved except for the offending tractor trolley, therefore, the claim petition filed under Section 166 read with Section 163-A of the Motor Vehicles Act has to be read as one filed under Section 163-A of the Act.

6. As per Disability Certificate (Ex.P-2), there is 80% disability, as the Board found it a case of amputation of the right leg below the knee upper 1/3rd with partial stiffness in right knee joint. It is certified that the

disability is permanent in nature and in relation to the whole body. At the time of accident, ₹2000/- was payable for each percentage of disability and that is how the amount has been assessed as ₹1,60,000/- by the Tribunal, which is not open to interference based on schedule. However, looking to the extent of injuries with amputation of right leg below knee, the amount awarded under the head 'pain & suffering' i.e. ₹20,000/- is on the much lower side and deserves to be enhanced to ₹2,00,000/- because Dr. Rajinder Mann, while appearing as PW-1, deposed that normally such patients may require pain killers off and on throughout their life because of pain in the stump and that such patients are also prescribed high protein diet for their muscle and bone build-up. The rest of the compensation awarded under different conventional heads calls for no interference.

7. However, for prosthetics and artificial limbs, crutches etc. which the appellant-claimant would need to move about and be replaced or repaired from time to time and for continued medical expenses including crutches, walkers etc. and other sundry expenses in case special equipment is required and has been used or is required even today and to make provision of battery operated wheel chair to make life more comfortable and provide money for the same, a further sum of ₹1,00,000/- is awarded.

8. In view of the above, the instant appeal is partially allowed. The award is enhanced by ₹1,80,000/- towards 'pain & suffering' and ₹1,00,000/- for past and future medical expenses, making a grand total of ₹2,04,100/- + ₹2,80,000/- = ₹4,84,100/-. In addition, the amount so awarded will carry interest at the rate of 7.5 % p.a. from the date of award till its realization. The amount be deposited by the respondent insurance company

within two months from the date of receipt of certified copy of this order and be disbursed to the claimant.

9. Office to send a copy of this order to the appellant for him to claim the enhanced amount of compensation.

10. Since the appellant has not been heard while passing this order, he will be at liberty to apply to this Court in case he is not satisfied with the enhanced compensation awarded by this Court. In case, an application is made, it will be decided on its own strength and merit in accordance with law.

11. In case, the appellant for any reason does not come to know of this order or does not appear before the Tribunal/Executing Court within three months, then the amount will be kept by the Tribunal - Executing Court in a fixed deposit in a Nationalised Bank to earn interest at the prevailing rate which amount of principal with accrued interest will be payable to the appellant when he approaches the Executing Court.

31.10.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>