

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

**FAO No.1063 of 1995 (O&M)
Date of Decision: May 19, 2017**

Vishwa Nath

..Appellant(s)

Versus

Lavneesh Jain and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vishwajeet Mehta, Advocate for
Mr. Vikram Singh, Advocate
for the appellant.

Mr. Gopal Mittal, Advocate
for respondent no.3-Insurance Company.

ANITA CHAUDHRY, J.

This is the claimant's appeal seeking enhancement in the award dated 15.12.1994 for the injuries suffered by him.

The record of this file had been burnt in the fire incident which had taken place in the year 2011. Only the copy of the award could be reconstructed. None of the parties could give any material for reconstruction of the record. The counsels appearing for the parties agreed that the matter can be decided on the basis of whatever is available on the record.

The Tribunal on the basis of the evidence adduced before it held the claimant to have contributed to the accident to the extent of 50% and therefore, half of the amount was allowed to him.

The counsel for the appellant has urged that the claimant had suffered disability to the extent of 14% though it was by a private doctor but he states that there was a fracture of the upper tibia and the appellant had remained in the hospital for almost two months and the amount allowed was meagre. The counsel further submits that no amount has been allowed for the attendant, for physiotherapy or transportation. The counsel for the appellant further submits that the finding recorded by the Tribunal that the claimant had also contributed in the accident needs to be reversed.

The submission on behalf of the insurance company was that the appellant had been sufficiently compensated and the bills to the tune of Rs.5,357/- only were produced and the Tribunal had awarded salary for two months though he would have got full salary for that period. It was urged that receipts of only Rs.227/- had been placed on record and the Tribunal had assessed the compensation to be Rs.20,000/- out of which Rs.10,000/- was allowed to the claimant.

Since the record of this case was burnt the evidence is not available, however, at the time of the arguments, the counsel for the appellant had shown the disability certificate which is not issued by the Medical Board but by doctor of a private nursing home. The Tribunal had referred to the certificate and had rightly rejected the same. The disability could only be assessed by a Medical Board to be set up by the Chief Medical Officer. There is no explanation why the appellant did not appear before the Medical Board to get his disability

assessed. The disability referred to in the certificate issued by a private doctor could not be considered.

So far as the contribution is concerned, the findings recorded by the tribunal have to be affirmed. The car was going on the national highway after crossing a red light. The car was on the left side and the appellant was crossing the road without taking care. The Tribunal has noted this fact that it was a busy road and without caring for the signals he attempted to cross the road and was struck by the car. He was also responsible and the amount was apportioned equally and rightly so.

The Tribunal noted that the appellant had remained in the hospital for about two months and there would be loss of salary for two months and had awarded it but I find that the appellant had not been sufficiently compensated on some other heads namely attendant charges, physiotherapy and transportation. The appellant had remained in two different hospitals. He would require physiotherapy. Since there was a fracture, the amount which should have been allowed would be as under:-

Compensation for actual medical expenses	: Rs.5,584/-
(Rs.5357/- + Rs.227/-)	
Compensation for loss of salary for two months	: Rs.3,495/-
Compensation for pain and sufferings	: Rs.15,000/-
Compensation for attendant (Rs.2000/- x 3)	: Rs.6,000/-
Compensation for physiotherapy (Rs.2000/- x 3)	: Rs.6,000/-
Compensation for transportation	: Rs.2,500/-
Total	: Rs.38,579/-

The appellant would be entitled to half of the above amount
i.e. Rs.19,289.50/-, which would be payable by the insurance company
with interest @ 6% from March, 1995 till realization.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

May 19, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No