

In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 2239 of 1995 (O&M)

Date of Decision: 16.5.2017

Rajiv Kumar

.....Appellant

Versus

Jagdish Bimal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Arun Nehra, Advocate
for the appellant.

Mr. R.K.Bishamboo, Advocate
for respondent No. 2.

Mr. Pradeep Kumar, Advocate
for respondent No. 1.

ANITA CHAUDHRY, J

This is the claimants' appeal seeking enhancement in the award dated 27.3.1995 passed by the Motor Accident Claims Tribunal, Chandigarh.

The record of this file had been burnt in the fire accident which had taken place in the year 2011. Copy of the award and grounds of appeal are available. The claimants have placed on record photocopy of the pleadings, zimni orders and some documents. The counsel appearing for both the parties stated that the matter can be decided on the basis of the award and the available material.

An accident had taken place on 28.3.1991 at 3.30 P.M. near

Attawa Chowk. The claimant was going towards Sector-40 in Chandigarh

and was on the pillion of a scooter driven by respondent No. 1. The scooter was hit by a jeep driven by respondent No. 3. The claimant was 25 years old and suffered disability. The Tribunal took the disability at 9% and awarded Rs. 30,000/- for the disability, Rs. 15,000/- for the medicines, Rs. 5,000 for pain and suffering, Rs. 3,000/- for transportation and Rs. 5,000/- for the attendant and award of Rs. 58,000/- was passed.

The submission on behalf of the appellant is that the claimant had to undergo 10 operations for dislocation of ankle and the disability certificate would show that it was 58% of the left leg and the appellant was re-examined again by PGI, Chandigarh and the opinion of the board was that the disability was to the extent of 35% in relation to the lower limb. Counsel further submits that though the bills of Rs. 21,000/- had been produced but only a sum of Rs. 15,000/- was allowed for the medicines and very less amount has been awarded for transportation as number of visits had to be made. It was urged that the multiplier method should have been used to calculate the loss. Counsel further submits that an application was moved for additional evidence and the report of the Tribunal was called as there were two disability certificates dated 13.5.1998 and other dated 15.9.2003 and the report had been received and the disability is 20% in relation to the whole body. It was urged that the claimant had pleaded that he was getting a salary of Rs. 3,000/- per month and was working with M/s Pari Services Pvt. Ltd. in Delhi and the multiplier method should have been applied to calculate the disability. Counsel further contended that the claimant was entitled to higher compensation for future expenses and also for loss of marriage prospects. It was urged that the claimant was referred

additional amount was payable for transportation and also for the attendant.

The submission on the other hand was that there was no evidence of the avocation nor about his qualification or any evidence regarding his income and no document has been produced to show that he had taken any treatment in Ganga Ram Hospital.

The claimant had pleaded that he was working as an agent with a concern in Model Town, Delhi and was getting a salary of Rs. 3,000/- per month in 1991. However, he has failed to lead any evidence with respect to his income. The claimant had suffered disability of the left leg and the disability given in Ex. PW4/A was 58% in relation to the left leg and 20% in relation to the whole body. The claimant was again examined by the medical board in 2003 and it merely states that 58% in relation to the left leg. There is another disability certificate wherein the disability was stated to be 35% of the lower limb which is available at page 91 (the record made available by the claimant).

The claimant is now married. The minimum wages for a labourer in 1991 were around Rs. 900/- per month and for the skilled upper, it would be around Rs. 1000/- per month. The claimant was required to lead evidence to show that he was getting salary of Rs. 3,000/- per month. In the absence of any evidence, the income can be taken to be Rs. 2,000/- per month. Since it was a case of permanent disability, the age of the claimant is relevant and addition of 50% for the future prospects should be made. The income thus would be Rs. 3,000/- per month. Taking the disability at 20% and using the multiplier method, the loss would be Rs. 600/- per month and the annual loss after using the multiplier would be Rs. 600/- x 12 x

tune of over Rs. 21,000/- and the entire amount had not been granted to him. The Tribunal had rejected some receipts as there was no prescription slip. It was also found that there was some overwriting and cuttings in Ex. P-55, P-15, P-20, P-22 and P-37. The bills which have been produced on record by the appellant do not have the exhibits. The record had been burnt. Therefore, the documents which were exhibited are not available. The Tribunal had elaborately dealt with this aspect in para 14 of the award and had allowed Rs. 15,000/-. I would raise it to Rs. 20,000/- only. It had been urged that the treatment was long but the claimant failed to produce supporting documents. The following amount are allowed to the claimant keeping in view the fact that the accident occurred in 1991:-

	<i>(in Rs.)</i>
Disability	1,29,600.00
Medicines	20,000.00
Pain and suffering	20,000.00
Transportation	10,000.00
Attendant (1000 x 6 months)	6,000.00
Loss of marriage prospects	25,000.00
Loss of income for the treatment period (2,000 x 6)	12,000.00
Cost of litigation	7,500.00
	2,30,100.00

The Tribunal had awarded Rs. 58,000/- which would be deducted and the remaining amount i.e. 1,72,100/- would be payable to the claimant with interest @ 6% from January 1996 till realization.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

May 16, 2017

Gurpreet

Whether speaking/reasoned : Yes

Whether reportable : No