

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

**FAO No.1434 of 2003
Date of decision : 01.09.2017**

Raj Kumar

..... Appellant

VERSUS

Karam Chand and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Y.P. Malik, Advocate
for the appellant.

None for the respondents.

SUDHIR MITTAL, J.

I am proceeding to decide this appeal in the absence of learned counsel for the respondents for the reason that they had remained unrepresented on 18.08.2017, on which date the case was adjourned to today for final arguments. Even today, the respondents remain unrepresented. The appeal is of the year 2003 and the claimants are seeking enhancement. Therefore, I deem it appropriate not to grant any further adjournment.

The claimant is in appeal against the Award dated 24.12.2002 of the learned Motor Accidents Claims Tribunal, Kaithal (hereinafter as referred to the "Tribunal"), for enhancement of compensation awarded on account of injuries sustained in the accident, which took place on 13.05.2001.

The claimant-Raj Kumar was going on foot towards Pehowa Chowk, Kaithal on 13.05.2001 at about 5.30 p.m. He was hit by a truck bearing registration No.HR-45-1006, which was being driven on the wrong

side of the road in a rash and negligent manner. After the accident, the driver of the offending vehicle ran away from the spot. The claimant was taken to Civil Hospital, Kaithal and FIR No.252 dated 15.05.2001, under Section 279, 337 and 338 IPC was registered at Police Station City, Kaithal. The claimant remained admitted in Civil Hospital, Kaithal for about one month. Thereafter, he was shifted to Anand Orthopedic Centre, Kurukshetra, where he remained admitted from 28.06.2001 to 03.08.2001. During his admission, he was operated upon and re-admitted from 10.09.2001 to 01.11.2001. He suffered fracture of right femur and as a result of the injuries sustained by him the flexion of his right knee was severely curtailed. The movement of right hip joint also became restricted. A medical board determined the physical disability of the claimant at 33% (permanent) as is evidenced by the disability certificate Ex.PF. The learned Tribunal granted compensation of ₹1,13,204/- and the same is assailed by the claimant as being inadequate.

Learned counsel for the appellant contends that the finding of the learned Tribunal regarding the accident having been caused on account of rash and negligent driving of respondent No.1 (driver of the offending vehicle) deserves to be upheld as the same has not been challenged either by the driver/owner or by the insurance company. I agree with this submission and uphold the finding that the accident was caused due to rash and negligent driving of respondent No.1.

It is further contended by the learned counsel for the appellants that the appellant was working as a mason and was aged 28 years on the date of the accident. From his statement as PW-1, it has come on record that his daily earning was in the range of ₹150/- to ₹160/-. Thus, the monthly

income is in the vicinity of ₹5,000/-. The permanent physical disability suffered by the appellant is 33% as is evident from Ex.PF. However, in view of the fact that the appellant was working as a mason and is unable to bend his right knee and is also unable to squat on account of reduction in movement of the hip joint, he is unable to work as a mason and therefore, his earning capacity has been reduced by 100%. He thus states that the learned Tribunal has committed an error by not granting compensation on account of loss of earning. He further submits that no compensation has been granted on account of curtailment in the future enjoyment of life and attendant charges. It is also his grouse that inadequate compensation has been granted on account of pain and suffering. It is the further contention of the learned counsel for the appellant that life-span of the appellant was grossly reduced on account of his injuries and poverty as he died on 05.04.2016. This is evident from the fact that the legal representatives of the appellant have been impleaded on account of his death and they are his widow and three minor children.

Having heard learned counsel for the appellant and having perused the record of this case, I agree with the submissions made by him. The fact that the appellant has been rendered unfit to work as a mason is conclusively proved by the disability certificate Ex.PF and also by the statement of PW-4, Dr. S.K. Jain. Even though, his physical disability has been assessed as 33%, his earning capacity has been reduced to zero. A mason who can't bend his knee and can't squat is unable to practice his trade and therefore, he has been rendered totally incapacitated so far as his ability to earn a living is concerned. For all practical purposes, he is 100% disabled. I find support for this view in judgment of the Hon'ble Supreme in

Rajan Vs. Soly Sebastian and others, 2015 (3) RCR (civil), 962 and Mohan Soni Vs. Ram Avtar Tomar and others, 2012 (2) RCR (civil), 431. Compensation would thus have to be determined keeping in view 100% disability of the appellant. The statement of the appellant as PW-1 that he was working as a mason and earning ₹150/- to ₹160/- per day, has remained unrebutted. Even the, minimum wages of skilled labourer in Haryana in the year 2001 were ₹2,114.58/- per month. Considering that the appellant worked for at least 15-20 days in a month, I assess the monthly income at ₹3,000/-. It is not in dispute that the appellant was 28 years of age on the date of the accident. Thus, the compensation to which the appellant is entitled is assessed as follows:-

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| (a) Monthly income (₹3,000x12) | ₹36,000/- |
| (b) Monthly dependency after reducing 1/3 rd for personal expenses (₹36,000-₹12,000) | ₹24,000/- |
| (c) Compensation for loss of dependency (multiplier of 15 is taken as appellant died on 05.04.2016) (₹24,000x15) | ₹3,60,000/- |
| (d) Period of admission in hospital, six months, loss of earning during admission (₹3,000x6) | ₹18,000/- |
| (e) Pain and suffering | ₹1,00,000/- |
| (f) Loss of future enjoyment and expectation of life | ₹1,00,000/- |
| (g) Compensation on account of special diet, conveyance and attendant | ₹50,000/- |
| (h) Medical bills and treatment (rounding off figure of ₹33,204/-) | ₹35,000/- |
| (i) Total compensation | ₹6,63,000/- |

The appeal is allowed in the above terms. The enhanced compensation will be payable with interest @ 7.5% per annum from the date of filing of the claim petition till the date of payment. Respondent No.3-United India Insurance Company Limited, is directed to make payment within a period of three months, from the date of receipt of certified copy of this judgment.

(SUDHIR MITTAL)
JUDGE

September 01, 2017
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No