IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2410 of 1999 (O&M)
Date of Decision:11.9.2017

Smt. Lalita Arora and others

.......Appellants

Versus

Onkar Nath and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Prateek Mahajan, Advocate
for the appellants.

None for respondents No. 1 and 2.

Mr. V. Ram Swaroop, Advocate
for respondents No. 3 to 5.

AVNEESH JHINGAN, J.

The present appeal is against the award dated 5.4.1999 passed by the Motor Accidents Claims Tribunal, Amritsar (for short 'the Tribunal').

This was burnt case and has been re-constructed from the salvaged record and copies supplied by counsels subject to all just exceptions.

The facts relevant for decision of the present appeal are being noted below:

On 10.9.1994, Bansi Lal Arora was travelling in a car bearing Registration No. HP-38-4055. The car was being driven in a very slow speed on the left side of the road when it reached near bus stand of village Mudhal, the same was struck by a Truck bearing registration No.PBN-9145. The truck was being driven at a very high speed and in a rash and negligent manner. As a result of head-on-collusion, the driver of the car died and Bansi Lal Arora suffered fracture of ribs, fracture of right fumer and other injuries also. He was taken to Guru Teg Bahadur Civil Hospital, Amritsar.

Thereafter, he was shifted to Dr. Karam Singh Memorial Orthopedic Hospital and Research Center, Amritsar, where he was operated upon on 13.9.1994 and was discharged on 24.9.1994. Thereafter, he continued getting treatment from Mool Chand Kharaiti Lal Hospital, New Delhi.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), was filed by Bansi Lal Arora. During the pendency of the claim petition, Bansi Lal Arora died on 28.11.1996. The Tribunal, after considering the witnesses and evidence, awarded a sum of ₹ 1,87,700/- along with interest at the rate of 12% per annum.

Aggrieved of the said award, the present appeal has been filed for enhancement.

Heard learned counsel for the parties and perused the paper book.

Learned counsel for the appellants argued that it was claimed before the Tribunal that the deceased was earning ₹ 50,000/- per month from a partnership concern, which was engaged in the business of import and export. The Tribunal only awarded ₹ 85,000/- for loss of income for 17 months by taking the income as ₹ 5000/- per month. Learned counsel for the appellants further argued that a certificate Ex.AW8/3 from the Chartered Accountant was also produced before the Tribunal but the same was not considered.

Learned counsel for the appellants further argued that the amount of ₹ 15,000/- awarded for pain and suffering is on lower side. Nothing has been awarded for special diet, mental agony and shortening of life expectancy.

Learned counsel for the appellants also argued that the Tribunal while considering the medical bills Ex.AW6/1 to AW6/20 produced before it, has not considered the bills from Ex.AW6/6 to AW6/10 and AW6/21. The Tribunal has only awarded an amount of ₹ 87,700.85. Learned counsel for the appellants still further argued that if entire bills would have been considered, the claimants were entitled for a sum of ₹ 1,28,931/-.

Learned counsel for respondents No. 3 to 5 argued that the Tribunal has already granted a sum of ₹ 1,87,700/- along with interest at the rate of 12% per annum. There was no permanent disability and the claimants were not able to show that after a gap of 2 years and 2 months, the death had occurred due to the injuries suffered in the accident. Learned counsel for the respondents contended that injuries were just fractures and thus no hospitalisation as such was required.

Learned counsel for the respondents had no serious objection with regard to omission on the part of the Tribunal with regard to not considering certain medical bills.

I have heard learned counsel for the parties and perused the paper book.

So far as non-awarding of claim for the medical bills Ex.AW6/6 to AW6/10 and AW6/21, which were produced before the Tribunal is concerned, the contention raised by learned counsel for the appellants has merit and should be allowed. The amount of ₹ 87,700/- awarded by the Tribunal, is enhanced to ₹ 1,30,000/-. Though, the total amount is claimed to be ₹ 1,28,931/-, in such a case of injury, it cannot be expected that each and every expenses would be vouched.

Hon'ble the Apex Court in ***G. Ravindranath @ R. Chowdary Versus E. Srinivas and another,*** 2013(12)SCC 455, held as under:

> "It is settled law that compensation in personal injury cases should be determined under the following heads:
>
> Pecuniary damages (Special damages)
>
> (i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure.
>
> (ii) Loss of earnings (and other gains), which the injured would have made had he not been injured, comprising:
>
> (a) Loss of earning during the period of treatment;
>
> (b) Loss of future earnings on account of permanent disability.
>
> (iii) Future medical expenses.
>
> Non-pecuniary damages (General damages)
>
> (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
>
> (v) Loss of amenities (and/or loss of prospects of marriage).
>
> (vi) Loss of expectation of life (shortening of normal longevity).
>
> 12. In routine personal injury cases, compensation will be awarded only under head (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evident of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

A perusal of the above decisions shows that in case of personal injury pecuniary damages (special damages) should be given under various heads. It was further held that non-pecuniary damages should also be compensated.

The above decision enunciates the law that in case of non-fatal injury also pecuniary and non-pecuniary losses should be assessed. It has come on record that Bansi Lal Arora not only suffered fracture and other injuries but was also operated upon.

As a result of accident, he was bed ridden for more than four months. In such circumstance, the compensation of ₹15,000/- awarded for pain and suffering is enhanced to ₹ 50,000/-, ₹ 20,000/- is awarded for special and rich diet and ₹ 10,000/- is awarded with regard to mental agony and shortening of life expectancy.

Now dealing with the issue of loss of income because of the accident. There is no dispute between the parties that the loss of income has to be assessed for 17 months only.

The only issue is with regard to enhancement of ₹ 5000/- assessed as income by the Tribunal. The certificate produced as Ex.AW8/3, issued by the Chartered Accountant, mentioned that apart from HUF Income, Bansi Lal Arora, had an annual income of ₹ 74,160/- during the financial year 1992-93 and an income of ₹ 3,29,573/- during the financial year 1993-94. If the income for the financial year 1993-94 is considered his monthly earning was approximately ₹ 28,000/-. It cannot be held that in case of a partnership firm, the entire business came to a stand still because one of the partner met with an accident.

Further it has not come on record that the injury has resulted into some permanent disability because of which Bansi Lal Arora was not able to conduct his business at all.

Hon'ble the Apex Court, in **Nagappa vs. Gurudayal Singh and ors., 2003(2) SCC 274,** has observed as under :-

> "For the reasons discussed above, in our view, under the M.V. Act, there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award 'Just' compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the M.V. Act. If required, in appropriate cases, Court may permit amendment to the Claim Petition.
>
> Is it permissible under the Act to award compensation by instalments or recurring compensation to meet the future medical expenses of the victim?"

As the Hon'ble Apex Court has laid down that the Courts and Tribunals are duty bound to award the just and equitable compensation, it cannot be restricted merely because of the amount claimed in the claim petition is less.

The income of ₹ 14,000/- per month is taken as loss of income for 17 months. Thus, calculation is 14000 x 17= 2,38,000.

Sr.No.	***Heads***	***Amount earlier awarded by the Tribunal***	***Now awarded***
1	Compensation awarded for loss of income	₹ 85,000/-	₹ 2,38,000/-
2	Medical bills	₹ 87,700/-	₹ 1,30,000/-
3	Pain and suffering	₹ 15,000/-	₹ 50,000/-
4	Special diet	Not awarded	₹ 20,000/-
5	Mental agony	Not awarded	₹ 10,000/-
	Total	₹ 1,87,700/-	₹ 4,48,000/-

Net result is that the appeal is partly allowed and the award dated 15.4.1999 is modified to the extent that the amount awarded by the Tribunal of ₹ 1,87,700/- is enhanced to ₹ 4,48,000/-. The claimants will be entitled to enhanced amount alongwith interest at the rate of 6% per annum from the date of filing of petition till its realization.

(AVNEESH JHINGAN)
JUDGE

11.09.2017
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Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No