

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

FAO No.2381 of 1998 (O&M)
Date of decision: March 06, 2017

Indu Bhushan

...Appellant

Versus

Ravi Kumar and others

...Respondents

Coram: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Gopal Mittal, Advocate
for the appellant – injured claimant.

Mr.Akash Sridhar, Advocate for
Mr.Ashwani Talwar, Advocate
for respondent – Insurance Company.

HARINDER SINGH SIDHU, J.

This is claimant's appeal for enhancement of compensation.

Brief factual background is that on 1.6.1993, the appellant was going towards Dhangu Chowk, Pathankot along with one Chander Parkash on motorcycle No.PB-35-1146, which met with an accident with Jeep No.UTL-4303, which was being driven rashly and negligently at a high speed on the wrong side of the road by respondent No.2. Both the occupants of the motorcycle suffered injuries.

FIR No.85 dated 2.6.1993 was registered in Police Station Division No.1, Pathankot regarding the accident. The appellant, who had received multiple injuries including fracture in his leg, remained under treatment at Civil Hospital, Pathankot and Karam Singh Memorial

Orthopedic Hospital and Research Centre, Amritsar.

The appellant filed claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation pleading that he spent Rs.50,000/- on the treatment, besides loss of income at Rs.5000/- per month. It was also pleaded that he has been rendered disabled to earn his livelihood due to the injuries.

The respondent – Insurance Company filed written statement controverting the claim of the appellant denying the accident as having occurred due to rash and negligent driving of the Jeep, besides taking other pleas also.

The Motor Accident Claims Tribunal, Gurdaspur after appreciating the evidence led by the parties, held that the accident had occurred due to rash and negligent driving of the jeep by respondent No.2. Considering the income tax return, the medical treatment expenses, the disability, etc., the Tribunal awarded the following compensation:-

Sr.No.	Head of Compensation	Amount
1.	Permanent Disability	1,00,000/-
2.	Pain and Suffering	20,000/-
3.	Medical expenses	18,300/-
4.	Special Diet	10,000/-
5.	Loss of enjoyment of life and future prospects	50,000/-
	TOTAL	1,98,300/-

The amount of compensation was directed to be paid along with interest at the rate of 12% per annum from the date of application till the date of payment.

Feeling dissatisfied with the quantum of compensation, the appellant has filed the present appeal.

Ld. counsel for the appellant has contended that the Tribunal has awarded the compensation on the lower side, particularly under the heads of 'loss of income', 'loss of future enjoyment of life' as also for 'pain and suffering'. It is argued that due to the injuries suffered in the accident, the appellant was hospitalized and remained confined to bed for long. The injury has resulted in the shortening of his leg by 1½ inch. There is marked restriction of ankle right side. As per the disability certificate issued by Civil Surgeon, Gurdaspur, his disability is fifty percent and is permanent. He contended that the appellant has been engaged in the business of production of Polythene bags through a firm 'M/s Jagdambay Industries Manufacturing Polythene Bags' at village Sujanpur, Tehsil Pathankot. Due to the disability suffered, his working capacity has been adversely affected, which has resulted in financial loss and his future earning prospects have been gravely impaired.

He referred to the deposition of Sanjeev Mahajan, Chartered Accountant, who while appearing in the witness box as AW5 deposed that the appellant was running the aforesaid industry and he had been going through the account books pertaining to that business. This witness also proved on record that the appellant is an income tax payee and in the assessment year 1992-93, his income was Rs.39,187/- and Rs.493/- was paid as income tax. The firm is suffering financial losses since 1993-94.

Ld. Counsel for the Insurance Company on the other hand

contended that the amount awarded is adequate.

Heard Ld. Counsel for the parties and perused the record made available by them.

The Court can take judicial notice of the fact that due to the disability, as indicated in the disability certificate which is permanent, the injured would not be able to work with the same vigor and capacity as before. Running a business requires constant movement, sourcing raw material, marketing, arranging for labour etc. and numerous other activities. Even on a very conservative estimate, the appellant would suffer loss of income to the extent of 20% for which he needs to be compensated. Taking his annual income at Rs.39,187/- per annum, the annual loss of future earnings comes to about Rs.7,837/- (approx.) Since, he was aged about 32 years at the time of accident, therefore, as per the decision of Hon'ble Supreme Court in **Smt.Sarla Verma vs. Delhi Transport Corporation (SC), 2009(3) RCR (Civil) 77**, multiplier of 16 needs to be applied.

At the same time, it also cannot be lost sight that he will carry the disability for whole of life, which will never allow him to get full enjoyment of life as a normal man. He remained hospitalised for long and took treatment from two hospitals; firstly at Civil Hospital, Pathankot and then at Dr.Karam Singh Memorial Orthopedic Hospital and Research Centre, Amritsar.

In view of the above, the compensation is re-assessed as under:-

Sr.No.	Head of Compensation	Amount
1.	Permanent Disability	1,00,000/-
2.	Pain and Suffering	50,000/-

3.	Medical expenses	18,300/-
4.	Special Diet	10,000/-
5.	Loss of enjoyment of life	75,000/-
6.	Loss of future income @ 20%	$(39187 \times 20 / 100) \times 16 = 1,25,398.40$
	TOTAL	3,78,698.40

Accordingly, the appeal is allowed. The appellant – injured is held entitled to compensation of Rs.3,78,698/-. The enhanced amount of Rs.1,80,398/- (378698-198300) is payable along with interest at the rate of 7.5% per annum from the date of filing the claim petition till its payment.

March 06, 2017
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(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/ reasoned:	Yes/No
Whether Reportable:	Yes/No