

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

-.-

FAO 1187 of 2001 (O&M)
Date of decision: 01.08.2017

Ram Singh

..... Appellant

Versus

Rajender and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Mani Ram Verma, Advocate
for the appellant

Mr. Pradeep Goyal, Advocate
for the Insurance Company

-.-

Rekha Mittal, J. (Oral)

The injured claimant is in appeal seeking enhancement of compensation in respect of injuries sustained by him in a motor vehicular accident that took place on 28.11.1998.

The learned Tribunal awarded compensation to the tune of Rs.1,88,600.00, detailed here-in-below:-

*Loss of income by adopting a multiplier method=	Rs.1,53,600.00
*Pain and sufferings	=Rs.10,000.00
*Special diet	=Rs.5,000.00
*Taxi charges	=Rs.7,500.00
*Medical expenses	=Rs.12,500.00

Counsel for the appellant has pressed his claim for enhancement of compensation on several grounds. The first submission

made by counsel is that the Tribunal has assessed income of the victim at Rs.1,600.00 per month for the purpose of loss of income due to disability to the extent of 50%. It is argued that the victim was running a Karyana shop in his village and earning Rs.5,000.00 per month. In the alternative, it is submitted that even if income is to be assessed on the basis of daily wages fixed by the State of Haryana and available in November 1998, the same would be more than Rs.1,600.00 per month and benefit of future prospects to the extent of 50% should be allowed.

Another submission made by counsel is that in view of nature of injuries sustained, period of confinement in the hospital, compensation awarded for pain and suffering, special diet etc. is liable to be enhanced.

Counsel representing the Insurance Company has supported the award with the submission that adequate compensation has been awarded by the Tribunal. The claimant failed to adduce satisfactory much less cogent and convincing evidence to prove that he was running a Karyana shop and earning Rs.5,000.00 per month. The benefit of increase in income for future prospects is not admissible as the matter with regard to future prospects is pending before a larger Bench of Hon'ble Supreme Court of India in view reference made in *National Insurance Company Limited v. Pushpa (SLP (c) No. 16735 of 2014, decided on 02.07.2014)* and the observations made by the Apex Court in *Shashikala and others v. Gangalakshamma and another, 2015 ACJ 1239*.

I have heard counsel for the parties and perused the paper book particularly the award passed by the Tribunal.

The occurrence in question took place on 28.11.1998 and

offending vehicle i.e. Tanker No. HR 16-GA-0136 driven by Rajender son of Har Narain has been attributed rashness and negligence for causing accident. Indisputably, the appellant has suffered disability to the extent of 50% as he suffered fracture of both legs resulting in stiffness of both knees, difficulty in standing on effective legs, walking, climbing stairs, kneeling, squatting and taking turn.

The Tribunal has adopted a multiplier method to assess loss of income due to disability suffered by the victim. The claimant has failed to establish his plea with regard to his doing Karyana business or earning Rs.5,000.00 per month. Taking into consideration the minimum wage admissible to an unskilled worker in State of Haryana in November 1998, income of the victim is assessed at Rs.1,730.00 per month. The mere fact that the matter is pending before a larger Bench of Hon'ble the Supreme Court is not sufficient to deny benefit of increase in income for future prospects. After extending benefit of future prospects to the extent of 50%, loss of income is assessed at Rs.865 (50% of income) x 12 x 16 + 83,040.00 (50% F.P.) = **Rs.2,49,120.00.**

The appellant remained admitted in hospital from 28.11.1998 to 16.12.1998. Dr. P K Charya (PW2) proved disability certificate Ex.P5, according to which the appellant was an old case of fracture of left femur with k-nailing and fracture of right leg bones with rash nailing resulting in stiffness of both knees. He was operated upon twice during the course of treatment. A plate was inserted in the left thigh and two rods in the right leg. Taking into consideration period of confinement in the hospital and nature of treatment given to the victim, the appellant is awarded an amount

of Rs.25,000.00 for pain and suffering and another sum of Rs.25,000.00 for loss of amenities of life. Compensation qua special diet is increased to Rs.10,000.00. In this manner, total compensation comes to **Rs.3,09,120.00** (2,49,120+25,000+25,000+10,000) and the additional amount is **Rs.1,20,520.00**. The additional amount shall be payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

01.08.2017
mohan bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No